

SB075*.*

Senator Gene Davis proposes to substitute the following bill:

IDENTITY FRAUD

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Gene Davis

AN ACT RELATING TO CRIMINAL CODE; AMENDING AUTHORITY OF THE DIVISION OF CONSUMER PROTECTION; MODIFYING DEFINITIONS; AMENDING THE CONSUMER SALES PRACTICES ACT; CREATING THE CRIMINAL OFFENSE OF IDENTITY FRAUD AND SPECIFYING EXCEPTIONS; PROVIDING INVESTIGATIVE AND PROSECUTORIAL POWERS, JURISDICTION, AND PUNISHMENT; AND PROVIDING THAT COURT RECORDS REFLECT THAT A PERSON WHOSE IDENTITY OR FINANCIAL TRANSACTION CARD WAS USED WITHOUT CONSENT TO COMMIT A CRIME DID NOT COMMIT THE CRIME.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

13-11-3, as last amended by Chapter 105, Laws of Utah 1987

13-11-4, as last amended by Chapter 194, Laws of Utah 1998

76-6-506.5, as last amended by Chapter 64, Laws of Utah 1998

ENACTS:

76-6-1101, Utah Code Annotated 1953

76-6-1102, Utah Code Annotated 1953

76-6-1103, Utah Code Annotated 1953

76-6-1104, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **13-11-3** is amended to read:

13-11-3. Definitions.

26 As used in this chapter:

27 (1) "Charitable solicitation" means any request directly or indirectly for money, credit,
28 property, financial assistance, or any other thing of value on the plea or representation that it will
29 be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

30 (a) any oral or written request, including a telephone request;

31 (b) the distribution, circulation, or posting of any handbill, written advertisement, or
32 publication;

33 (c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance,
34 coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button,
35 sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which
36 any appeal is made for any charitable purpose, or where the name of any charitable organization
37 or movement is used or referred to as an inducement or reason for making any purchase donation,
38 or where, in connection with any sale or donation, any statement is made that the whole or any part
39 of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A
40 charitable solicitation is considered complete when made, whether or not the organization or
41 person making the solicitation receives any contribution or makes any sale.

42 (2) "Consumer transaction" means a sale, lease, assignment, award by chance, or other
43 written or oral transfer or disposition of goods, services, or other property, both tangible and
44 intangible (except securities and insurance), including the use or misuse of personal identifying
45 information of any person in relation to a consumer transaction to, or apparently to, a person for
46 primarily personal, family, or household purposes, or for purposes that relate to a business
47 opportunity that requires both his expenditure of money or property and his personal services on
48 a continuing basis and in which he has not been previously engaged, or a solicitation or offer by
49 a supplier with respect to any of these transfers or dispositions. It includes any offer or solicitation,
50 any agreement, any performance of an agreement with respect to any of these transfers or
51 dispositions, and any charitable solicitation as defined in this section.

52 (3) "Enforcing authority" means the Division of Consumer Protection.

53 (4) "Final judgment" means a judgment, including any supporting opinion, that determines
54 the rights of the parties and concerning which appellate remedies have been exhausted or the time
55 for appeal has expired.

56 (5) "Person" means an individual, corporation, government, governmental subdivision or

57 agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

58 (6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who
59 regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly
60 with the consumer.

61 Section 2. Section **13-11-4** is amended to read:

62 **13-11-4. Deceptive act or practice by supplier or other person.**

63 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
64 violates this chapter whether it occurs before, during, or after the transaction.

65 (2) Without limiting the scope of Subsection (1), a supplier or other person commits a
66 deceptive act or practice if the supplier or other person knowingly or intentionally:

67 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
68 performance characteristics, accessories, uses, or benefits, if it has not;

69 (b) indicates that the subject of a consumer transaction is of a particular standard, quality,
70 grade, style, or model, if it is not;

71 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or has
72 been used to an extent that is materially different from the fact;

73 (d) indicates that the subject of a consumer transaction is available to the consumer for a
74 reason that does not exist;

75 (e) indicates that the subject of a consumer transaction has been supplied in accordance
76 with a previous representation, if it has not;

77 (f) indicates that the subject of a consumer transaction will be supplied in greater quantity
78 than the supplier intends;

79 (g) indicates that replacement or repair is needed, if it is not;

80 (h) indicates that a specific price advantage exists, if it does not;

81 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier does
82 not have;

83 (j) indicates that a consumer transaction involves or does not involve a warranty, a
84 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if the
85 representation is false;

86 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
87 inducement for entering into a consumer transaction in return for giving the supplier the names of

88 prospective consumers or otherwise helping the supplier to enter into other consumer transactions,
89 if receipt of the benefit is contingent on an event occurring after the consumer enters into the
90 transaction;

91 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
92 services within the time advertised or otherwise represented or, if no specific time is advertised
93 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
94 applicable time period the supplier provides the buyer with the option to either cancel the sales
95 agreement and receive a refund of all previous payments to the supplier or to extend the shipping
96 date to a specific date proposed by the supplier, but any refund shall be mailed or delivered to the
97 buyer within ten business days after the seller receives written notification from the buyer of the
98 buyer's right to cancel the sales agreement and receive the refund;

99 (m) fails to furnish a notice of the purchaser's right to cancel a direct solicitation sale
100 within three business days of the time of purchase if the sale is made other than at the supplier's
101 established place of business pursuant to the supplier's mail, telephone, or personal contact and if
102 the sale price exceeds \$25, unless the supplier's cancellation policy is communicated to the buyer
103 and the policy offers greater rights to the buyer than Subsection (2)(m), which notice shall be a
104 conspicuous statement written in dark bold at least 12 point type, on the first page of the purchase
105 documentation, and shall read as follows: "YOU, THE BUYER, MAY CANCEL THIS
106 CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or
107 time period reflecting the supplier's cancellation policy but not less than three business days)
108 AFTER THE DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT,
109 WHICHEVER IS LATER.";

110 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
111 76, Chapter 6a, Pyramid Scheme Act;

112 (o) represents that the funds or property conveyed in response to a charitable solicitation
113 will be donated or used for a particular purpose or will be donated to or used by a particular
114 organization, if the representation is false; [~~or~~]

115 (p) for any unlawful or deceptive purpose obtains or records personal identifying
116 information which would assist in accessing the financial resources or medical information in the
117 name of the other person or accesses or attempts to access the financial resources or medical
118 information in the name of the other person through the use of personal identifying information

119 as provided in Title 76, Chapter 6, Part 11, Identity Fraud Act; or

120 ~~[(p)]~~ (q) if a consumer indicates his intention of making a claim for a motor vehicle repair
121 against his motor vehicle insurance policy:

122 (i) commences the repair without first giving the consumer oral and written notice of:

123 (A) the total estimated cost of the repair; and

124 (B) the total dollar amount the consumer is responsible to pay for the repair, which dollar
125 amount may not exceed the applicable deductible or other copay arrangement in the consumer's
126 insurance policy; or

127 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
128 consumer was initially told he was responsible to pay as an insurance deductible or other copay
129 arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that amount is less than
130 the full amount the motor vehicle insurance policy requires the insured to pay as a deductible or
131 other copay arrangement, unless:

132 (A) the consumer's insurance company denies that coverage exists for the repair, in which
133 case, the full amount of the repair may be charged and collected from the consumer; or

134 (B) the consumer misstates, before the repair is commenced, the amount of money the
135 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in which
136 case, the supplier may charge and collect from the consumer an amount that does not exceed the
137 amount the insurance policy requires the consumer to pay as a deductible or other copay
138 arrangement.

139 Section 3. Section **76-6-506.5** is amended to read:

140 **76-6-506.5. Financial transaction card offenses -- Classification -- Multiple violations**
141 **-- Court record.**

142 (1) Any person found guilty of unlawful conduct described in Section 76-6-506.2,
143 76-6-506.4, or 76-6-506.6 shall be punished for:

144 (a) a class B misdemeanor when the value of the property, money, or thing obtained or
145 sought to be obtained is less than \$300;

146 (b) a class A misdemeanor when the value of the property, money, or thing obtained or
147 sought to be obtained is or exceeds \$300 but is less than \$1,000;

148 (c) a third degree felony when the value of the property, money, or thing obtained or
149 sought to be obtained is or exceeds \$1,000 but is less than \$5,000; and

150 (d) a second degree felony when the value of the property, money, or thing obtained or
151 sought to be obtained is or exceeds \$5,000.

152 (2) Multiple violations of Subsection 76-6-506.2(1), Sections 76-6-506.4, and 76-6-506.6
153 may be aggregated into a single offense, and the degree of the offense is determined by the total
154 value of all property, money, or things obtained or sought to be obtained through the multiple
155 violations.

156 (3) The court records shall reflect that the card holder did not commit the crime if:

157 (a) another person uses the financial transaction card without the card holder's consent; and

158 (b) that person commits a crime in addition to a financial transaction card offense with the
159 card holder's financial transaction card.

160 Section 4. Section **76-6-1101** is enacted to read:

161 **Part 11. Identity Fraud**

162 **76-6-1101. Identity Fraud.**

163 This act is known as the "Identity Fraud Act."

164 Section 5. Section **76-6-1102** is enacted to read:

165 **76-6-1102. Identity fraud crime.**

166 (1) For purposes of this part, "personal identifying information" may include:

167 (a) name;

168 (b) address;

169 (c) telephone number;

170 (d) driver's license number;

171 (e) social security number;

172 (f) place of employment;

173 (g) employee identification numbers or other personal identification numbers;

174 (h) mother's maiden name;

175 (i) electronic identification numbers;

176 (j) digital signatures; or

177 (k) any other numbers or information that can be used to access a person's financial

178 resources or medical information in the name of the other person without the consent of that person

179 except for numbers or information that can be prosecuted as financial transaction card offenses

180 under Sections 76-6-506 through 76-6-506.4.

181 (2) A person is guilty of identity fraud when that person knowingly or intentionally:

182 (a) obtains personal identifying information of another person without the authorization
183 of that person; and

184 (b) uses, or attempts to use, that information for any unlawful purpose, including to obtain,
185 or attempt to obtain, credit, goods, services, any other thing of value, or medical information in the
186 name of the other person without the consent of that person.

187 (3) Identity fraud is:

188 ~~§ [—(a) a second degree felony if the value of the credit, goods, services, or any other thing of~~
189 ~~value is worth or exceeds \$5,000; or~~

190 ~~—(b) a third degree felony.]~~ **(a) A CLASS B MISDEMEANOR IF THE VALUE OF THE CREDIT,**
190a **GOODS, SERVICES, OR ANY OTHER THING OF VALUE IS LESS THAN \$300;**

190b **(b) A CLASS A MISDEMEANOR IF:**

190c **(i) A VALUE CANNOT BE DETERMINED AND THE PERSONAL IDENTIFYING INFORMATION**
190d **HAS BEEN USED TO OBTAIN MEDICAL INFORMATION IN THE NAME OF THE OTHER PERSON**
190e **WITHOUT THE CONSENT OF THAT PERSON; OR**

190f **(ii) THE VALUE OF THE CREDIT, GOODS, SERVICES, OR ANY OTHER THING OF VALUE IS**
190g **OR EXCEEDS \$300 BUT IS LESS THAN \$1,000;**

190h **(c) A THIRD DEGREE FELONY IF THE VALUE OF THE CREDIT, GOODS, SERVICES, OR ANY**
190i **OTHER THING OF VALUE IS OR EXCEEDS \$1,000 BUT IS LESS THAN \$5,000; OR**

190j **(d) A SECOND DEGREE FELONY IF THE VALUE OF THE CREDIT, GOODS, SERVICES, OR**
ANY

190k **OTHER THING OF VALUE IS OR EXCEEDS \$5,000. §**

191 (4) Multiple violations within a 90-day period may be aggregated into a single offense, and
192 the degree of the offense is determined by the total value of all credit, goods, services, or any other
193 thing of value used, or attempted to be used, through the multiple violations.

194 Section 6. Section **76-6-1103** is enacted to read:

195 **76-6-1103. Investigation, jurisdiction, and prima facie evidence of violation.**

196 (1) In any criminal proceeding brought pursuant to this section, the crime shall be
197 considered to have been committed in any county in which any part of the identity fraud took
198 place, regardless of whether the defendant was ever actually in that county.

199 (2) The Division of Consumer Protection has primary responsibility for investigating
200 violations of this part.

201 (3) A criminal conviction under this part is prima facie evidence of a violation of Section
202 13-11-4, the Utah Consumer Sales Practices Act.

203 (4) Any violation of this part constitutes a violation of Section 13-11-4, the Utah
204 Consumer Sales Practices Act.

205 Section 7. Section **76-6-1104** is enacted to read:

206 **76-6-1104. Court records.**

207 In any case in which a person commits identify fraud and uses the personal identifying
208 information obtained to commit a crime in addition to the identity fraud, the court records shall
209 reflect that the person whose identity was falsely used to commit the crime did not commit the
210 crime.