

BILL ANALYSIS

C.S.H.B. 2945

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

There are concerns about the growing use of card skimmers at gas pumps throughout Texas. C.S.H.B. 2945 seeks to address these concerns by requiring the attorney general to establish policies and procedures that identify best practices for merchants to actively prevent skimmer installations and by providing for the creation of a fusion center in the City of Tyler under the supervision of the attorney general for the sole purpose of combatting card skimmers.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill expressly does one or more of the following: creates a criminal offense, increases the punishment for an existing criminal offense or category of offenses, or changes the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the attorney general in SECTIONS 1 and 2 of this bill.

ANALYSIS

C.S.H.B. 2945 amends the Business & Commerce Code and the Government Code to provide for the reporting and investigation of payment card skimmers on motor fuel dispensers and for the establishment of a payment fraud fusion center to assist with the detection, prevention, and response to criminal activities relating to payment fraud. The bill requires a merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business to implement procedures to prevent the installation of a skimmer on the payment terminal, find and remove a skimmer placed on the payment terminal, and report the discovery of a skimmer to the department, defined by the bill as the state agency that is the licensing authority for service companies and service technicians under Agriculture Code provisions relating to weights and measures. The bill requires the attorney general by rule to establish reasonable policies and procedures that identify best practices for merchants to use to comply with that requirement. The bill requires the attorney general, in adopting such rules, to consider emerging technology, compliance costs to merchants, and any impact the policies and procedures may have on consumers.

C.S.H.B. 2945 provides for notification to a merchant of a service technician's discovery of a skimmer and provides for steps to be taken by a merchant on discovering a skimmer or being notified by a service technician or other person that a skimmer has been discovered, including reporting the discovery to the department. The bill authorizes an interested person, as defined by the bill, to also submit such a report.

C.S.H.B. 2945 sets out procedures for investigation of a reported skimmer that:

- require the department to immediately notify the payment fraud fusion center established under the bill's provisions and share the report with the center;
- require the department and the center to coordinate with law enforcement agencies in conducting the investigation; and
- authorize inspection of the motor fuel dispenser by the department directly or in coordination with a law enforcement agency.

The bill requires a merchant to cooperate with the department or a law enforcement agency during an investigation of a skimmer discovered at the merchant's place of business and to permit the department or agency to inspect and alter the motor fuel dispenser as necessary. The bill provides for the confidentiality of information received, prepared, or compiled by the department in connection with the report or investigation, including disclosure to the public by the attorney general of information that furthers a law enforcement purpose.

C.S.H.B. 2945 sets out enforcement actions for the attorney general in the event the attorney general has reason to believe a merchant has a payment terminal with a skimmer installed at the merchant's place of business and is in violation of a rule adopted by the attorney general under the bill's provisions, including ordering the merchant to take corrective action as necessary. The bill establishes liability for a merchant as follows:

- a merchant who wilfully violates a rule adopted by the attorney general under the bill's provisions is liable to the state for a civil penalty in an amount not to exceed \$5,000; and
- a merchant who negligently fails to make a report within the prescribed period, or who has had at least three reports made under those provisions within a 24-month period as a result of a failure to comply with the bill's provisions, is liable to the state for a civil penalty of at least \$1,000 but not more than \$5,000 for each violation.

The bill authorizes the attorney general to bring an action to recover such a civil penalty.

C.S.H.B. 2945 creates the following offenses:

- a Class C misdemeanor offense for a person who refuses to allow an inspection of a motor fuel dispenser at the merchant's place of business in violation of the bill's provisions;
- a Class B misdemeanor offense for a person who negligently or recklessly disposes of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person; and
- a third degree felony offense for a person who, knowing that an investigation is ongoing or that a criminal proceeding has been commenced and is pending, disposes of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person.

C.S.H.B. 2945 authorizes law enforcement agencies or other governmental agencies designated by the attorney general to collaborate with the attorney general to establish a payment fraud fusion center for the planning, coordination, and integration of law enforcement and other governmental agency capabilities to respond to criminal activity that is related to payment fraud, including through the use of skimmers. The bill requires the center to provide certain assistance to law enforcement agencies, other governmental agencies, and merchants and authorizes the center to collaborate with federal agencies for the performance of the center's duties and to accomplish the purpose of the center, as described by the bill. The bill requires the attorney general to establish the center in the City of Tyler and to appoint a director to supervise and manage the center under the supervision and direction of the attorney general. The bill requires the attorney general by rule to adopt reasonable policies and procedures necessary to implement these provisions. The bill authorizes a municipality's police department to provide facilities and

administrative support to a payment fraud fusion center established in the municipality. The bill authorizes the center to accept gifts, grants, and donations to carry out the purpose of the center.

EFFECTIVE DATE

September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2945 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute changes the definition of "department" from the Texas Department of Agriculture to a state agency that is the licensing authority for service companies and service technicians.

The substitute revises the definition of "unattended payment terminal" to provide for electronic means of payment other than a payment card. The substitute changes the name of the payment card fraud center to the payment fraud fusion center and includes a definition of "payment fraud" for purposes of provisions relating to the center.

The substitute replaces certain references to a local law enforcement agency with references to a law enforcement agency.

The substitute makes the following changes with regard to the investigation of a reported skimmer:

- does not require that the investigation be conducted by the department;
- requires the department to immediately notify the center on receipt of the report;
- changes an authorization for the department to coordinate with local law enforcement agencies in conducting the investigation to a requirement for the department and the center to coordinate with law enforcement agencies in conducting the investigation;
- specifies that inspection of the motor fuel dispenser may be conducted by the department directly or in coordination with a law enforcement agency; and
- provides for a merchant's cooperation with a law enforcement agency during the investigation.

The substitute includes an authorization for the attorney general to bring an action to recover certain civil penalties.

The substitute does not include as a condition on the conduct constituting an offense involving the reckless or negligent disposal of a skimmer that the actor engaged in the conduct after making a report of the discovery of a skimmer. The substitute changes the penalty for such an offense from a state jail felony to a Class B misdemeanor.

The substitute changes the agencies that may collaborate with the attorney general to establish the center and expands the types of agencies that the center is required to assist.

The substitute includes an authorization for the center to collaborate with federal agencies for certain purposes.