

HOUSE BILL REPORT

SSB 5704

As Reported By House Committee On:
Judiciary

Title: An act relating to the unlawful factoring of credit card transactions.

Brief Description: Penalizing unlawful factoring of credit card transactions.

Sponsors: Senate Committee on Law & Justice (originally sponsored by Senators Prentice, Moore and Amondson).

Brief History:

Reported by House Committee on:
Judiciary, March 30, 1993, DPA.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 16 members: Representatives Appelwick, Chair; Ludwig, Vice Chair; Padden, Ranking Minority Member; Ballasiotes, Assistant Ranking Minority Member; Campbell; Chappell; Forner; Johanson; Long; Mastin; H. Myers; Riley; Schmidt; Scott; Tate; and Wineberry.

Staff: Margaret Allen (786-7191).

Background: A business that wishes to accept credit cards from its customers must first enter into a merchant agreement with a financial institution. Credit card factoring occurs when a business that has a merchant agreement (the factor) processes the credit card transactions of a second business that has been unable or unwilling to obtain its own merchant agreement. In return, the second business may pay a fee to the factor, which often is based on a percentage of the credit sales processed.

Factoring of credit card transactions is not illegal. However, disreputable operators reportedly use factoring in deceptive or fraudulent schemes. These deceptive transactions can produce significant losses to consumers who do not receive bargained-for products or services, and to financial institutions who must reimburse injured consumers.

Summary of Amended Bill: Unlawful factoring of credit card transactions is an unranked class C felony.

A person commits the crime of unlawful factoring if he or she, with intent to defraud a cardholder, credit card issuer, or financial institution:

- (a) Presents to a financial institution for payment a credit card transaction record that did not result from a credit card transaction between the person and the cardholder;
- (b) Causes a merchant or the merchant's agent to present to a financial institution for payment a credit card transaction record that did not result from a credit card transaction between the merchant and the cardholder; or
- (c) Causes another person to become a merchant for the purpose of engaging in activities made unlawful by the act.

Normal transactions conducted by specified types of travel agents are not considered factoring.

Amended Bill Compared to Substitute Bill: Facilitation of a violation of the Consumer Protection Act is removed as an element of the offense and replaced with the intent to defraud a cardholder, credit card issuer, or financial institution.

Fiscal Note: Not requested.

Effective Date of Amended Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: This bill will deter disreputable business activities in Washington.

Testimony Against: This bill includes a violation of a specific civil statute, with its own culpability standards, as an element of a criminal offense.

Witnesses: Trevor Sandison, Washington Bankers Association (for); and Scott Reiman, Washington Association of Criminal Defense Lawyers (against).