

# HOUSE BILL REPORT

## SSB 5719

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### As Reported by House Committee On:

Financial Institutions & Insurance

**Title:** An act relating to fraudulent use of a credit card scanning device.

**Brief Description:** Penalizing the fraudulent use of credit card scanning devices.

**Sponsors:** Senate Committee on Financial Services, Insurance & Housing (originally sponsored by Senators Winsley, Prentice, Benton, Finkbeiner and Shin).

### Brief History:

#### Committee Activity:

Financial Institutions & Insurance: 3/26/03, 4/1/03 [DP].

#### Brief Summary of Substitute Bill

- Expands the scope of the unlawful factoring statute to include "payment cards."
- Redefines the offense of unlawful factoring of credit cards so that it includes the unauthorized or fraudulent use of a "scanning device" or "reencoder."

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### HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

**Majority Report:** Do pass. Signed by 11 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Hunter, Roach and Santos.

**Staff:** Thamas Osborn (786-7129).

### Background:

Credit card "factoring." 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.

Unlawful factoring. A person commits the crime of unlawful factoring if he or she, with intent to commit fraud or theft against a cardholder, credit card issuer, or financial institution, causes monetary damages in excess of \$1,000 to the cardholder, issuer or institution, by: (a) presenting 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) causing 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) causing another person to become a merchant for the purpose of engaging in activities made unlawful by the act.

The unlawful factoring of a credit card is a class C felony.

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**Summary of Bill:**

The scope of the unlawful factoring statute is expanded by making it applicable to the unlawful factoring of "payment cards" rather than just credit cards. "Payment cards" are very broadly defined to include credit cards, charge cards, debit cards, stored value cards, or any card that allows the user to obtain goods, services, money, or anything else of value from a merchant.

The definition of the offense is further expanded to include the unauthorized or fraudulent use of a payment card "scanning device" or a payment card "reencoder." "Scanning device" refers to an electronic device that is used to access, read, scan, obtain, memorize, or store information encoded on a payment card. "Reencoder" means an electronic device that places encoded information from a payment card onto a different payment card.

The first violation of the unlawful factoring statute remains a class C felony. A second violation constitutes a class B felony, which is ranked in the sentencing guidelines as seriousness level IV. This ranking is considered in conjunction with an offender's criminal history to determine the appropriate sentence.

Section 3 of the bill expires on July 1, 2004.

Section 4 of the bill takes effect on July 1, 2004.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** The bill takes effect 90 days after adjournment of session in which bill

is passed, except for section 4, which takes effect on July 1, 2004. Section 3 of the bill expires on July 1, 2004.

**Testimony For:** This bill is the end product of the Senate's Financial Fraud Task Force, which met during the 2002 legislative interim. The companion House bill was based on the Senate bill. This legislation is needed to combat financial fraud and will benefit both consumers and business.

**Testimony Against:** None.

**Testified:** Senator Winsley, prime sponsor; Denny Eliason, Washington Banker's Association; and Dave Horn, Office of the Attorney General.