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**HOUSE BILL 2899**

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**State of Washington 64th Legislature 2016 Regular Session**

**By** Representatives Kirby and Ryu

AN ACT Relating to unlawful possession of instruments of financial fraud; amending RCW 9A.56.320; creating a new section; prescribing penalties; and providing an effective date.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

NEW SECTION. **Sec.**  The legislature finds that financial fraud is being committed with more sophisticated devices including electronic devices. The narrow intent of this act is to combat financial fraud only and not to address other uses by electronic or wireless devices.

**Sec.**  RCW 9A.56.320 and 2003 c 119 s 1 are each amended to read as follows:

(1) A person is guilty of unlawful production of payment instruments if he or she prints or produces 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 the person or entity to manufacture or reproduce such payment instrument with such name, routing number, or account number.

(2)(a) A person is guilty of unlawful possession of payment instruments if he or she possesses two or more checks or other payment instruments, alone or in combination:

(i) 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 the person or entity to possess such payment instrument, and with intent either to deprive the person of possession of such payment instrument or to commit theft, forgery, or identity theft; or

(ii) In the name of a fictitious person or entity, or with a fictitious routing number or account number of a person or entity, with intent to use the payment instruments to commit theft, forgery, or identity theft.

(b) (a)(i) of this subsection does not apply to:

(i) A person or financial institution that has lawful possession of a check, which is endorsed to that person or financial institution; and

(ii) A person or financial institution that processes checks for a lawful business purpose.

(3) A person is guilty of unlawful possession of a personal identification device if the person possesses a personal identification device with intent to use such device to commit theft, forgery, or identity theft. "Personal identification device" includes any machine or instrument whose purpose is to manufacture or print any driver's license or identification card issued by any state or the federal government, or any employee identification issued by any employer, public or private, including but not limited to badges and identification cards, or any credit or debit card.

(4) A person is guilty of unlawful possession of fictitious identification if the person possesses a personal identification card with a fictitious person's identification with intent to use such identification card to commit theft, forgery, or identity theft, when the possession does not amount to a violation of RCW 9.35.020.

(5) A person is guilty of unlawful possession of instruments of financial fraud if the person possesses 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 any other person or organization.

(6) 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. For the purposes of this subsection:

(a) An access device is defined in RCW 9A.56.010;

(b) 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 overlays, wireless devices, magnetic card readers, video recorders, memory and data storage devices, and wireless transmitters and receivers.

(7) This section does not apply to:

(a) A person, business, or other entity, that has lawful possession of a check, which is endorsed to that person, business, or other entity;

(b) A financial institution or other entity that processes checks for a lawful business purpose;

(c) A person engaged in a lawful business who obtains another person's personal identification in the ordinary course of that lawful business;

(d) A person who obtains another person's personal identification for the sole purpose of misrepresenting his or her age; and

(e) A law enforcement agency that produces or displays counterfeit credit or debit cards, checks or other payment instruments, or personal identification devices for investigative or educational purposes.

((~~(7)~~)) (8) In a proceeding under this section that is related to an identity theft under RCW 9.35.020, the crime will be considered to have been committed in any locality where the person whose means of identification or financial information was appropriated resides, or in which any part of the offense took place, regardless of whether the defendant was ever actually in that locality.

((~~(8)~~)) (9) A violation of this section is a class C felony.

NEW SECTION. **Sec.**  This act takes effect January 1, 2017.

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