

IDENTITY FRAUD

2000 GENERAL SESSION

STATE OF UTAH

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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; PROVIDING THAT COURT MAKE APPROPRIATE FINDINGS THAT A PERSON WHOSE IDENTITY OR FINANCIAL TRANSACTION CARD WAS USED WITHOUT CONSENT TO COMMIT A CRIME DID NOT COMMIT THE CRIME; AND PROVIDING A COORDINATION CLAUSE.

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

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

ENACTS:

13-11-4.5, Utah Code Annotated 1953

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.

As used in this chapter:

(1) "Charitable solicitation" means any request directly or indirectly for money, credit,

property, financial assistance, or any other thing of value on the plea or representation that it will be used for a charitable purpose. A charitable solicitation may be made in any manner, including:

- (a) any oral or written request, including a telephone request;
- (b) the distribution, circulation, or posting of any handbill, written advertisement, or publication;
- (c) the sale of, offer or attempt to sell, or request of donations for any book, card, chance, coupon, device, magazine, membership, merchandise, subscription, ticket, flower, flag, button, sticker, ribbon, token, trinket, tag, souvenir, candy, or any other article in connection with which any appeal is made for any charitable purpose, or where the name of any charitable organization or movement is used or referred to as an inducement or reason for making any purchase donation, or where, in connection with any sale or donation, any statement is made that the whole or any part of the proceeds of any sale or donation will go to or be donated to any charitable purpose. A charitable solicitation is considered complete when made, whether or not the organization or person making the solicitation receives any contribution or makes any sale.

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

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

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

(5) "Person" means an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or any other legal entity.

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

Section 2. Section **13-11-4.5** is enacted to read:

13-11-4.5. Deceptive act or practice by person other than a supplier.

(1) A deceptive act or practice by a person other than a supplier in connection with a consumer transaction violates this chapter when it occurs before, during, or after the transaction.

(2) Without limiting the scope of Subsection (1), a person other than a supplier commits a deceptive act or practice if the person knowingly or intentionally, with fraudulent intent, obtains or records personal identifying information which would assist in accessing the financial resources or medical information in the name of another person or accesses or attempts to access the financial resources or medical information in the name of another person through the use of personal identifying information as defined in Title, 76, Chapter 6, Part 11, Identity Fraud Act.

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

76-6-506.5. Financial transaction card offenses -- Classification -- Multiple violations.

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

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

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

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

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

(2) Multiple violations of Subsection 76-6-506.2(1), Sections 76-6-506.4, and 76-6-506.6

may be aggregated into a single offense, and the degree of the offense is determined by the total value of all property, money, or things obtained or sought to be obtained through the multiple violations.

(3) The court shall make appropriate findings in any prosecution under this section that the card holder did not commit the crime if:

- (a) another person uses the financial transaction card without the card holder's consent; and
- (b) that person commits a crime in addition to a financial transaction card offense with the card holder's financial transaction card.

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

Part 11. Identity Fraud Act

76-6-1101. Identity fraud.

This part is known as the "Identity Fraud Act."

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

76-6-1102. Identity fraud crime.

- (1) For purposes of this part, "personal identifying information" may include:
- (a) name;
 - (b) address;
 - (c) telephone number;
 - (d) driver's license number;
 - (e) Social Security number;
 - (f) place of employment;
 - (g) employee identification numbers or other personal identification numbers;
 - (h) mother's maiden name;
 - (i) electronic identification numbers;
 - (j) digital signatures or a private key; or
 - (k) any other numbers or information that can be used to access a person's financial resources or medical information in the name of another person without the consent of that person except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.4.

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

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

(b) uses, or attempts to use, that information with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, any other thing of value, or medical information in the name of another person without the consent of that person.

(3) Identity fraud is:

(a) a class B misdemeanor if the value of the credit, goods, services, or any other thing of value is less than \$300;

(b) a class A misdemeanor if:

(i) a value cannot be determined and the personal identifying information has been used to obtain medical information in the name of another person without the consent of that person; or

(ii) the value of the credit, goods, services, or any other thing of value is or exceeds \$300 but is less than \$1,000;

(c) a third degree felony if the value of the credit, goods, services, or any other thing of value is or exceeds \$1,000 but is less than \$5,000; or

(d) a second degree felony if the value of the credit, goods, services, or any other thing of value is or exceeds \$5,000.

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

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

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

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

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

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

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

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

76-6-1104. Court records.

In any case in which a person commits identify fraud and uses the personal identifying information obtained to commit a crime in addition to the identity fraud, the court shall make appropriate findings in any prosecution of such a crime that the person whose identity was falsely used to commit the crime did not commit the crime.

Section 8. **Coordination clause.**

If this bill and H.B. 163, Identification Number Fraud, both pass, it is the intent of the Legislature that the amendments in this bill supersede the amendments in H.B. 163.