

SUBJECT: Enforcing prohibition on payment card skimmers at gas stations

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

VOTE: 10 ayes — Murphy, Vo, Capriglione, Flynn, Gervin-Hawkins, Gutierrez, Lambert, Leach, Longoria, Wu

0 nays

1 absent — Stephenson

WITNESSES: For — Melodie Durst, Credit Union Coalition of Texas; Jeff Headley, Houston Police Department; Stephen Scurlock, Independent Bankers Association of Texas; Matt Burgin, Texas Food and Fuel Association; Adam Colby, Tyler Police Department; Steven Webster, WEX Inc. (*Registered, but did not testify*: Rita Ostrander, Combined Law Enforcement Associations of Texas; Ray Hunt, Houston Police Officers Union; Christopher Lutton, San Antonio Police Department; Jim Skinner, Sheriffs' Association of Texas; Celeste Embrey, Texas Bankers Association; Jeff Huffman, Texas Credit Union Association; Mike Gomez, Texas Municipal Police Association; Shana Joyce, Texas Oil and Gas Association)

Against — None

On — Brad Schuelke, Texas Attorney General's Office; Tim Kleinschmidt, Texas Department of Agriculture (*Registered, but did not testify*: John Bohannon, Office of the Attorney General; Jessica Escobar, Texas Department of Agriculture; Steve Bruno, Texas Department of Licensing and Regulation)

DIGEST: CSHB 2945 would provide enforcement mechanisms against payment card skimming at gas stations, grant the attorney general rulemaking authority over gas station merchants, establish a reporting and investigation process for skimmers, establish civil and criminal penalties,

and create a fusion center for the purpose of countering card skimmers.

Rulemaking. CSHB 2945 would require the attorney general to establish reasonable policies and procedures that identified best practices for merchants who used unattended payment terminals on motor fuel dispensers, such as fuel pumps. These best practices would include procedures to prevent the installation of a skimmer on a payment terminal, to find and remove a skimmer, and to report the discovery of a skimmer to the Texas Department of Agriculture (TDA).

In adopting the rules, the attorney general would have to consider emerging technology, merchants' compliance costs, and any impact the policies and procedures could have on consumers.

Fraud fusion center. Under the bill, law enforcement agencies or other designated governmental agencies could collaborate with the attorney general to establish a payment fraud fusion center. This center would be established in the city of Tyler.

The center would 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 that is related to payment fraud, including through the use of skimmers. The purpose of the center would be to maximize the ability of law enforcement agencies and other governmental agencies to detect, prevent, and respond to criminal activities related to payment fraud.

The center could collaborate with federal agencies in the performance of its duties, and would be required to assist law enforcement agencies, other agencies, and merchants in their efforts to develop and implement strategies to detect skimmers, effectively respond if a skimmer was found, and prevent payment fraud.

The attorney general would be required to appoint a director to supervise and manage the center. The director would be under the supervision and direction of the attorney general.

The attorney general would be required to adopt by rule reasonable policies and procedures necessary to implement the fraud fusion center. A municipality's police department could provide facilities and administrative support to a payment fraud fusion center established in the municipality. The payment fraud fusion center would be allowed to accept gifts, grants, and donations to carry out the purpose of the center.

Discovery of skimmer. If a service technician discovered a skimmer on the unattended payment terminal of a merchant's motor fuel dispenser, the technician or the technician's employer would be required to immediately notify the merchant.

If a merchant discovered the skimmer or was notified of the skimmer by a service technician or other person, the merchant would be required to:

- immediately disable, or cause to be disabled, the fuel pump on which the skimmer was discovered and notify a law enforcement agency that a skimmer has been detected;
- take appropriate measures to protect the fuel pump from being tampered with until the law enforcement agency arrived; and
- report the discovery of the skimmer to TDA within 24 hours.

An interested person also could submit a report of the discovery of a skimmer to TDA. The bill would define interested persons to include a law enforcement agency, financial institution, member of the public, or any other interested person.

Investigation of skimmer report. On receipt of a report of a potential skimmer from an interested party, the TDA would be required to immediately notify the fraud fusion center and share the report with the center. TDA and the center would coordinate with law enforcement agencies to conduct an investigation of the report.

TDA could inspect, directly or in coordination with a law enforcement agency, the motor fuel dispenser that was the subject of the report. A

merchant would be required to cooperate with the department or 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 fuel pump that was the subject of the report as necessary.

Confidentiality. Information from a skimmer report or that was prepared or compiled by TDA in connection with a skimmer report or investigation would be confidential and would not be subject to disclosure under the state's public information laws. Such information could be disclosed to the attorney general, a law enforcement agency, the fraud fusion center, a financial institution that could be impacted by the use of the skimmer, or another person if permitted or required by other law or a court order.

On the dismissal or final resolution of a report or investigation under the bill, information from a skimmer report or investigation would be subject to disclosure under public information laws.

The attorney general could disclose information made confidential under the bill to the public if the attorney general determined that the disclosure would further a law enforcement purpose.

Enforcement. If after an investigation the attorney general had reason to believe that a merchant had an unattended payment terminal at a fuel pump at the merchant's place of business on which a skimmer had been installed and the merchant was in violation of a rule adopted by the attorney general under this bill, the attorney general would have to notify the merchant of the violation.

The attorney general could order the merchant to take corrective action as necessary, including the implementation of best practices and the training of employees to detect skimmers.

Civil penalties. A merchant who willfully violated a rule adopted by the attorney general related to skimmers would be liable to the state for a civil penalty in an amount not to exceed \$5,000.

A merchant who negligently failed to make a skimmer report within the required time or who had had at least three skimmer reports made within a two-year period as a result of the merchant's failure to comply with requirements under the bill would be liable to the state for a civil penalty of at least \$1,000 but not more than \$5,000 for each violation.

The attorney general could bring an action to recover a civil penalty imposed under the bill.

Criminal penalties. A person would commit a class C misdemeanor (maximum fine of \$500) if the person refused to allow an inspection of a motor fuel dispenser at the merchant's place of business following the report of a skimmer.

A person would commit a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000) if the person negligently or recklessly disposed of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person.

A person would commit a third-degree felony (two to 10 years in prison and an optional fine of up to \$10,000) if, knowing that an investigation was ongoing or that a criminal proceeding had been commenced and was pending, the person disposed of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person.

The bill would take effect September 1, 2019.

NOTES:

According to the Legislative Budget Board, the bill would have a negative impact of \$1.2 million on general revenue related funds through fiscal 2020-21