Washington State
House of Representatives
Office of Program Research

BILL ANALYSIS

Financial Institutions & Insurance Committee

SSB 5719

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 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."

Hearing Date: 3/26/03.

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.

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.

Appropriation: None.

Fiscal Note: Requested on March 19, 2003.

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.