

By: Perez

H.B. No. 2106

A BILL TO BE ENTITLED

AN ACT

relating to the prevention, identification, investigation, and enforcement of payment card fraud; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 607, Business & Commerce Code, is amended to read as follows:

CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL METERING DEVICES
~~[DISPENSERS]~~

SECTION 2. Section 607.001, Business & Commerce Code, is amended by amending Subdivisions (1), (2), (4), (5), (7), and (8) and adding Subdivisions (1-a), (1-b), (2-a), and (5-a) to read as follows:

(1) "Center" means the financial crimes intelligence ~~[payment fraud fusion]~~ center established under Chapter 2312 ~~[424]~~, Occupations ~~[Government]~~ Code.

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

(1-b) "Credit card issuer" has the meaning assigned by Section 505.001.

(2) "Department" means the Texas Department of Licensing and Regulation ~~[state agency that is the licensing authority for service companies and service technicians]~~.

(2-a) "Executive director" means the executive director of the department.

1 (4) "Merchant" means a person whose business includes
2 the sale of motor fuel through motor fuel metering devices
3 [~~dispensers~~] to retail customers.

4 (5) "Motor fuel" and "motor fuel metering device" have
5 the meanings assigned by Section 2310.001, Occupations Code [~~"Motor~~
6 ~~fuel dispenser" means a machine that is used to pump gasoline,~~
7 ~~diesel, biofuels, or other types of fuels into motor vehicles~~].

8 (5-a) "Motor fuel unattended payment terminal" means a
9 point-of-sale terminal or kiosk that is operated by a customer to
10 activate or complete a transaction at a motor fuel metering device
11 through the use of a payment card or a payment by other electronic
12 means.

13 (7) "Service company" and "service technician" have
14 the meanings assigned by Section 2310.151 [~~13.451~~], Occupations
15 [~~Agriculture~~] Code.

16 (8) "Skimmer" means a wire or electronic device that
17 is capable of unlawfully intercepting electronic communications or
18 data to perpetrate fraud. [~~The term includes a re-encoder and~~
19 ~~scanning device, as those terms are defined by Section 522.001.~~]

20 SECTION 3. Subchapter A, Chapter 607, Business & Commerce
21 Code, is amended by adding Sections 607.002, 607.003, and 607.004
22 to read as follows:

23 Sec. 607.002. ADMINISTRATION AND ENFORCEMENT OF CHAPTER.

24 (a) The department shall administer and enforce this chapter.

25 (b) The commission or the executive director may enforce
26 this chapter, a rule adopted under this chapter, or an order of the
27 commission or executive director as provided by Subchapters F and

1 G, Chapter 51, Occupations Code.

2 Sec. 607.003. FUNDING. The department may solicit and
3 accept gifts, grants, and other donations for purposes of
4 administering this chapter, except that the department may not
5 solicit or accept a gift, grant, or other donation from a license
6 holder as defined by Section 2310.151, Occupations Code.

7 Sec. 607.004. RULES. The commission shall adopt rules for
8 administering this chapter.

9 SECTION 4. Section 607.053, Business & Commerce Code, is
10 amended to read as follows:

11 Sec. 607.053. NOTICE OF DISCOVERY OF SKIMMER REQUIRED. (a)
12 If a service technician discovers a skimmer in or on a motor fuel
13 [the] unattended payment terminal or [of a] motor fuel metering
14 device [dispenser], the service technician or service company that
15 employs the technician shall [immediately] notify the department
16 and the merchant of the skimmer in the manner prescribed by
17 commission rule.

18 (b) If a merchant discovers a [the] skimmer in or on a motor
19 fuel unattended payment terminal or motor fuel metering device or
20 is notified of the presence of a skimmer [by a service technician or
21 other person], the merchant shall, in the manner prescribed by
22 commission rule:

23 (1) [immediately] disable, or cause to be disabled,
24 the motor fuel metering device [dispenser] on which the skimmer was
25 discovered;

26 (1-a) [and] notify a law enforcement agency and the
27 department that a skimmer has been detected; and

1 (2) take appropriate measures to protect ~~[from~~
2 ~~tampering with]~~ the motor fuel metering device from being tampered
3 with [dispenser] until the department or law enforcement agency
4 arrives and the skimmer is removed ~~[, and~~

5 ~~[(3) not later than 24 hours after the discovery of the~~
6 ~~skimmer or a report of the discovery of a skimmer is made to the~~
7 ~~merchant, report the discovery to the department].~~

8 SECTION 5. Section [607.054](#)(a), Business & Commerce Code, is
9 amended to read as follows:

10 (a) The department may accept a report of a suspected
11 skimmer from any interested person, including ~~[In this section,~~
12 ~~"interested person" includes]:~~

- 13 (1) a law enforcement agency;
14 (2) a financial institution;
15 (3) a credit card issuer ~~[as defined by Section~~
16 ~~[505.001](#)];~~
17 (4) a service technician or service company; and
18 (5) a member of the public ~~[, or~~
19 ~~[(6) any other interested person].~~

20 SECTION 6. Section [607.055](#), Business & Commerce Code, is
21 amended to read as follows:

22 Sec. 607.055. INVESTIGATION OF SKIMMER REPORT. (a) On
23 receipt of a report under Section [607.053](#) or [607.054](#), the
24 department shall conduct an inspection for the presence of
25 suspected skimmers ~~[immediately notify the center and share the~~
26 ~~report with the center].~~

27 (b) The department ~~[and the center]~~ shall coordinate with

1 law enforcement agencies in conducting an investigation of the
2 report.

3 (c) The department may inspect, directly or in coordination
4 with a law enforcement agency, the motor fuel metering device
5 ~~[dispenser]~~ that is the subject of the report and any other motor
6 fuel metering device located at the same place of business.

7 (d) A merchant shall cooperate with the department or law
8 enforcement agency during an investigation of a skimmer discovered
9 or reported at the merchant's place of business and permit the
10 inspection and alteration of motor fuel metering devices at the
11 place of business ~~[department or agency to inspect and alter the~~
12 ~~motor fuel dispenser that is the subject of the report]~~ as
13 necessary.

14 SECTION 7. Sections 607.056(b), (d), and (e), Business &
15 Commerce Code, are amended to read as follows:

16 (b) Information described by Subsection (a) may be
17 disclosed to:

18 (1) an institution of higher education, as defined by
19 Section 61.003, Education Code ~~[the attorney general];~~

20 (2) a law enforcement agency;

21 (3) the center;

22 (4) a credit card issuer or a financial institution
23 that is not a credit card issuer that may be impacted by the use of a
24 skimmer on a motor fuel ~~[the]~~ unattended payment terminal or ~~[of a]~~
25 motor fuel metering device ~~[dispenser];~~ ~~[or]~~

26 (5) another person if the disclosure of the
27 information is permitted or required by other law or court order;

1 (6) a trade association representing a financial
2 institution; or

3 (7) a department contractor or other agent.

4 (d) On the dismissal or final resolution of a report [~~or~~
5 ~~investigation~~] by the department, information described by
6 Subsection (a) is subject to disclosure under Chapter 552,
7 Government Code.

8 (e) Notwithstanding Subsection (a), a law enforcement
9 agency or the center [~~the attorney general~~] may disclose to the
10 public information made confidential by that subsection if the law
11 enforcement agency or the chief intelligence coordinator for the
12 center [~~attorney general~~] determines that the disclosure of the
13 information furthers a law enforcement purpose.

14 SECTION 8. Subchapter C, Chapter 607, Business & Commerce
15 Code, is amended by adding Section 607.1021 to read as follows:

16 Sec. 607.1021. CIVIL PENALTY. (a) A person who violates
17 this chapter or a rule adopted under this chapter is liable to the
18 state for a civil penalty.

19 (b) The attorney general or the executive director may bring
20 an action to collect a penalty under this section.

21 (c) The provisions of Section 51.352, Occupations Code,
22 relating to an action to collect and the amount of a civil penalty
23 under that section apply to an action to collect and the amount of a
24 civil penalty under this section.

25 SECTION 9. Section 607.103, Business & Commerce Code, is
26 amended to read as follows:

27 Sec. 607.103. OFFENSES; PENALTIES. (a) A person commits an

1 offense if the person refuses to allow an inspection of a motor fuel
2 metering device [~~dispenser~~] at the merchant's place of business in
3 violation of Section 607.055. An offense under this subsection is a
4 Class C misdemeanor.

5 (b) A person commits an offense if the person negligently or
6 recklessly disposes of a skimmer that was installed on a motor fuel
7 [~~the~~] unattended payment terminal or [~~of a~~] motor fuel metering
8 device [~~dispenser~~] by another person. An offense under this
9 subsection is a Class B misdemeanor.

10 (c) A person commits an offense if, knowing that an
11 investigation is ongoing or that a criminal proceeding has been
12 commenced and is pending, the person disposes of a skimmer that was
13 installed on a motor fuel [~~the~~] unattended payment terminal or [~~of~~
14 ~~a~~] motor fuel metering device [~~dispenser~~] by another person. An
15 offense under this subsection is a felony of the third degree.

16 SECTION 10. Section 2310.101, Occupations Code, is amended
17 by adding Subsection (c) to read as follows:

18 (c) Regardless of whether the department has received a
19 report of a suspected skimmer under Section 607.053 or 607.054,
20 Business & Commerce Code, the department may inspect each motor
21 fuel metering device located at a dealer's retail outlet if the
22 department has reason to believe that a skimmer is installed on or
23 in a motor fuel unattended payment terminal or motor fuel metering
24 device at the retail outlet. In this subsection, "motor fuel
25 unattended payment terminal" and "skimmer" have the meanings
26 assigned by Section 607.001, Business & Commerce Code.

27 SECTION 11. Chapter 424, Government Code, as added by

1 Chapter 863 (H.B. 2945), Acts of the 86th Legislature, Regular
2 Session, 2019, is transferred to Subtitle A, Title 14, Occupations
3 Code, redesignated as Chapter 2312, Occupations Code, and amended
4 to read as follows:

5 CHAPTER 2312 [~~424~~]. FINANCIAL CRIMES INTELLIGENCE [~~PAYMENT FRAUD~~
6 ~~FUSION~~] CENTER

7 SUBCHAPTER A. GENERAL PROVISIONS

8 Sec. 2312.001 [~~424.001~~]. DEFINITIONS. In this chapter:

9 (1) "Card fraud" means an act that constitutes the
10 offense of fraudulent use or possession of a credit card or debit
11 card under Section 32.315, Penal Code.

12 (2) "Center" means the financial crimes intelligence
13 [~~payment fraud fusion~~] center established under this chapter.

14 (3) "Commission" means the Texas Commission of
15 Licensing and Regulation.

16 (4) "Department" means the Texas Department of
17 Licensing and Regulation.

18 (5) [~~(2)~~] "~~Payment card~~" ~~has the meaning assigned by~~
19 ~~Section 522.001, Business & Commerce Code.~~

20 [~~(3)~~] "~~Payment fraud~~" ~~means a fraudulent payment~~
21 ~~transaction made by the unauthorized use of a payment card or other~~
22 ~~electronic means.~~

23 [~~(4)~~] "Skimmer" means an [~~a wire or~~] electronic,
24 mechanical, or other device that may be used to [~~is capable of~~]
25 unlawfully intercept [~~intercepting~~] electronic communications or
26 data to perpetrate card fraud.

27 Sec. 2312.002. RULES. The commission shall adopt rules as

1 necessary to implement this chapter [~~The term includes a re-encoder~~
2 ~~and scanning device, as those terms are defined by Section 522.001,~~
3 ~~Business & Commerce Code~~].

4 SUBCHAPTER B. PURPOSE AND ADMINISTRATION

5 Sec. 2312.051 [~~424.002~~]. FINANCIAL CRIMES INTELLIGENCE
6 [~~PAYMENT FRAUD FUSION~~] CENTER ESTABLISHED. [~~(a) Law enforcement~~
7 ~~agencies or other governmental agencies designated by the attorney~~
8 ~~general may collaborate with the attorney general to establish a~~
9 ~~payment fraud fusion center.~~

10 [~~(b)~~] The commission [~~attorney general~~] shall establish the
11 center within the department [~~in the City of Tyler~~].

12 Sec. 2312.052. PURPOSES [~~424.003. PURPOSE~~] OF CENTER.

13 [~~(a)~~] The purposes of the center are to:

14 (1) serve [~~serves~~] as the state's primary entity for
15 the planning, coordination, and integration of [~~the capabilities~~
16 ~~of~~] law enforcement agencies and other governmental agencies that
17 [~~to~~] respond to criminal activity [~~that is~~] related to card
18 [~~payment~~] fraud, including through the use of skimmers; and [~~-~~]

19 (2) [~~(b) The purpose of the center is to~~] maximize
20 the ability of the department, law enforcement agencies, and other
21 governmental agencies to detect, prevent, and respond to criminal
22 activities related to card [~~payment~~] fraud.

23 Sec. 2312.053. OPERATION AGREEMENTS AUTHORIZED; CHIEF
24 INTELLIGENCE COORDINATOR. (a) The department:

25 (1) may enter into agreements with law enforcement
26 agencies or other governmental agencies for the operation of the
27 center; and

1 (2) shall enter into an agreement with a law
2 enforcement agency or other governmental agency for the appointment
3 of a chief intelligence coordinator to supervise and manage the
4 operation of the center.

5 (b) The chief intelligence coordinator appointed under the
6 agreement required by Subsection (a)(2) may be a licensed peace
7 officer. The agreement must provide that the commission of a chief
8 intelligence coordinator who is a licensed peace officer will be
9 carried by the agency with which the department enters into the
10 agreement under that subdivision.

11 (c) Information a law enforcement agency or other
12 governmental agency collects and maintains under an agreement
13 entered into with the department under this chapter is the
14 intellectual property of the center. On termination of the
15 agreement, the contracting agency shall transfer the information to
16 the department in accordance with the terms of the agreement.

17 Sec. 2312.054 [~~424.004~~]. POWERS AND DUTIES. (a) The
18 center may collaborate with federal, state, and other governmental
19 agencies [~~for the performance of the center's duties and~~] to
20 accomplish the purposes [~~purpose~~] of the center.

21 (b) The center shall assist law enforcement agencies, [and]
22 other governmental agencies, financial institutions, credit card
23 issuers, and merchants in their efforts to develop and implement
24 strategies to:

- 25 (1) detect skimmers;
- 26 (2) ensure an effective response if a skimmer is
27 found; and

1 (3) prevent card [~~payment~~] fraud.

2 (c) The center may:

3 (1) serve as a centralized collection point for
4 information related to card fraud;

5 (2) provide training and educational opportunities to
6 law enforcement;

7 (3) provide outreach to the public; and

8 (4) release information to affected financial
9 institutions, credit card issuers, and merchants if the center does
10 not consider the information to be sensitive to law enforcement.

11 (d) For purposes of Subsection (c)(4), information is
12 considered sensitive to law enforcement if the information could
13 cause harm to law enforcement activities or jeopardize an
14 investigation or operation if disclosed.

15 Sec. 2312.055. ANNUAL REPORT. (a) Not later than December
16 1 of each year, the chief intelligence coordinator shall file a
17 report with the department.

18 (b) The report must include:

19 (1) a plan of operation for the center and an estimate
20 of the amount of money necessary to implement that plan;

21 (2) an assessment of the current state of card fraud in
22 this state, including:

23 (A) an identification of the geographic
24 locations in this state that have the highest statistical
25 probability for card fraud; and

26 (B) a summary of card fraud statistics for the
27 year in which the report is filed;

1 (3) a detailed plan of operation for combatting card
2 fraud;

3 (4) a communications plan for outreach to law
4 enforcement agencies, financial institutions, credit card issuers,
5 merchants, and the public; and

6 (5) a list of expenditures made since the most recent
7 report was filed with the department.

8 SUBCHAPTER C. FINANCIAL PROVISIONS

9 ~~[Sec. 424.005. DIRECTOR. (a) The attorney general shall~~
10 ~~appoint a director to supervise and manage the center.~~

11 ~~[(b) The director is under the supervision and direction of~~
12 ~~the attorney general.~~

13 ~~[Sec. 424.006. RULES. The attorney general by rule shall~~
14 ~~adopt reasonable policies and procedures necessary to implement~~
15 ~~this chapter.~~

16 ~~[Sec. 424.007. FACILITIES AND ADMINISTRATIVE SUPPORT. A~~
17 ~~municipality's police department may provide facilities and~~
18 ~~administrative support to a payment fraud fusion center established~~
19 ~~in the municipality.]~~

20 Sec. 2312.101 ~~[424.008]~~. FUNDING ~~[GIFTS AND GRANTS]~~. The
21 department ~~[payment fraud fusion center]~~ may solicit and accept
22 gifts, grants, and other donations to fund, administer, and carry
23 out the purposes ~~[purpose]~~ of the center, except that the
24 department may not solicit or accept a gift, grant, or other
25 donation from a license holder as defined by Section [2310.151](#).

26 Sec. 2312.102. AWARD OF GRANTS. (a) Subject to the
27 availability of appropriated money, the department may award grants

1 for the purposes of this chapter by entering into a contract with
2 each grant recipient.

3 (b) A grant recipient may use grant money to:

4 (1) reduce card fraud by removing skimmers;

5 (2) purchase or upgrade fraud deterrence equipment,
6 including unique locking systems, cameras, and lights;

7 (3) provide training opportunities regarding
8 skimmers; and

9 (4) conduct public outreach regarding card fraud.

10 SECTION 12. The following provisions of the Business &
11 Commerce Code are repealed:

12 (1) Section 607.001(9);

13 (2) Section 607.051;

14 (3) Section 607.052;

15 (4) Section 607.054(b);

16 (5) Section 607.101; and

17 (6) Section 607.102.

18 SECTION 13. (a) The Texas Department of Licensing and
19 Regulation may establish a workgroup composed of stakeholders to
20 provide input, advice, and recommendations regarding the
21 department's powers and duties under and the administration of:

22 (1) Chapter 607, Business & Commerce Code, as amended
23 by this Act;

24 (2) Section 2310.101(c), Occupations Code, as added by
25 this Act; and

26 (3) Chapter 2312, Occupations Code, as transferred,
27 redesignated, and amended by this Act.

1 (b) If a workgroup is established as authorized by
2 Subsection (a) of this section, the Texas Department of Licensing
3 and Regulation shall lead the workgroup and determine the
4 workgroup's size, composition, and scope of purpose.

5 (c) A workgroup established under this section is abolished
6 and this section expires December 1, 2022.

7 SECTION 14. The Texas Commission of Licensing and
8 Regulation shall adopt rules necessary to implement the changes in
9 law made by this Act not later than January 1, 2022.

10 SECTION 15. (a) On January 1, 2022:

11 (1) the payment fraud fusion center is redesignated as
12 the financial crimes intelligence center;

13 (2) all powers, duties, functions, programs, and
14 activities of the office of the attorney general under Chapter 424,
15 Government Code, as added by Chapter 863 (H.B. 2945), Acts of the
16 86th Legislature, Regular Session, 2019, as that chapter existed
17 immediately before January 1, 2022, are transferred to the Texas
18 Commission of Licensing and Regulation and the Texas Department of
19 Licensing and Regulation;

20 (3) all obligations, contracts, property, and records
21 of the office of the attorney general that are related to a power,
22 duty, function, program, or activity transferred under Subdivision
23 (2) of this subsection are transferred to the Texas Commission of
24 Licensing and Regulation and the Texas Department of Licensing and
25 Regulation; and

26 (4) all pending complaints, investigations, or
27 contested cases that are related to a power, duty, function,

1 program, or activity transferred under Subdivision (2) of this
2 subsection are transferred without change in status to the Texas
3 Commission of Licensing and Regulation and the Texas Department of
4 Licensing and Regulation.

5 (b) A rule or form adopted by the office of the attorney
6 general that relates to a power, duty, function, program, or
7 activity transferred under Subsection (a)(2) of this section is a
8 rule or form of the Texas Commission of Licensing and Regulation and
9 the Texas Department of Licensing and Regulation, as applicable,
10 until altered by the commission.

11 SECTION 16. Section [607.103](#), Business & Commerce Code, as
12 amended by this Act, applies only to an offense committed on or
13 after January 1, 2022. An offense committed before January 1, 2022,
14 is governed by the law in effect on the date the offense was
15 committed, and the former law is continued in effect for that
16 purpose. For purposes of this section, an offense was committed
17 before January 1, 2022, if any element of the offense occurred
18 before that date.

19 SECTION 17. To the extent of any conflict, this Act prevails
20 over another Act of the 87th Legislature, Regular Session, 2021,
21 relating to nonsubstantive additions to and corrections in enacted
22 codes.

23 SECTION 18. (a) Except as provided by Subsection (b) of
24 this section, this Act takes effect January 1, 2022.

25 (b) Sections 13 and 14 of this Act take effect immediately
26 if this Act receives a vote of two-thirds of all the members elected
27 to each house, as provided by Section [39](#), Article III, Texas

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1 Constitution. If this Act does not receive the vote necessary for
2 those sections to have immediate effect, Sections 13 and 14 of this
3 Act take effect September 1, 2021.