

**SUBJECT:** Enforcing prohibition on payment card skimmers at gas stations

**COMMITTEE:** Pensions, Investments and Financial Services — committee substitute recommended

**VOTE:** 9 ayes — Anchia, Parker, Capriglione, Muñoz, Perez, Rogers, Slawson, Stephenson, Vo

0 nays

**WITNESSES:** For — Stephen Scurlock, Independent Bankers Association of Texas; Adam Colby, Tyler Police Department; (*Registered, but did not testify:* Melodie Durst, Credit Union Coalition of Texas; Celeste Embrey, Texas Bankers Association; Charlotte Spencer, Texas Credit Union Association; Matt Burgin, Texas Food and Fuel Association; Shana Joyce, Texas Oil and Gas Association; John Esparza, Texas Trucking Association)

Against — None

On — Jessica Escobar, Texas Department of Licensing and Regulation

**BACKGROUND:** Business and Commerce Code ch. 607 establishes rules, reporting requirements, and penalties related to payment card skimmers on motor fuel dispensers.

Government Code ch. 424 establishes the Payment Fraud Fusion Center to serve as the state's primary entity for the planning, coordination, and integration of the capabilities of law enforcement agencies and other governmental agencies to respond to criminal activity related to payment fraud, including through the use of skimmers. The attorney general is required to establish the center, adopt policies and procedures to implement the chapter, and appoint a director to supervise and manage the center.

Concerns have been raised about the effectiveness of the state's response to card skimming at gas pumps and the coordination of law enforcement

responses to instances of skimming. Some have suggested that the Texas Department of Licensing and Regulation is best situated to conduct and house anti-skimming efforts.

**DIGEST:**

CSHB 2106 would amend provisions under Business and Commerce Code ch. 607 to make provisions relating to payment card skimmers on motor fuel dispensers apply instead to skimmers on motor fuel metering devices. The Texas Department of Licensing and Regulation (TDLR) would administer ch. 607, and the bill would make related changes and repeal certain sections of that chapter.

The bill also would transfer and redesignate the Payment Fusion Fraud Center as the Financial Crimes Intelligence Center under the Texas Commission on Licensing and Regulation (TCLR) and the Texas Department of Licensing and Regulation (TDLR).

**Administration.** CSHB 2106 would require the Texas Department of Licensing and Regulation (TDLR) to administer and enforce statutory provisions regarding payment card skimmers on motor fuel metering devices under Government Code ch. 607. The Texas Commission of Department and Licensing (TCLR) would have to adopt rules for administering the chapter, and TCLR or the executive director of TDLR could enforce the chapter and rules established under that chapter as necessary.

TDLR could solicit and accept gifts, grants, and other donations for administering ch. 607 from any source except from a person who held certain licenses related to motor fuel metering device services.

**Report of a skimmer.** If a skimmer, defined as a wire or electronic device capable of unlawfully intercepting electronic communications or data to perpetrate fraud, was discovered in or on a motor fuel unattended payment terminal or motor fuel metering device, TDLR would have to be notified of the discovery.

A merchant who discovered a skimmer or was notified of its presence

would have to disable the motor fuel metering device, notify TDLR that a skimmer had been detected, and take appropriate measures to protect the motor fuel metering device from being tampered with until TDLR or law enforcement arrived and the skimmer was removed.

TDLR also could accept a report of a suspected skimmer from any interested person, including a debit card issuer or a payment card network.

**Investigation of a skimmer report.** On receipt of a report of a discovered or suspected skimmer, TDLR could conduct an inspection for the presence of suspected skimmers.

The department could inspect, directly or in coordination with a law enforcement agency, the motor fuel metering device that was the subject of the report and any other motor fuel metering devices located at the same place of business. Merchants would be required to cooperate with TDLR or law enforcement during an investigation of a discovered or reported skimmer and to permit the inspection and alteration of motor fuel metering devices at the merchant's place of business.

Regardless of whether TDLR had received a report of a suspected skimmer, the department could inspect each motor fuel metering device located at a dealer's retail outlet if the department had reason to believe that a skimmer was installed on or in a motor fuel unattended payment terminal or motor fuel metering device at the outlet.

**Disclosure of information.** CSHB 2106 would amend the list of entities that could receive certain confidential information related to a report about a suspected skimmer or an investigation of a skimmer. The bill would remove the attorney general from this list and add:

- an institution of higher education;
- a credit card issuer, a debit card issuer, a financial institution that was not a credit card issuer, or a payment card network that could be impacted by the use of a skimmer;
- a trade association representing a financial institution; and

- a TDLR contractor or other agent.

The bill also would allow a law enforcement agency or the Financial Crimes Intelligence Center created under the bill, rather than the attorney general, to disclose such confidential information under certain conditions. A law enforcement agency or the center could not disclose to the public the identity of a person that submitted a report of a suspected skimmer to TDLR.

**Penalty, civil offenses.** A person who violated Business and Commerce Code ch. 607 or a rule adopted under that chapter would be liable to the state for a civil penalty, and the attorney general or the executive director of TDLR could bring an action to collect the penalty. Occupations Code provisions on injunctive relief related to an action to collect a civil penalty and the amount of the penalty would apply to an action under the bill.

The bill would repeal certain civil penalties for merchants who willfully violated certain rules or who negligently failed to immediately make a report of a discovered skimmer.

CSHB 2106 also would amend offenses created under ch. 607 related to inspections of motor fuel metering devices and the disposal of skimmers installed on motor fuel unattended payment terminals or metering devices to update references to those terminals and devices.

**Financial Crimes Intelligence Center.** CSHB would redesignate the Payment Fraud Fusion Center as the Financial Crimes Intelligence Center (FCIC) and move provisions governing the center from the Government Code to the Occupations Code. The bill would transfer the powers, duties, functions, programs, and activities of the Office of the Attorney General related to the center to the TCLR and TDLR, as well as all related obligations, property, and records and all pending complaints, investigations, or contested cases without change in status. A rule or form adopted by the Office of the Attorney General related to transferred duties, powers, functions, programs, or activities would be a rule or form of TCLR or TDLR until altered. TCLR would have to adopt rules as

necessary to implement the bill's provisions related to the center.

Under the bill, TCLR would be required to establish FCIC within TDLR. The purpose of the center would be to serve as the state's primary entity for the planning, coordination, and integration of law enforcement agencies and other governmental agencies that respond to criminal activity related to card fraud, including through the use of skimmers, and to maximize the ability of these agencies and TDLR to detect, prevent, and respond to activities related to card fraud.

TDLR could enter into agreements with law enforcement agencies or other governmental agencies to operate the center, and the department would be required to enter into an agreement with a law enforcement agency or government agency to appoint a chief intelligence coordinator to supervise and manage the center. The chief intelligence coordinator could be a licensed peace officer, and the agreement for the coordinator's appointment would have to provide that the commission of a coordinator who was a licensed peace officer would be carried by the agency with which TDLR entered into the agreement.

Information collected and maintained by a law enforcement agency or other governmental agency under an agreement with TDLR made under the bill would be the intellectual property of FCIC. On termination of the agreement, the contracting agency would be required to transfer the information to TDLR in accordance with the agreement's terms.

FCIC could collaborate with federal, state, and local governmental agencies to accomplish its purposes. The center would be required to assist law enforcement and other governmental agencies, financial institutions, credit card issuers, debit card issuers, payment card networks, institutions of higher education, and merchants in their efforts to develop and implement strategies to detect skimmers, ensure an effective response if a skimmer was found, and prevent card fraud.

FCIC could:

- serve as a centralized collection point for information related to card fraud;
- provide training and educational opportunities to law enforcement;
- provide outreach to the public; and
- release information to affected financial institutions, credit and debt card issuers, payment card networks, institutions of higher education, and merchants if the center did not consider the information to be sensitive to law enforcement.

Information would be considered sensitive to law enforcement if the information could cause harm to law enforcement activities or jeopardize an investigation or operation if disclosed.

**Annual report.** By December 1 of each year, the chief intelligence coordinator would be required to file a report with TDLR. The report would have to include:

- a plan of operation for the center and an estimate of the amount of money necessary to implement the plan;
- an assessment of the current state of card fraud in the state, including the locations in the state that had the higher statistical probability of card fraud and a summary of card fraud statistic for the year;
- a detailed plan of operation for combatting card fraud;
- a communications plan for outreach to law enforcement agencies, financial institutions, credit and debit card issuers, payment card networks, merchants, and the public; and
- a list of the expenditures made since the most recent report was filed with TDLR.

**Funding and grants.** TDLR could solicit and accept gifts, grants, and other donations to fund, administer, and carry out the purposes of FCIC, except that the department could not solicit such funding from a person who held certain licenses related to motor fuel metering device services.

Subject to the availability of appropriated money, TDLR could award

grants to achieve the center's purposes by contracting with grant recipients. Recipients could use the grant money to:

- reduce card fraud by removing skimmers;
- purchase or upgrade fraud deterrence equipment, including unique locking systems, cameras, and lights;
- provide training opportunities regarding skimmers; and
- conduct public outreach regarding card fraud.

**Workgroup.** TDLR could establish a workgroup of stakeholders to provide input, advice, and recommendations regarding the duties and powers of the department under the bill. If a workgroup was established, TDLR would have to lead the group and determine its size, composition, and scope of purpose. A workgroup established under the bill would be abolished on December 1, 2022.

**Effective dates.** TCLR would be required to adopt rules necessary to implement the changes in law made by the bill no later than September 1, 2021.

On the bill's effective date, the redesignation of FCIC and the transfer of related duties, obligations, and other matters from the office of the attorney general to TCLR and TDLR would go into effect.

The bill would take effect September 1, 2021, and would apply only to an offense committed on or after the effective date. To the extent of any conflict, this bill prevails over another bill of the 87th Legislature, Regular Session, 2021, relating to nonsubstantive additions to and corrections in enacted codes.

**NOTES:**

According to the Legislative Budget Board, the bill would have no impact to general revenue related funds through fiscal 2023. The Texas Department of Licensing and Regulation (TDLR) is statutorily required to generate sufficient revenue to cover its costs of operation, and LBB assumes that any increased cost to TDLR would be offset by an increase in fee-generated revenue. It is possible that TDLR would have to increase

fees on its other regulatory programs to cover an increase in costs as a result of the bill.