

# HOUSE BILL REPORT

## HB 1846

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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:** Representatives Schual-Berke, Benson, Chase, Bush, Simpson, Morrell and McIntire.

**Brief History:**

**Committee Activity:**

Financial Institutions & Insurance: 2/19/03, 2/28/03 [DPS].

**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:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Schual-Berke, Chair; Simpson, Vice Chair; Benson, Ranking Minority Member; Newhouse, Assistant Ranking Minority Member; Cairnes, Carrell, Cooper, Hatfield, Hunter and Roach.

**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 Substitute 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 in order 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.

**Substitute Bill Compared to Original Bill:**

The substitute bill adds "financial institutions" to the list of entities that may be victimized by the fraudulent or unauthorized use of a payment card scanning device or reencoder.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Substitute Bill:** 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:** (Original bill) Retailers suffer large losses as the result of criminals using credit card scanners and reencoders to steal the magnetic code numbers off of credit cards. This magnetic code information can be used to create fake credit cards. There are groups of individuals who travel together and commit large scale credit card fraud using scanners and reencoders. Sometimes they involve store or restaurant employees who will surreptitiously use a scanner to steal the magnetic code information off an unsuspecting customer's credit card. This technology is readily available and poses a big problem for both merchants and law enforcement. This bill will provide an important tool for combating credit card fraud.

**Testimony Against:** None.

**Testified:** Dedi Hitchens, Washington Retailers Association; Don Hanlon, Target Corporation; and Denny Eliason, Washington Restaurant Association.