

# HOUSE BILL REPORT

## ESB 6248

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**As Reported by House Committee On:**  
Public Safety

**Title:** An act relating to unlawful possession of instruments of financial fraud.

**Brief Description:** Making the unlawful possession of instruments of financial fraud a crime.

**Sponsors:** Senators Pearson, Benton and O'Ban.

**Brief History:**

**Committee Activity:**

Public Safety: 2/25/14, 2/26/14 [DP].

**Brief Summary of Engrossed Bill**

- Makes possession of a device that has the ability to capture, read, scan, store, record, transmit, or receive financial information from an access device, a class C felony, when the intent is to commit financial fraud.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass. Signed by 11 members: Representatives Goodman, Chair; Roberts, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Holy, Hope, Moscoso, Pettigrew, Ross and Takko.

**Staff:** Yvonne Walker (786-7841).

**Background:**

A person can commit financial fraud in a variety of ways including, but not limited to, the unlawful:

1. Production of Payment Instruments: producing a check or other payment instrument in the name of a person or entity, or with the routing number or account number of a person or entity without the permission of that person or entity;
2. Possession of Payment Instruments: possessing two or more checks or other payment instruments, alone or in combination, in the name of another person, entity or fictitious person or entity;

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3. Possession of a Personal Identification Device: possessing a personal identification device with intent to use the device to commit theft, forgery, or identity theft;
4. Possession of Fictitious Identification: possessing a personal identification card with a fictitious person's identification with intent to use the identification card to commit theft, forgery, or identity theft; or
5. Possession of Instruments of Financial Fraud: possessing a check-making machine, equipment, or software, with intent to use or distribute checks for purposes of defrauding an account holder, business, financial institution, or other person or organization.

Such crimes are a seriousness level I, class C felony offense. A first-time offender would receive a presumptive sentence of zero to 60 days in jail.

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### **Summary of Bill:**

A person is guilty of Unlawful Possession of Instruments of Financial Fraud if he or she possesses a device that has the ability to capture, read, scan, store, record, transmit, or receive financial information from an access device, with the intent to commit financial fraud. Unlawful Possession of Instruments of Financial Fraud is a class C felony offense.

An "access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument. A device that has the ability to capture, read, scan, store, record, transmit, or receive financial information may include, but is not limited to, automated teller machine (ATM) overlays, wireless devices, magnetic card readers, video recorders, memory and data storage devices, and wireless transmitters and receivers.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date:** This act takes effect on January 1, 2015.

### **Staff Summary of Public Testimony:**

(In support) This bill deals with financial fraud which includes but is not limited to overlays on ATMs and small cameras. These are items a person should not have in his or her possession and this bill makes it a class C felony offense.

Gas pump skimmers and card overlays are common and the mere possession of these devices is currently a gross misdemeanor offense. Today's suspects are transient and highly organized. They often come into town and gather data from thousands of victims. Once data

is gathered and recovered from these devices it can be easily transmitted immediately by a Bluetooth to other suspects. By the time the police find out about the financial crime the suspects have left town. This leaves very little evidence for the police to gather and makes it hard to prosecute these crimes. If a suspect is caught before any stolen data is obtained, the only charge that can be brought against the suspect is attempted identity theft. Skimming is the way of the future and crimes are increasing each day. The goal of this bill is to make possession of these devices with the criminal element of intent to commit fraud a felony offense.

(Opposed) The list of items in the bill is too broad. People who commonly use similar items such as an iPhone and webcams could possibly be criminalized under this bill. The other issue is not that there are not laws to criminalize financial fraud but that the penalties are not sufficient to address the issue. Instead of increasing the list of things that a person can be charged with as a crime for possession it may be better to address the penalties.

**Persons Testifying:** (In support) Senator Pearson, prime sponsor; Shelby Shearer, Bellevue Police Department; and Melinda Young, King County Prosecuting Attorney's Office.

(Opposed) Lisa Mulligan, Washington Criminal Defense Lawyers and Washington Defender Association.

**Persons Signed In To Testify But Not Testifying:** None.