

HOUSE BILL REPORT

ESHB 1844

As Passed Legislature

Title: An act relating to possession of instruments or equipment of financial fraud.

Brief Description: Criminalizing possession of instruments or equipment of financial fraud.

Sponsors: By House Committee on Financial Institutions & Insurance (originally sponsored by Representatives Schual-Berke, Benson, Simpson, Morrell, McIntire, Mielke, Hudgins, Rockefeller and Bush).

Brief History:

Committee Activity:

Financial Institutions & Insurance: 2/19/03, 3/5/03 [DPS].

Floor Activity:

Passed House: 3/18/03, 97-0.

Passed Senate: 4/15/03, 47-0.

Passed Legislature.

Brief Summary of Engrossed Substitute Bill

- Creates six financial fraud crimes pertaining to the use, possession, or production of payment instruments, identification, or devices used to produce fraudulent documents.
- Adds five felony offenses to the list of predicate offenses that can give rise to prosecution under the Criminal Profiteering Act.

HOUSE COMMITTEE ON FINANCIAL INSTITUTIONS & INSURANCE

Majority Report: The substitute bill be substituted therefor and the substitute bill 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:

The proliferation of identity theft and other financial fraud crimes is due, in part, to the

increasing sophistication of offenders with respect to the use of technology to produce fraudulent credit/debit cards, identification, and various payment instruments. Although the use of fraudulent documents or instruments may currently constitute any one of several crimes, the mere possession or manufacture of such items is not necessarily criminal.

Summary of Engrossed Substitute Bill:

Overview: The bill creates five new financial fraud crimes pertaining to the use, possession, or production of payment instruments, identification, or devices used to produce fraudulent documents. Exemptions are created for the legitimate practices of financial institutions and other entities occurring in the usual course of business. Statutory definitions are added with respect to new terminology introduced in the descriptions of these offenses. Several of these crimes are added to the list of predicate offenses that can give rise to prosecution under the Criminal Profiteering Act.

Unlawful production of payment instruments: It is a crime to print or otherwise produce a check or other payment instrument that includes either the name, routing number, or account number of another person without the consent of that person. (class C felony.)

Unlawful possession of payment instruments: It is unlawful to possess “ with the requisite criminal intent “ two or more payment instruments in the name of a person, or which contain the routing or account number of a person, absent the permission of that person. Such possession is also prohibited if the named person, routing number, or account number is fictitious. (class C felony.)

Unlawful possession of a personal identification device: It is unlawful to possess “ with the requisite criminal intent “ any device whose purpose is to manufacture or print any driver’s license, identification card, credit/debit card, or badge. (class C felony.)

Unlawful possession of fictitious identification: It is unlawful to possess “ with the requisite criminal intent “ an identification card in the name of a fictitious person. (class C felony.)

Unlawful possession of instruments of financial fraud: It is unlawful to knowingly possess check making equipment or software with the intent to perpetrate a crime involving financial fraud. (class C felony.)

Unlawful possession of another’s identification: It is unlawful to possess identification in the name of another person unless one has the permission of that person. (Gross misdemeanor.)

Jurisdiction: When the prosecution of any of the offenses created by the bill relates to

the offense of identity theft, the jurisdiction may be either the place of the victim's residence or the locality in which any part of the offense took place.

Criminal Profiteering Act: The five felony offenses created by the bill constitute criminal profiteering and are subject to the remedies available under the Criminal Profiteering Act.

Ranking of Seriousness Level: The class C felonies created by the bill are ranked in the sentencing guidelines as seriousness level I. This ranking is considered in conjunction with an offender's criminal history in order to determine the appropriate sentence.

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 8, which takes effect July 1, 2004.

Testimony For: (Original bill) The number of fraud-related crimes are increasing at an enormous rate, averaging a 20 percent increase per year for the last seven years. Many businesses have experienced a doubling of their fraud losses during the last several years. Washington has seen greater increases in such crimes than have most other states, particularly with respect to the passing of bad checks. The average perpetrator of financial fraud crimes nets \$17,500, yet the penalties are very mild. This bill would make it much easier to prosecute financial fraud crimes.

Testimony Against: None.

Testified: (In support) Ken Johnson, Bank of America; and Holly Chisa, Washington Food Industry.