

1-1 By: Zaffirini S.B. No. 964
1-2 (In the Senate - Filed March 3, 2021; March 11, 2021, read
1-3 first time and referred to Committee on Business & Commerce;
1-4 April 7, 2021, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 7, 2021,
1-6 sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15	X			
1-16	X			
1-17	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 964 By: Nichols

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to the prevention, identification, investigation, and
1-22 enforcement of payment card fraud; providing a civil penalty.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. The heading to Chapter 607, Business & Commerce
1-25 Code, is amended to read as follows:

1-26 CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL METERING DEVICES
1-27 [DISPENSERS]

1-28 SECTION 2. Section 607.001, Business & Commerce Code, is
1-29 amended by amending Subdivisions (1), (2), (4), (5), (7), and (8)
1-30 and adding Subdivisions (1-a), (1-b), (2-a), (3-a), (5-a), and
1-31 (6-a) to read as follows:

1-32 (1) "Center" means the financial crimes intelligence
1-33 [payment fraud fusion] center established under Chapter 2312 [424],
1-34 Occupations [Government] Code.

1-35 (1-a) "Commission" means the Texas Commission of
1-36 Licensing and Regulation.

1-37 (1-b) "Credit card issuer" has the meaning assigned by
1-38 Section 505.001.

1-39 (2) "Department" means the Texas Department of
1-40 Licensing and Regulation [state agency that is the licensing
1-41 authority for service companies and service technicians].

1-42 (2-a) "Executive director" means the executive
1-43 director of the department.

1-44 (3-a) "Institution of higher education" has the
1-45 meaning assigned by Section 61.003, Education Code.

1-46 (4) "Merchant" means a person whose business includes
1-47 the sale of motor fuel through motor fuel metering devices
1-48 [dispensers] to retail customers.

1-49 (5) "Motor fuel" and "motor fuel metering device" have
1-50 the meanings assigned by Section 2310.001, Occupations Code ["Motor
1-51 fuel dispenser" means a machine that is used to pump gasoline,
1-52 diesel, biofuels, or other types of fuels into motor vehicles].

1-53 (5-a) "Motor fuel unattended payment terminal" means a
1-54 point-of-sale terminal or kiosk that is operated by a customer to
1-55 activate or complete a transaction at a motor fuel metering device
1-56 through the use of a payment card or a payment by other electronic
1-57 means.

1-58 (6-a) "Payment card network" means an entity that
1-59 directly, or through a licensed member, processor, or agent,
1-60 provides the proprietary services, infrastructure, and software

2-1 that route information and data to conduct debit card or credit card
 2-2 transaction authorization, clearance, and settlement, and that an
 2-3 entity uses in order to accept as a form of payment a brand of debit
 2-4 card, credit card, or other device that may be used to carry out
 2-5 debit or credit transactions.

2-6 (7) "Service company" and "service technician" have
 2-7 the meanings assigned by Section 2310.151 [~~13.451~~], Occupations
 2-8 [Agriculture] Code.

2-9 (8) "Skimmer" means a wire or electronic device that
 2-10 is capable of unlawfully intercepting electronic communications or
 2-11 data to perpetrate fraud. [~~The term includes a re-encoder and~~
 2-12 ~~scanning device, as those terms are defined by Section 522.001.]~~

2-13 SECTION 3. Subchapter A, Chapter 607, Business & Commerce
 2-14 Code, is amended by adding Sections 607.002, 607.003, and 607.004
 2-15 to read as follows:

2-16 Sec. 607.002. ADMINISTRATION AND ENFORCEMENT OF CHAPTER.

2-17 (a) The department shall administer and enforce this chapter.

2-18 (b) The commission or the executive director may enforce
 2-19 this chapter, a rule adopted under this chapter, or an order of the
 2-20 commission or executive director as provided by Subchapters F and
 2-21 G, Chapter 51, Occupations Code.

2-22 Sec. 607.003. FUNDING. The department may solicit and
 2-23 accept gifts, grants, and other donations for purposes of
 2-24 administering this chapter, except that the department may not
 2-25 solicit or accept a gift, grant, or other donation from a license
 2-26 holder as defined by Section 2310.151, Occupations Code.

2-27 Sec. 607.004. RULES. The commission shall adopt rules for
 2-28 administering this chapter.

2-29 SECTION 4. Section 607.053, Business & Commerce Code, is
 2-30 amended to read as follows:

2-31 Sec. 607.053. NOTICE OF DISCOVERY OF SKIMMER REQUIRED. (a)
 2-32 If a service technician discovers a skimmer in or on a motor fuel
 2-33 ~~[the]~~ unattended payment terminal or ~~[of a]~~ motor fuel metering
 2-34 device ~~[dispenser]~~, the service technician or service company that
 2-35 employs the technician shall ~~[immediately]~~ notify the department
 2-36 and the merchant of the skimmer in the manner prescribed by
 2-37 commission rule.

2-38 (b) If a merchant discovers a ~~[the]~~ skimmer in or on a motor
 2-39 fuel unattended payment terminal or motor fuel metering device or
 2-40 is notified of the presence of a skimmer ~~[by a service technician or~~
 2-41 ~~other person]~~, the merchant shall, in the manner prescribed by
 2-42 commission rule:

2-43 (1) ~~[immediately]~~ disable, or cause to be disabled,
 2-44 the motor fuel metering device ~~[dispenser]~~ on which the skimmer was
 2-45 discovered;

2-46 (1-a) ~~[and]~~ notify a law enforcement agency and the
 2-47 department that a skimmer has been detected; and

2-48 (2) take appropriate measures to protect ~~[from~~
 2-49 ~~tampering with]~~ the motor fuel metering device from being tampered
 2-50 with ~~[dispenser]~~ until the department or law enforcement agency
 2-51 arrives and the skimmer is removed~~[, and~~

2-52 ~~[(3) not later than 24 hours after the discovery of the~~
 2-53 ~~skimmer or a report of the discovery of a skimmer is made to the~~
 2-54 ~~merchant, report the discovery to the department].~~

2-55 SECTION 5. Section 607.054(a), Business & Commerce Code, is
 2-56 amended to read as follows:

2-57 (a) The department may accept a report of a suspected
 2-58 skimmer from any interested person, including [In this section,
 2-59 "interested person" includes]:

2-60 (1) a law enforcement agency;

2-61 (2) a financial institution;

2-62 (3) a credit card or debit card issuer ~~[as defined by~~
 2-63 Section 505.001];

2-64 (4) a service technician or service company;

2-65 (5) a member of the public; and~~[, or]~~

2-66 (6) a payment card network ~~[any other interested~~
 2-67 person].

2-68 SECTION 6. Section 607.055, Business & Commerce Code, is
 2-69 amended to read as follows:

3-1 Sec. 607.055. INVESTIGATION OF SKIMMER REPORT. (a) On
 3-2 receipt of a report under Section 607.053 or 607.054, the
 3-3 department may conduct an inspection for the presence of suspected
 3-4 skimmers [~~shall immediately notify the center and share the report~~
 3-5 ~~with the center~~].

3-6 (b) The department [~~and the center~~] shall coordinate with
 3-7 law enforcement agencies in conducting an investigation of the
 3-8 report.

3-9 (c) The department may inspect, directly or in coordination
 3-10 with a law enforcement agency, the motor fuel metering device
 3-11 [~~dispenser~~] that is the subject of the report and any other motor
 3-12 fuel metering device located at the same place of business.

3-13 (d) A merchant shall cooperate with the department or law
 3-14 enforcement agency during an investigation of a skimmer discovered
 3-15 or reported at the merchant's place of business and permit the
 3-16 inspection and alteration of motor fuel metering devices at the
 3-17 place of business [~~department or agency to inspect and alter the~~
 3-18 ~~motor fuel dispenser that is the subject of the report~~] as
 3-19 necessary.

3-20 SECTION 7. Sections 607.056(b), (d), and (e), Business &
 3-21 Commerce Code, are amended to read as follows:

3-22 (b) Information described by Subsection (a) may be
 3-23 disclosed to:

3-24 (1) an institution of higher education [~~the attorney~~
 3-25 ~~general~~];

3-26 (2) a law enforcement agency;

3-27 (3) the center;

3-28 (4) a credit card issuer, a debit card issuer, a
 3-29 financial institution that is not a credit card issuer, or a payment
 3-30 card network that may be impacted by the use of a skimmer on a motor
 3-31 fuel [~~the~~] unattended payment terminal or [~~of a~~] motor fuel
 3-32 metering device [~~dispenser~~]; [~~or~~]

3-33 (5) another person if the disclosure of the
 3-34 information is permitted or required by other law or court order;

3-35 (6) a trade association representing a financial
 3-36 institution; or

3-37 (7) a department contractor or other agent.

3-38 (d) On the dismissal or final resolution of a report [~~or~~
 3-39 ~~investigation~~] by the department, information described by
 3-40 Subsection (a) is subject to disclosure under Chapter 552,
 3-41 Government Code.

3-42 (e) Notwithstanding Subsection (a), a law enforcement
 3-43 agency or the center [~~the attorney general~~] may disclose to the
 3-44 public information made confidential by that subsection if the law
 3-45 enforcement agency or the chief intelligence coordinator for the
 3-46 center [~~attorney general~~] determines that the disclosure of the
 3-47 information furthers a law enforcement purpose, except that a law
 3-48 enforcement agency or the center may not disclose to the public the
 3-49 identity of a person that submits a report of a suspected skimmer to
 3-50 the department under Section 607.053 or 607.054.

3-51 SECTION 8. Subchapter C, Chapter 607, Business & Commerce
 3-52 Code, is amended by adding Section 607.1021 to read as follows:

3-53 Sec. 607.1021. CIVIL PENALTY. (a) A person who violates
 3-54 this chapter or a rule adopted under this chapter is liable to the
 3-55 state for a civil penalty.

3-56 (b) The attorney general or the executive director may bring
 3-57 an action to collect a penalty under this section.

3-58 (c) The provisions of Section 51.352, Occupations Code,
 3-59 relating to an action to collect and the amount of a civil penalty
 3-60 under that section apply to an action to collect and the amount of a
 3-61 civil penalty under this section.

3-62 SECTION 9. Section 607.103, Business & Commerce Code, is
 3-63 amended to read as follows:

3-64 Sec. 607.103. OFFENSES; PENALTIES. (a) A person commits an
 3-65 offense if the person refuses to allow an inspection of a motor fuel
 3-66 metering device [~~dispenser~~] at the merchant's place of business in
 3-67 violation of Section 607.055. An offense under this subsection is a
 3-68 Class C misdemeanor.

3-69 (b) A person commits an offense if the person negligently or

4-1 recklessly disposes of a skimmer that was installed on a motor fuel
 4-2 ~~[the]~~ unattended payment terminal or ~~[of a]~~ motor fuel metering
 4-3 device ~~[dispenser]~~ by another person. An offense under this
 4-4 subsection is a Class B misdemeanor.

4-5 (c) A person commits an offense if, knowing that an
 4-6 investigation is ongoing or that a criminal proceeding has been
 4-7 commenced and is pending, the person disposes of a skimmer that was
 4-8 installed on a motor fuel ~~[the]~~ unattended payment terminal or ~~[of~~
 4-9 ~~a]~~ motor fuel metering device ~~[dispenser]~~ by another person. An
 4-10 offense under this subsection is a felony of the third degree.

4-11 SECTION 10. Section 2310.101, Occupations Code, is amended
 4-12 by adding Subsection (c) to read as follows:

4-13 (c) Regardless of whether the department has received a
 4-14 report of a suspected skimmer under Section 607.053 or 607.054,
 4-15 Business & Commerce Code, the department may inspect each motor
 4-16 fuel metering device located at a dealer's retail outlet if the
 4-17 department has reason to believe that a skimmer is installed on or
 4-18 in a motor fuel unattended payment terminal or motor fuel metering
 4-19 device at the retail outlet. In this subsection, "motor fuel
 4-20 unattended payment terminal" and "skimmer" have the meanings
 4-21 assigned by Section 607.001, Business & Commerce Code.

4-22 SECTION 11. Chapter 424, Government Code, as added by
 4-23 Chapter 863 (H.B. 2945), Acts of the 86th Legislature, Regular
 4-24 Session, 2019, is transferred to Subtitle A, Title 14, Occupations
 4-25 Code, redesignated as Chapter 2312, Occupations Code, and amended
 4-26 to read as follows:

4-27 CHAPTER 2312 ~~[424]~~. FINANCIAL CRIMES INTELLIGENCE [PAYMENT FRAUD
 4-28 FUSION] CENTER

4-29 SUBCHAPTER A. GENERAL PROVISIONS

4-30 Sec. 2312.001 ~~[424.001]~~. DEFINITIONS. In this chapter:

4-31 (1) "Card fraud" means an act that constitutes the
 4-32 offense of fraudulent use or possession of a credit card or debit
 4-33 card under Section 32.315, Penal Code.

4-34 (2) "Center" means the financial crimes intelligence
 4-35 [payment fraud fusion] center established under this chapter.

4-36 (3) "Commission" means the Texas Commission of
 4-37 Licensing and Regulation.

4-38 (4) "Department" means the Texas Department of
 4-39 Licensing and Regulation.

4-40 (5) ~~[(2) "Payment card" has the meaning assigned by~~
 4-41 ~~Section 522.001, Business & Commerce Code.~~

4-42 ~~[(3) "Payment fraud" means a fraudulent payment~~
 4-43 ~~transaction made by the unauthorized use of a payment card or other~~
 4-44 ~~electronic means.~~

4-45 ~~[(4)] "Skimmer" means an [a wire or] electronic,~~
 4-46 ~~mechanical, or other device that may be used to [is capable of]~~
 4-47 ~~unlawfully intercept [intercepting] electronic communications or~~
 4-48 ~~data to perpetrate card fraud.~~

4-49 Sec. 2312.002. RULES. The commission shall adopt rules as
 4-50 necessary to implement this chapter [The term includes a re-encoder
 4-51 and scanning device, as those terms are defined by Section 522.001,
 4-52 Business & Commerce Code].

4-53 SUBCHAPTER B. PURPOSE AND ADMINISTRATION

4-54 Sec. 2312.051 ~~[424.002]~~. FINANCIAL CRIMES INTELLIGENCE
 4-55 [PAYMENT FRAUD FUSION] CENTER ESTABLISHED. [(a) Law enforcement
 4-56 agencies or other governmental agencies designated by the attorney
 4-57 general may collaborate with the attorney general to establish a
 4-58 payment fraud fusion center.

4-59 ~~[(b)] The commission [attorney general] shall establish the~~
 4-60 ~~center within the department [in the City of Tyler].~~

4-61 Sec. 2312.052. PURPOSES ~~[424.003. PURPOSE]~~ OF CENTER.

4-62 ~~[(a)] The purposes of the center are to:~~

4-63 (1) serve [serves] as the state's primary entity for
 4-64 the planning, coordination, and integration of [the capabilities
 4-65 of] law enforcement agencies and other governmental agencies that
 4-66 [to] respond to criminal activity [that is] related to card
 4-67 [payment] fraud, including through the use of skimmers; and [-]

4-68 (2) ~~[(b) The purpose of the center is to] maximize~~
 4-69 the ability of the department, law enforcement agencies, and other

5-1 governmental agencies to detect, prevent, and respond to criminal
5-2 activities related to card [payment] fraud.

5-3 Sec. 2312.053. OPERATION AGREEMENTS AUTHORIZED; CHIEF
5-4 INTELLIGENCE COORDINATOR. (a) The department:

5-5 (1) may enter into agreements with law enforcement
5-6 agencies or other governmental agencies for the operation of the
5-7 center; and

5-8 (2) shall enter into an agreement with a law
5-9 enforcement agency or other governmental agency for the appointment
5-10 of a chief intelligence coordinator to supervise and manage the
5-11 operation of the center.

5-12 (b) The chief intelligence coordinator appointed under the
5-13 agreement required by Subsection (a)(2) may be a licensed peace
5-14 officer. The agreement must provide that the commission of a chief
5-15 intelligence coordinator who is a licensed peace officer will be
5-16 carried by the agency with which the department enters into the
5-17 agreement under that subdivision.

5-18 (c) Information a law enforcement agency or other
5-19 governmental agency collects and maintains under an agreement
5-20 entered into with the department under this chapter is the
5-21 intellectual property of the center. On termination of the
5-22 agreement, the contracting agency shall transfer the information to
5-23 the department in accordance with the terms of the agreement.

5-24 Sec. 2312.054 [424.004]. POWERS AND DUTIES. (a) The
5-25 center may collaborate with federal, state, and local governmental
5-26 agencies [~~for the performance of the center's duties and~~] to
5-27 accomplish the purposes [~~purpose~~] of the center.

5-28 (b) The center shall assist law enforcement agencies, [~~and~~]
5-29 other governmental agencies, financial institutions, credit card
5-30 issuers, debit card issuers, payment card networks, institutions of
5-31 higher education, and merchants in their efforts to develop and
5-32 implement strategies to:

5-33 (1) detect skimmers;

5-34 (2) ensure an effective response if a skimmer is
5-35 found; and

5-36 (3) prevent card [payment] fraud.

5-37 (c) The center may:

5-38 (1) serve as a centralized collection point for
5-39 information related to card fraud;

5-40 (2) provide training and educational opportunities to
5-41 law enforcement;

5-42 (3) provide outreach to the public; and

5-43 (4) release information to affected financial
5-44 institutions, credit card issuers, debit card issuers, payment card
5-45 networks, institutions of higher education, and merchants if the
5-46 center does not consider the information to be sensitive to law
5-47 enforcement.

5-48 (d) For purposes of Subsection (c)(4), information is
5-49 considered sensitive to law enforcement if the information could
5-50 cause harm to law enforcement activities or jeopardize an
5-51 investigation or operation if disclosed.

5-52 Sec. 2312.055. ANNUAL REPORT. (a) Not later than December
5-53 1 of each year, the chief intelligence coordinator shall file a
5-54 report with the department.

5-55 (b) The report must include:

5-56 (1) a plan of operation for the center and an estimate
5-57 of the amount of money necessary to implement that plan;

5-58 (2) an assessment of the current state of card fraud in
5-59 this state, including:

5-60 (A) an identification of the geographic
5-61 locations in this state that have the highest statistical
5-62 probability for card fraud; and

5-63 (B) a summary of card fraud statistics for the
5-64 year in which the report is filed;

5-65 (3) a detailed plan of operation for combatting card
5-66 fraud;

5-67 (4) a communications plan for outreach to law
5-68 enforcement agencies, financial institutions, credit card issuers,
5-69 debit card issuers, payment card networks, merchants, and the

6-1 public; and

6-2 (5) a list of expenditures made since the most recent
6-3 report was filed with the department.

6-4 SUBCHAPTER C. FINANCIAL PROVISIONS

6-5 ~~[Sec. 424.005. DIRECTOR. (a) The attorney general shall~~
6-6 ~~appoint a director to supervise and manage the center.~~

6-7 ~~[(b) The director is under the supervision and direction of~~
6-8 ~~the attorney general.~~

6-9 ~~[Sec. 424.006. RULES. The attorney general by rule shall~~
6-10 ~~adopt reasonable policies and procedures necessary to implement~~
6-11 ~~this chapter.~~

6-12 ~~[Sec. 424.007. FACILITIES AND ADMINISTRATIVE SUPPORT. A~~
6-13 ~~municipality's police department may provide facilities and~~
6-14 ~~administrative support to a payment fraud fusion center established~~
6-15 ~~in the municipality.]~~

6-16 Sec. 2312.101 [424.008]. FUNDING [GIFTS AND GRANTS]. The
6-17 department [payment fraud fusion center] may solicit and accept
6-18 gifts, grants, and other donations to fund, administer, and carry
6-19 out the purposes [purpose] of the center, except that the
6-20 department may not solicit or accept a gift, grant, or other
6-21 donation from a license holder as defined by Section 2310.151.

6-22 Sec. 2312.102. AWARD OF GRANTS. (a) Subject to the
6-23 availability of appropriated money, the department may award grants
6-24 for the purposes of this chapter by entering into a contract with
6-25 each grant recipient.

6-26 (b) A grant recipient may use grant money to:

6-27 (1) reduce card fraud by removing skimmers;

6-28 (2) purchase or upgrade fraud deterrence equipment,
6-29 including unique locking systems, cameras, and lights;

6-30 (3) provide training opportunities regarding
6-31 skimmers; and

6-32 (4) conduct public outreach regarding card fraud.

6-33 SECTION 12. The following provisions of the Business &
6-34 Commerce Code are repealed:

6-35 (1) Section 607.001(9);

6-36 (2) Section 607.051;

6-37 (3) Section 607.052;

6-38 (4) Section 607.054(b);

6-39 (5) Section 607.101; and

6-40 (6) Section 607.102.

6-41 SECTION 13. (a) The Texas Department of Licensing and
6-42 Regulation may establish a workgroup composed of stakeholders to
6-43 provide input, advice, and recommendations regarding the
6-44 department's powers and duties under and the administration of:

6-45 (1) Chapter 607, Business & Commerce Code, as amended
6-46 by this Act;

6-47 (2) Section 2310.101(c), Occupations Code, as added by
6-48 this Act; and

6-49 (3) Chapter 2312, Occupations Code, as transferred,
6-50 redesignated, and amended by this Act.

6-51 (b) If a workgroup is established as authorized by
6-52 Subsection (a) of this section, the Texas Department of Licensing
6-53 and Regulation shall lead the workgroup and determine the
6-54 workgroup's size, composition, and scope of purpose.

6-55 (c) A workgroup established under this section is abolished
6-56 and this section expires December 1, 2022.

6-57 SECTION 14. The Texas Commission of Licensing and
6-58 Regulation shall adopt rules necessary to implement the changes in
6-59 law made by this Act not later than September 1, 2021.

6-60 SECTION 15. (a) On the effective date of this Act:

6-61 (1) the payment fraud fusion center is redesignated as
6-62 the financial crimes intelligence center;

6-63 (2) all powers, duties, functions, programs, and
6-64 activities of the office of the attorney general under Chapter 424,
6-65 Government Code, as added by Chapter 863 (H.B. 2945), Acts of the
6-66 86th Legislature, Regular Session, 2019, as that chapter existed
6-67 immediately before the effective date of this Act, are transferred
6-68 to the Texas Commission of Licensing and Regulation and the Texas
6-69 Department of Licensing and Regulation;

7-1 (3) all obligations, contracts, property, and records
7-2 of the office of the attorney general that are related to a power,
7-3 duty, function, program, or activity transferred under Subdivision
7-4 (2) of this subsection are transferred to the Texas Commission of
7-5 Licensing and Regulation and the Texas Department of Licensing and
7-6 Regulation; and

7-7 (4) all pending complaints, investigations, or
7-8 contested cases that are related to a power, duty, function,
7-9 program, or activity transferred under Subdivision (2) of this
7-10 subsection are transferred without change in status to the Texas
7-11 Commission of Licensing and Regulation and the Texas Department of
7-12 Licensing and Regulation.

7-13 (b) A rule or form adopted by the office of the attorney
7-14 general that relates to a power, duty, function, program, or
7-15 activity transferred under Subsection (a)(2) of this section is a
7-16 rule or form of the Texas Commission of Licensing and Regulation and
7-17 the Texas Department of Licensing and Regulation, as applicable,
7-18 until altered by the commission.

7-19 SECTION 16. Section 607.103, Business & Commerce Code, as
7-20 amended by this Act, applies only to an offense committed on or
7-21 after the effective date of this Act. An offense committed before
7-22 the effective date of this Act is governed by the law in effect on
7-23 the date the offense was committed, and the former law is continued
7-24 in effect for that purpose. For purposes of this section, an
7-25 offense was committed before the effective date of this Act if any
7-26 element of the offense occurred before that date.

7-27 SECTION 17. To the extent of any conflict, this Act prevails
7-28 over another Act of the 87th Legislature, Regular Session, 2021,
7-29 relating to nonsubstantive additions to and corrections in enacted
7-30 codes.

7-31 SECTION 18. This Act takes effect September 1, 2021.

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