

BILL ANALYSIS

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S.B. 1648
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Skimming, the use of electronic devices to steal and record credit card information from unsuspecting consumers—most frequently at gas pumps—is an organized crime activity and a persistent issue for Texas consumers, businesses, and financial institutions. It takes only minutes to install a skimming device and, after installation, a skimmer on a single compromised gas pump can steal data from up to 100 cards a day.

Gas stations do not have an incentive to report skimming at their pumps because such reporting could affect their business negatively. In an effort to continue attracting customers, merchants will attempt to locate and dispose of skimming devices themselves, letting them go unreported and eliminating an opportunity for law enforcement to trace the device.

S.B. 1648 would authorize the Texas attorney general (attorney general) to promulgate rules to ensure merchants employ best practices to help deter and catch skimmers; authorize the Texas Department of Agriculture (TDA) to inspect pumps for skimmers, investigate reported skimmers, and assist law enforcement as needed; require a merchant, upon discovery of a skimmer, to disable the fuel dispenser immediately, notify local law enforcement, take appropriate measures to protect the motor fuel dispenser from tampering until local law enforcement agency arrives, and report the discovery of a skimmer within 24 hours to TDA; impose civil and criminal penalties on persons or businesses who fail to comply with state law or attorney general rules regarding skimming, or who otherwise impede ongoing investigations; and establish the Payment Card Fraud Center in the City of Tyler to coordinate state and local law enforcement efforts to prevent, detect, track, and prosecute skimmers.

As proposed, S.B. 1648 amends current law relating to payment card skimmers on motor fuel dispensers; imposes a civil penalty; and creates criminal offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas attorney general in SECTION 1 (Section 607.052, Business and Commerce Code) and SECTION 2 (Section 424.004, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 12, Business & Commerce Code, by adding Chapter 607, as follows:

CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL DISPENSERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 607.001. DEFINITIONS. Defines "center," "department," "financial institution," "merchant," "motor fuel dispenser," "payment card," "service company," "skimmer," and "unattended payment terminal."

SUBCHAPTER B. DUTIES RELATED TO USE OF CERTAIN UNATTENDED PAYMENT TERMINALS

Sec. 607.051. MERCHANT DUTIES REGARDING UNATTENDED PAYMENT TERMINALS ON MOTOR FUEL DISPENSERS. Requires a merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business to implement procedures in accordance with the rules adopted by the attorney general under Section 607.052 to:

- (1) prevent the installation of a skimmer on the payment terminal;
- (2) find and remove a skimmer placed on the payment terminal; and
- (3) report the discovery of a skimmer to the Texas Department of Agriculture (TDA).

Sec. 607.052. RULES. (a) Requires the Texas attorney general (attorney general) by rule to establish reasonable policies and procedures that identify best practices for merchants to use to comply with Section 607.051.

(b) Requires the attorney general; in adopting rules under Subsection (a), to consider:

- (1) emerging technology;
- (2) compliance costs to merchants; and
- (3) any impact the policies and procedures may have on consumers.

Sec. 607.053. DISCOVERY OF SKIMMERS. Requires a service technician or service company that employs a technician, if the service technician discovers a skimmer on the unattended payment terminal of a motor fuel dispenser, to immediately notify the merchant of the skimmer. Requires the merchant, if a merchant discovers the skimmer or is notified of the skimmer by a service technician or other person, to:

- (1) immediately disable, or cause to be disabled, the motor fuel dispenser on which the skimmer was discovered and notify a local law enforcement agency that a skimmer has been detected;
- (2) take appropriate measures to protect from tampering with the motor fuel dispenser until a local law enforcement agency arrives; and
- (3) not later than 24 hours after the discovery of the skimmer, or after a report of the discovery of a skimmer is made to the merchant, report the discovery to the Texas Department of Agriculture (TDA).

Sec. 607.054. REPORT TO DEPARTMENT. (a) Defines "interested person" for purposes of this section.

(b) Authorizes an interested person to submit a report of the discovery of a skimmer on an unattended payment terminal of a motor fuel dispenser at a merchant's place of business to TDA.

Sec. 607.055. INVESTIGATION OF SKIMMER REPORTS. (a) Requires TDA, on receipt of a report under Section 607.053 or 607.054, to conduct an investigation and share the report with the payment card fraud center (center).

(b) Authorizes TDA to:

- (1) coordinate with local law enforcement agencies in conducting an investigation under this section; and
- (2) inspect the motor fuel dispenser that is the subject of the report.

(c) Requires merchant to cooperate with TDA during an investigation conducted under this section and permit TDA to inspect the motor fuel dispenser that is the subject of the report or alter the motor fuel dispenser as necessary.

Sec. 607.056. CONFIDENTIALITY. (a) Provides that except as otherwise provided by this section, information is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, if the information is:

(1) received by TDA under Section 607.053 or 607.054; or

(2) prepared or compiled by TDA in connection with a report to or investigation conducted by TDA under this subchapter.

(b) Authorizes information described by Subsection (a) to be disclosed to:

(1) the attorney general;

(2) a criminal justice agency, as defined by Section 411.082 (Definitions), Government Code;

(3) the center;

(4) a financial institution that may be impacted by the installation of a skimmer on the unattended payment terminal of a motor fuel dispenser; or

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

(c) Provides that the disclosure of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007 (Voluntary Disclosure of Certain Information When Disclosure Not Required), Government Code.

(d) Provides that in the dismissal or final resolution of a report or investigation by TDA, information described by Subsection (a) is subject to disclosure under Chapter 552, Government Code.

(e) Authorizes the attorney general, notwithstanding Subsection (a), to disclose to the public information made confidential by that subsection if the attorney general determines that the disclosure of the information furthers a law enforcement purpose.

SUBCHAPTER C. ENFORCEMENT

Sec. 607.101. CORRECTIVE ACTION. Requires the attorney general, if the attorney general has reason to believe that a merchant who, after an investigation conducted by a law enforcement agency, has at the merchant's place of business an unattended payment terminal of a motor fuel dispenser on which a skimmer was installed and who is in violation of a rule adopted by the attorney general under Section 607.052, to notify the merchant of the violation. Authorizes the attorney general to order the merchant to take corrective action as necessary, including the implementation of best practices and the training of employees to detect skimmers.

Sec. 607.102. CIVIL PENALTIES. (a) Provides that a merchant who wilfully violates a rule adopted by the attorney general under Section 607.052 is liable to this state for a civil penalty in an amount not to exceed \$5,000.

(b) Provides that a merchant who negligently fails to make a report within the period prescribed by Section 607.053, or who has had at least three reports made under that section within a 24-month period as a result of the merchant failing to

comply with Subchapter B, is liable to this state for a civil penalty of at least \$1,000 but not more than \$5,000 for each violation.

Sec. 607.103. OFFENSES; PENALTIES. (a) Provides that a person commits an offense if the person refuses to allow TDA to inspect a motor fuel dispenser at the merchant's place of business in violation of Section 607.055. Provides that an offense under this subsection is a Class C misdemeanor.

(b) Provides that a person commits an offense if, after making a report under Section 607.053, the person negligently or recklessly disposes of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person. Provides that an offense under this subsection is a state jail felony.

(c) Provides that a person commits an offense if, knowing that an investigation is ongoing or that a criminal proceeding has been commenced and is pending, the person disposes of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person. Provides that an offense under this subsection is a felony of the third degree.

SECTION 2. Amends Subtitle B, Title 4, Government Code, by adding Chapter 424, as follows:

CHAPTER 424. PAYMENT CARD FRAUD CENTER

Sec. 424.001. DEFINITIONS. Defines "center," "payment card," and "skimmer."

Sec. 424.002. PAYMENT CARD FRAUD CENTER. (a) Authorizes the Department of Public Safety of the State of Texas, TDA, and other state or local agencies, as designated by the attorney general, to collaborate with the attorney general to establish a center as provided by this chapter. Requires the attorney general to establish the center in the City of Tyler.

(b) Requires the attorney general to appoint a director to supervise and manage the center. Provides that the director is under the supervision and direction of the attorney general.

Sec. 424.003. PURPOSE OF CENTER. (a) Provides that the center serves as the state's primary entity for the planning, coordination, and integration of the capabilities of law enforcement agencies and other agencies to respond to criminal activity that is related to payment card fraud, including through the use of skimmers.

(b) Provides that the purpose of the center is to maximize the ability of state agencies and local law enforcement agencies to detect, prevent, and respond to criminal activities related to payment card fraud.

(c) Requires the center to assist state agencies and local law enforcement agencies and merchants in their efforts to develop and implement strategies to:

- (1) detect skimmers;
- (2) ensure an effective response if a skimmer is found; and
- (3) prevent payment card fraud.

Sec. 424.004. RULES. Requires the attorney general by rule to adopt reasonable policies and procedures necessary to implement this chapter.

Sec. 424.005. FACILITIES AND ADMINISTRATIVE SUPPORT. Authorizes a municipality's police department to provide facilities and administrative support if the payment card fraud center is established in the municipality.

Sec. 424.006. GIFTS AND GRANTS. Authorizes the payment card fraud center to accept gifts, grants, and donations to carry out the purpose of the center.

SECTION 3. Effective date: September 1, 2019.