

1 **FRAUDULENT USE OF CREDIT CARD**
2 **NUMBER**

3 2003 GENERAL SESSION
4 STATE OF UTAH

5 **Sponsor: Carlene M. Walker**

6 **This act modifies the Criminal Code by providing that possession of a financial**
7 **transaction card number or related information with the intent to defraud is a third**
8 **degree felony. This act also provides that a person who obtains the encoded information**
9 **from the strip on a financial transaction card with the intent to use the information to**
10 **defraud a merchant is guilty of a third degree felony, and that any subsequent violation is**
11 **a second degree felony.**

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

13 AMENDS:

14 **76-6-506.3**, as last amended by Chapter 191, Laws of Utah 1997

15 ENACTS:

16 **76-6-506.7**, Utah Code Annotated 1953

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

18 Section 1. Section **76-6-506.3** is amended to read:

19 **76-6-506.3. Financial transaction card offenses -- Unlawful acquisition,**
20 **possession, or transfer of card.**

21 Any person is guilty of a third degree felony who:

22 (1) acquires a financial transaction card from another without the consent of the card
23 holder or the issuer, or, with the knowledge that it has been acquired without consent, and with
24 intent to use it in violation of Section 76-6-506.2;

25 (2) receives a financial transaction card with intent to use it in violation of Section
26 76-6-506.2;

27 (3) sells or transfers a financial transaction card to another person with the knowledge



28 that it will be used in violation of Section 76-6-506.2; ~~or~~

29 (4) (a) acquires a financial transaction card that the person knows was lost, mislaid, or
30 delivered under a mistake as to the identity or address of the card holder; and

31 (b) (i) retains possession with intent to use it in violation of Section 76-6-506.2; or

32 (ii) sells or transfers a financial transaction card to another person with the knowledge
33 that it will be used in violation of Section 76-6-506.2~~[-]; or~~

34 (5) possesses, sells, or transfers any information necessary for the use of a financial
35 transaction card, including the credit number of the card, the expiration date of the card, or the
36 personal identification code related to the card:

37 (a) (i) without the consent of the card holder or the issuer; or

38 (ii) with the knowledge that the information has been acquired without consent of the
39 card holder or the issuer; and

40 (b) with intent to use the information in violation of Section 76-6-506.2.

41 Section 2. Section **76-6-506.7** is enacted to read:

42 **76-6-506.7. Obtaining encoded information on a financial transaction card with**
43 **the intent to defraud the issuer, holder, or merchant.**

44 (1) As used in this section:

45 (a) "Financial transaction card" or "card" means any credit card, credit plate, bank
46 services card, banking card, check guarantee card, debit card, telephone credit card, or any
47 other card, issued by an issuer for the use of the card holder in:

48 (i) obtaining money, goods, services, or anything else of value on credit; or

49 (ii) certifying or guaranteeing to a merchant the availability to the card holder of the
50 funds on deposit that are equal to or greater than the amount necessary to honor a draft or check
51 as the instrument for obtaining, purchasing, or receiving goods, services, money, or any other
52 thing of value from the merchant.

53 (b) (i) "Merchant" means an owner or operator of any retail mercantile establishment or
54 any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor
55 of the owner or operator.

56 (ii) "Merchant" also means a person:

57 (A) who receives from a card holder, or a third person the merchant believes to be the
58 card holder, a financial transaction card or information from a financial transaction card, or

59 what the merchant believes to be a financial transaction card or information from a card; and

60 (B) who accepts the financial transaction card or information from a card under
61 Subsection (1)(a)(ii)(A) as the instrument for obtaining, purchasing, or receiving goods,
62 services, money, or any other thing of value from the merchant.

63 (c) "Reencoder" means an electronic device that places encoded information from the
64 magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a
65 different financial transaction card.

66 (d) "Scanning device" means a scanner, reader, or any other electronic device used to
67 access, read, scan, obtain, memorize, or store, temporarily or permanently, information
68 encoded on the magnetic strip or stripe of a financial transaction card.

69 (2) (a) A person is guilty of a third degree felony who uses:

70 (i) a scanning device to access, read, obtain, memorize, or store, temporarily or
71 permanently, information encoded on the magnetic strip or stripe of a financial transaction card
72 without the permission of the card holder and with intent to defraud the card holder, the issuer,
73 or a merchant; or

74 (ii) a reencoder to place information encoded on the magnetic strip or stripe of a
75 financial transaction card onto the magnetic strip or stripe of a different card without the
76 permission of the authorized user of the card from which the information is being reencoded
77 and with the intent to defraud the card holder, the issuer, or a merchant.

78 (b) Any person who has been convicted previously of an offense under Subsection
79 (2)(a) is guilty of a second degree felony upon a second conviction and any subsequent
80 conviction for the offense.

Legislative Review Note

as of 1-6-03 12:34 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

State Impact

This bill requires an ongoing General Fund appropriation of \$62,000 to the Utah Department of Corrections for prison and probation costs related to additional convictions due to a new offense. Some Counties may incur additional expenses for unreimbursed costs related to individuals sentenced to jail as a condition of probation. This is estimated to be approximately \$4,000 state-wide.

	<u>FY 04 Approp.</u>	<u>FY 05 Approp.</u>	<u>FY 04 Revenue</u>	<u>FY 05 Revenue</u>
General Fund	\$62,000	\$90,700	\$0	\$0
TOTAL	\$62,000	\$90,700	\$0	\$0

Individual and Business Impact

Some individuals could be sentenced to jail or prison for a longer period of time, consequently impacting their ability to earn personal income. There may be a benefit to business and the general public as fewer individuals may be involved in fraud.

Office of the Legislative Fiscal Analyst