

By: Perez

H.B. No. 2945

A BILL TO BE ENTITLED

AN ACT

relating to payment card skimmers on motor fuel dispensers;  
imposing a civil penalty; creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 12, Business & Commerce Code, is amended by  
adding Chapter 607 to read as follows:

CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL DISPENSERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 607.001. DEFINITIONS. In this chapter:

(1) "Center" means the payment card fraud center  
established under Chapter 424, Government Code.

(2) "Department" means the Texas Department of  
Agriculture.

(3) "Financial institution" has the meaning assigned  
by Section 277.001, Finance Code.

(4) "Merchant" means a person whose business includes  
the sale of motor fuel through motor fuel dispensers to retail  
customers.

(5) "Motor fuel dispenser" means a machine that is  
used to pump gasoline, diesel, biofuels, or other types of fuels  
into motor vehicles.

(6) "Payment card" has the meaning assigned by Section  
522.001.

(7) "Service company" and "service technician" have

1 the meanings assigned by Section 13.451, Agriculture Code.

2 (8) "Skimmer" means a wire or electronic device that  
3 is capable of unlawfully intercepting electronic communications  
4 and used to perpetuate fraud. The term includes a re-encoder and  
5 scanning device, as those terms are defined by Section 522.001.

6 (9) "Unattended payment terminal" means a  
7 point-of-sale terminal or kiosk that is operated by a customer to  
8 activate a transaction through use of a payment card.

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

10 TERMINALS

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

17 (1) prevent the installation of a skimmer on the  
18 payment terminal;

19 (2) find and remove a skimmer placed on the payment  
20 terminal; and

21 (3) report the discovery of a skimmer to the  
22 department.

23 Sec. 607.052. RULES. (a) The attorney general by rule  
24 shall establish reasonable policies and procedures that identify  
25 best practices for merchants to use to comply with Section 607.051.

26 (b) In adopting rules under Subsection (a), the attorney  
27 general must consider:

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

5           Sec. 607.053. DISCOVERY OF SKIMMERS. If a service  
6 technician discovers a skimmer on the unattended payment terminal  
7 of a motor fuel dispenser, the service technician or service  
8 company that employs the technician shall immediately notify the  
9 merchant of the skimmer. If a merchant discovers the skimmer or is  
10 notified of the skimmer by a service technician or other person, the  
11 merchant shall:

12           (1) immediately disable, or cause to be disabled, the  
13 motor fuel dispenser on which the skimmer was discovered and notify  
14 a local law enforcement agency that a skimmer has been detected;

15           (2) take appropriate measures to protect from  
16 tampering with the motor fuel dispenser until a local law  
17 enforcement agency arrives; and

18           (3) not later than 24 hours after the discovery of the  
19 skimmer, or after a report of the discovery of a skimmer is made to  
20 the merchant, report the discovery to the department.

21           Sec. 607.054. REPORT TO DEPARTMENT. (a) In this section,  
22 "interested person" includes:

23           (1) a local law enforcement agency;

24           (2) a merchant;

25           (3) a financial institution;

26           (4) a credit card issuer as defined by Section

27 505.001;

1           (5) a service technician or service company;

2           (6) a member of the public; or

3           (7) any other interested person.

4           (b) An interested person may submit a report of the  
5 discovery of a skimmer on an unattended payment terminal of a motor  
6 fuel dispenser at a merchant's place of business to the department.

7           Sec. 607.055. INVESTIGATION OF SKIMMER REPORTS. (a) On  
8 receipt of a report under Section 607.053 or 607.054, the  
9 department shall conduct an investigation and share the report with  
10 the center.

11           (b) The department may:

12           (1) coordinate with local law enforcement agencies in  
13 conducting an investigation under this section; and

14           (2) inspect the motor fuel dispenser that is the  
15 subject of the report.

16           (c) A merchant shall cooperate with the department during an  
17 investigation conducted under this section and permit the  
18 department to inspect the motor fuel dispenser that is the subject  
19 of the report or alter the motor fuel dispenser as necessary.

20           Sec. 607.056. CONFIDENTIALITY. (a) Except as otherwise  
21 provided by this section, information is confidential and not  
22 subject to disclosure under Chapter 552, Government Code, if the  
23 information is:

24           (1) received by the department under Section 607.053  
25 or 607.054; or

26           (2) prepared or compiled by the department in  
27 connection with a report to or investigation conducted by the

1 department under this subchapter.

2 (b) Information described by Subsection (a) may be  
3 disclosed to:

4 (1) the attorney general;

5 (2) a criminal justice agency, as defined by Section  
6 411.082, Government Code;

7 (3) the center;

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

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

13 (c) The disclosure of information under Subsection (b) is  
14 not a voluntary disclosure for purposes of Section 552.007,  
15 Government Code.

16 (d) On the dismissal or final resolution of a report or  
17 investigation by the department, information described by  
18 Subsection (a) is subject to disclosure under Chapter 552,  
19 Government Code.

20 (e) Notwithstanding Subsection (a), the attorney general  
21 may disclose to the public information made confidential by that  
22 subsection if the attorney general determines that the disclosure  
23 of the information furthers a law enforcement purpose.

24 SUBCHAPTER C. ENFORCEMENT

25 Sec. 607.101. CORRECTIVE ACTION. If the attorney general  
26 has reason to believe that a merchant who, after an investigation  
27 conducted by a law enforcement agency, has at the merchant's place

1 of business an unattended payment terminal of a motor fuel  
2 dispenser on which a skimmer was installed and who is in violation  
3 of a rule adopted by the attorney general under Section 607.052, the  
4 attorney general shall notify the merchant of the violation. The  
5 attorney general may order the merchant to take corrective action  
6 as necessary, including the implementation of best practices and  
7 the training of employees to detect skimmers.

8 Sec. 607.102. CIVIL PENALTIES. (a) A merchant who wilfully  
9 violates a rule adopted by the attorney general under Section  
10 607.052 is liable to this state for a civil penalty in an amount not  
11 to exceed \$5,000.

12 (b) A merchant who negligently fails to make a report within  
13 the period prescribed by Section 607.053, or who has had at least  
14 three reports made under that section within a 24-month period as a  
15 result of the merchant failing to comply with Subchapter B, is  
16 liable to this state for a civil penalty of at least \$1,000 but not  
17 more than \$5,000 for each violation.

18 Sec. 607.103. OFFENSES; PENALTIES. (a) A person commits an  
19 offense if the person refuses to allow the department to inspect a  
20 motor fuel dispenser at the merchant's place of business in  
21 violation of Section 607.055. An offense under this subsection is a  
22 Class C misdemeanor.

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

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

7       SECTION 2. Subtitle B, Title 4, Government Code, is amended  
8 by adding Chapter 424 to read as follows:

9               CHAPTER 424. PAYMENT CARD FRAUD CENTER

10       Sec. 424.001. DEFINITIONS. In this chapter:

11               (1) "Center" means the payment card fraud center  
12 established under this chapter.

13               (2) "Payment card" has the meaning assigned by Section  
14 522.001, Business & Commerce Code.

15               (3) "Skimmer" means a wire or electronic device that  
16 is capable of unlawfully intercepting electronic communications  
17 and used to perpetuate fraud. The term includes a re-encoder and  
18 scanning device, as those terms are defined by Section 522.001,  
19 Business & Commerce Code.

20       Sec. 424.002. PAYMENT CARD FRAUD CENTER. (a) The  
21 Department of Public Safety, the Department of Agriculture, and  
22 other state or local agencies, as designated by the attorney  
23 general, may collaborate with the attorney general to establish a  
24 payment card fraud center as provided by this chapter. The attorney  
25 general shall establish the center in the City of Tyler.

26               (b) The attorney general shall appoint a director to  
27 supervise and manage the center. The director is under the

1 supervision and direction of the attorney general.

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

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

11 (c) The center shall assist state agencies and local law  
12 enforcement agencies and merchants in their efforts to develop and  
13 implement strategies to:

14 (1) detect skimmers;

15 (2) ensure an effective response if a skimmer is  
16 found; and

17 (3) prevent payment card fraud.

18 Sec. 424.004. RULES. The attorney general by rule shall  
19 adopt reasonable policies and procedures necessary to implement  
20 this chapter.

21 Sec. 424.005. FACILITIES AND ADMINISTRATIVE SUPPORT. A  
22 municipality's police department may provide facilities and  
23 administrative support if the payment card fraud center is  
24 established in the municipality.

25 Sec. 424.006. GIFTS AND GRANTS. The payment card fraud  
26 center may accept gifts, grants, and donations to carry out the  
27 purpose of the center.

1 SECTION 3. This Act takes effect September 1, 2019.