

BILL ANALYSIS

Senate Research Center
87R13636 JES-F

C.S.S.B. 964
By: Zaffirini
Business & Commerce
4/1/2021
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Skimming, the use of electronic devices to steal and record credit card information from unsuspecting consumers, is a persistent issue for Texas consumers, financial institutions, and motor fuel merchants. It takes only minutes to install a skimming device and, after installation, a single compromised gas pump can steal data from 30 to 100 cards per day.

Recognizing the gravity of this issue, the legislature in 2019 passed H.B. 2945, which authorized the attorney general to promulgate rules to ensure merchants employ best practices to deter and catch skimmers and established a Payment Card Fraud Center in the City of Tyler to coordinate law enforcement efforts. Unfortunately, structural and statutory issues complicated the implementation of this legislation, leading experts to the conclusion that the anti-skimming program is best housed at the Texas Department of Licensing and Regulation (TDLR).

S.B. 964 would transfer rulemaking authority regarding credit card skimmers at motor fuel dispensers to TDLR and would re-establish the Payment Card Fraud Center as the Financial Crimes Intelligence Center at TDLR. These changes would ensure the greatest possible coordination between relevant stakeholders and assist law enforcement officials with identifying, tracking, and ultimately dismantling complex criminal enterprises engaged in skimming.

(Original Author's/Sponsor's Statement of Intent)

C.S.S.B. 964 amends current law relating to the prevention, identification, investigation, and enforcement of payment card fraud and provides a civil penalty.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 3 (Section 607.004, Business & Commerce Code) and SECTION 11 (Section 2312.002, Occupations Code) of this bill.

Rulemaking authority previously granted to the attorney general is rescinded in SECTION 11 and SECTION 12 (Section 607.052, Business & Commerce Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Chapter 607, Business & Commerce Code, to read as follows:

CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL METERING DEVICES

SECTION 2. Amends Section 607.001, Business & Commerce Code, by amending Subdivisions (1), (2), (4), (5), (7), and (8) and adding Subdivisions (1-a), (1-b), (2-a), (3-a), (5-a), and (6-a), to redefine "center," "department," "merchant," "service company," "service technician," and "skimmer" and to define "commission," "credit card issuer," "executive director," "institution of higher education," "motor fuel," "motor fuel motoring device," "motor fuel unattended payment terminal," and "payment card network" and to delete existing text defining "motor fuel dispenser" for purposes of Chapter 607.

SECTION 3. Amends Subchapter A, Chapter 607, Business & Commerce Code, by adding Sections 607.002, 607.003, and 607.004, as follows:

Sec. 607.002. ADMINISTRATION AND ENFORCEMENT OF CHAPTER. (a) Requires the Texas Department of Licensing and Regulation (TDLR) to administer and enforce Chapter 607.

(b) Authorizes the Texas Commission of Licensing and Regulation (TCLR) or the executive director of TDLR (executive director) to enforce this chapter, a rule adopted under this chapter, or an order of TCLR or the executive director as provided by Subchapters F (Administrative Penalty) and G (Other Penalties and Enforcement Provisions), Chapter 51 (Texas Department of Licensing and Regulation), Occupations Code.

Sec. 607.003. FUNDING. Authorizes TDLR to solicit and accept gifts, grants, and other donations for purposes of administering this chapter, except that TDLR is prohibited from soliciting or accepting a gift, grant, or other donation from a license holder as defined by Section 2310.151 (Definitions), Occupations Code.

Sec. 607.004. RULES. Requires TCLR to adopt rules for administering this chapter.

SECTION 4. Amends Section 607.053, Business & Commerce Code, as follows:

Sec. 607.053. New heading: NOTICE OF DISCOVERY OF SKIMMER REQUIRED. (a) Creates this subsection from existing text. Requires a service technician or service company that employs the technician, if the service technician discovers a skimmer in or on a motor fuel unattended payment terminal or motor fuel metering device, rather than on the unattended payment terminal of a motor fuel dispenser, to notify TDLR and the merchant of the skimmer in the manner prescribed by TCLR rule, rather than immediately. Makes nonsubstantive changes.

(b) Creates this subsection from existing text. Requires a merchant, if the merchant discovers a skimmer in or on a motor fuel unattended payment terminal or motor fuel metering device or is notified of the presence of a skimmer, to, in the manner prescribed by TCLR rule:

(1) makes conforming and nonsubstantive changes to this subdivision;

(1-a) notify a law enforcement agency and TDLR that a skimmer has been detected; and

(2) take appropriate measures to protect the motor fuel metering device from being tampered with until TDLR or the law enforcement agency arrives and the skimmer is removed. Makes nonsubstantive changes.

Deletes existing text requiring the merchant, not later than 24 hours after the discovery of a skimmer, to report the discovery of the skimmer to TDLR. Makes nonsubstantive changes.

SECTION 5. Amends Section 607.054(a), Business & Commerce Code, as follows:

(a) Authorizes TDLR to accept a report of a suspected skimmer from any of certain interested persons, including a debit card issuer and a payment card network. Makes conforming and nonsubstantive changes.

SECTION 6. Amends Section 607.055, Business & Commerce Code, as follows:

Sec. 607.055. INVESTIGATION OF SKIMMER REPORT. (a) Provides that, on receipt of a report under Section 607.053 or 607.054 (Report to Department), TDLR is authorized to conduct an inspection for the presence of suspected skimmers, rather than

TDLR is required to immediately notify the payment fraud fusion center and share the report with the payment fraud fusion center.

(b) Requires TDLR, rather than TDLR and the payment fraud fusion center, to coordinate with law enforcement agencies in conducting an investigation of the report.

(c) Authorizes TDLR to inspect, directly or in coordination with a law enforcement agency, the motor fuel metering device, rather than the motor fuel dispenser, that is the subject of the report and any other motor fuel metering device located at the same place of business.

(d) Requires a merchant to cooperate with TDLR or the law enforcement agency during an investigation of a skimmer discovered or reported at the merchant's place of business and to permit the inspection and alteration of motor fuel metering devices at the place of business as necessary. Makes a conforming change.

SECTION 7. Amends Sections 607.056(b), (d), and (e), Business & Commerce Code, as follows:

(b) Authorizes information described by Subsection (a) (relating to the confidentiality of certain public information) to be disclosed to certain entities, including to an institution of higher education, rather than the attorney general; to a credit card issuer, a debit card issuer, a financial institution that is not a credit card issuer, or a payment card network that may be impacted by the use of a skimmer on a motor fuel unattended payment terminal or motor fuel metering device; to a trade association representing a financial institution; or to a TDLR contractor or other agent. Makes nonsubstantive changes.

(d) Provides that on the dismissal or final resolution of a report, rather than of a report or investigation, by TDLR, information described by Subsection (a) is subject to disclosure under Chapter 552 (Public Information), Government Code.

(e) Authorizes a law enforcement agency or the financial crimes intelligence center (center), rather than the attorney general, notwithstanding Subsection (a), to disclose to the public information made confidential by that subsection if the law enforcement agency or the chief intelligence coordinator for the center determines that the disclosure of the information furthers a law enforcement purpose, except that a law enforcement agency or the center is prohibited from disclosing to the public the identity of a person that submits a report of a suspected skimmer to TDLR under Section 607.053 or 607.054. Makes a conforming change.

SECTION 8. Amends Subchapter C, Chapter 607, Business & Commerce Code, by adding Section 607.1021, as follows:

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

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

(c) Provides that the provisions of Section 51.352 (Injunctive Relief; Civil Penalty), Occupations Code, relating to an action to collect and the amount of a civil penalty under that section apply to an action to collect and the amount of a civil penalty under this section.

SECTION 9. Amends Section 607.103, Business & Commerce Code, to make conforming and nonsubstantive changes.

SECTION 10. Amends Section 2310.101, Occupations Code, by adding Subsection (c), as follows:

(c) Authorizes TDLR, regardless of whether TDLR has received a report of a suspected skimmer under Section 607.053 or 607.054, Business & Commerce Code, to inspect each motor fuel metering device located at a dealer's retail outlet if TDLR has reason to believe that a skimmer is installed on or in a motor fuel unattended payment terminal or motor fuel metering device at the retail outlet. Defines "motor fuel unattended payment terminal" and "skimmer."

SECTION 11. Transfers Chapter 424, Government Code, as added by Chapter 863 (H.B. 2945), Acts of the 86th Legislature, Regular Session, 2019, to Subtitle A, Title 14, Occupations Code, redesignates it as Chapter 2312, Occupations Code, and amends it, as follows:

CHAPTER 2312. New heading: FINANCIAL CRIMES INTELLIGENCE CENTER

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 2312.001. DEFINITIONS. Defines "card fraud," "commission," and "department," and redefines "skimmer." Redefines "center" as the financial crimes intelligence center, rather than the payment fraud fusion center. Deletes existing text defining "payment card" and "payment fraud." Makes conforming and nonsubstantive changes.

Sec. 2312.002. RULES. Requires TDLR to adopt rules as necessary to implement this chapter. Makes a conforming change.

SUBCHAPTER B. PURPOSE AND ADMINISTRATION

Sec. 2312.051. New heading: FINANCIAL CRIMES INTELLIGENCE CENTER ESTABLISHED. Requires TDLR to establish the center within TDLR. Deletes existing text authorizing 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. Deletes existing text requiring the attorney general to establish the center in the City of Tyler.

Sec. 2312.052. New heading: PURPOSES OF CENTER. Makes conforming and nonsubstantive changes.

Sec. 2312.053. OPERATION AGREEMENTS AUTHORIZED; CHIEF INTELLIGENCE COORDINATOR. (a) Provides that TDLR:

(1) is authorized to enter into agreements with law enforcement agencies or other governmental agencies for the operation of the center; and

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

(b) Authorizes the chief intelligence coordinator appointed under the agreement required by Subsection (a)(2) to be a licensed peace officer. Requires that the agreement provide that the commission of a chief intelligence coordinator who is a licensed peace officer will be carried by the agency with which TDLR enters into the agreement under that subdivision.

(c) Provides that information a law enforcement agency or other governmental agency collects and maintains under an agreement entered into with TDLR under this chapter is the intellectual property of the center. Requires the contracting agency, on termination of the agreement, to transfer the information to TDLR in accordance with the terms of the agreement.

Sec. 2312.054. POWERS AND DUTIES. (a) Authorizes the center to collaborate with federal, state, and local governmental agencies, rather than with federal agencies, to accomplish the purposes of the center. Makes nonsubstantive changes.

(b) Requires the center to assist law enforcement agencies, 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 take certain actions. Makes conforming and nonsubstantive changes.

(c) Authorizes the center to:

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

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

(3) provide outreach to the public; and

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

(d) Provides that, for purposes of Subsection (c)(4), information is considered sensitive to law enforcement if the information could cause harm to law enforcement activities or jeopardize an investigation or operation if disclosed.

Sec. 2312.055. ANNUAL REPORT. (a) Requires the chief intelligence coordinator, not later than December 1 of each year, to file a report with TDLR.

(b) Requires that the report include:

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

(2) an assessment of the current state of card fraud in this state, including an identification of the geographic locations in this state that have the highest statistical probability for card fraud and a summary of card fraud statistics for the year in which the report is filed;

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

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

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

SUBCHAPTER C. FINANCIAL PROVISIONS

Sec. 2312.101. New heading: FUNDING. Authorizes TDLR, rather than the payment fraud fusion center, to solicit and accept gifts, grants, and other donations to fund, administer, and carry out the purposes of the center, except that TDLR is prohibited from soliciting or accepting a gift, grant, or other donation from a license holder as defined by Section 2310.151 (Definitions). Makes a nonsubstantive change. Deletes existing text relating to the director of the center, policies adopted by the attorney general by rule, and facilities and administrative support.

Sec. 2312.102. AWARD OF GRANTS. (a) Authorizes TDLR, subject to the availability of appropriated money, to award grants for the purposes of this chapter by entering into a contract with each grant recipient.

(b) Authorizes a grant recipient to use 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.

SECTION 12. (1) Repealer: Section 607.001(9) (relating to the definition of "unattended payment terminal"), Business & Commerce Code.

(2) Repealer: Section 607.051 (Merchant Duties Regarding Unattended Payment Terminals on Motor Fuel Dispensers), Business & Commerce Code.

(3) Repealer: Section 607.052 (Rules), Business & Commerce Code.

(4) Repealer: Section 607.054(b) (relating to a report of the discovery of a skimmer on certain payment terminals submitted by an interested person), Business & Commerce Code.

(5) Repealer: Section 607.101 (Corrective Action), Business & Commerce Code.

(6) Repealer: Section 607.102 (Civil Penalties), Business & Commerce Code.

SECTION 13. (a) Authorizes TDLR to establish a workgroup composed of stakeholders to provide input, advice, and recommendations regarding TDLR's powers and duties under and the administration of:

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

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

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

(b) Requires TDLR, if a workgroup is established as authorized by Subsection (a) of this section, to lead the workgroup and determine the workgroup's size, composition, and scope of purpose.

(c) Provides that a workgroup established under this section is abolished and this section expires December 1, 2022.

SECTION 14. Requires TCLR to adopt rules necessary to implement the changes in law made by this Act not later than September 1, 2021.

SECTION 15. (a) Provides that, on the effective date of this Act:

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

(2) all powers, duties, functions, programs, and activities of the Office of the Attorney General (OAG) under Chapter 424, Government Code, as added by Chapter 863 (H.B. 2945), Acts of the 86th Legislature, Regular Session, 2019, as that chapter existed immediately before the effective date of this Act, are transferred to TCLR and TDLR;

(3) all obligations, contracts, property, and records of OAG that are related to a power, duty, function, program, or activity transferred under Subdivision (2) of this subsection are transferred to TCLR and TDLR; and

(4) all pending complaints, investigations, or contested cases that are related to a power, duty, function, program, or activity transferred under Subdivision (2) of this subsection are transferred without change in status to TCLR and TDLR.

(b) Provides that a rule or form adopted by OAG that relates to a power, duty, function, program, or activity transferred under Subsection (a)(2) of this section is a rule or form of TCLR and TDLR, as applicable, until altered by TCLR.

SECTION 16. Makes application of Section 607.103, Business & Commerce Code, as amended by this Act, prospective.

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

SECTION 18. Effective date: September 1, 2021.