

FINANCIAL TRANSACTION CARD OFFENSES

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Julie Fisher

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding fraudulent use of financial transaction cards.

Highlighted Provisions:

This bill:

- ▶ clarifies the definition of "card holder";
- ▶ revises language to provide that the offense of:
 - unlawful use of a financial transaction card to obtain goods or services involves acting knowingly and with the intent to defraud;
 - unlawful use of a financial transaction card to exceed authorized credit involves acting knowingly and with the intent to defraud; and
 - applying for a financial transaction card and providing a false statement or report of required information in the application process involves acting knowingly and with the intent to defraud;
- ▶ increases the penalty to a third degree felony for obtaining property valued at less than \$5,000 by means of an unlawful financial transaction card offense; and
- ▶ deletes certain provisions that have been addressed by amendments or are no longer applicable to the enforcement of these financial transaction offenses.

Monies Appropriated in this Bill:

None



28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **76-6-506**, as last amended by Laws of Utah 1991, Chapter 60

33 **76-6-506.2**, as last amended by Laws of Utah 2007, Chapter 306

34 **76-6-506.5**, as last amended by Laws of Utah 2000, Chapter 57

35 REPEALS:

36 **76-6-506.1**, as last amended by Laws of Utah 1997, Chapter 191

37 **76-6-506.3**, as last amended by Laws of Utah 2003, Chapter 306

38 **76-6-506.4**, as enacted by Laws of Utah 1983, Chapter 96



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

41 Section 1. Section **76-6-506** is amended to read:

42 **76-6-506. Financial transaction card offenses -- Definitions.**

43 [~~For purposes of~~] As used in this part:

44 (1) "Authorized credit card merchant" means a person as defined in Section 68-3-12
45 who is authorized by an issuer to furnish money, goods, services, or anything else of value
46 upon presentation of a financial transaction card by a card holder and to present valid credit
47 card sales drafts to the issuer for payment.

48 (2) "Automated banking device" means any machine which, when properly activated
49 by a financial transaction card or a personal identification code, may be used for any of the
50 purposes for which a financial transaction card may be used.

51 (3) "Card holder" means any person or organization named on the face of a financial
52 transaction card to whom or for whose benefit a financial transaction card is issued [~~by an~~
53 issuer].

54 (4) "Credit card sales draft" means any sales slip, draft, or other written or electronic
55 record of a sale of money, goods, services, or anything else of value made or purported to be
56 made to or at the request of a card holder with a financial transaction card, financial transaction
57 card credit number, or personal identification code, whether the record of the sale or purported
58 sale is evidenced by a sales draft, voucher, or other similar document in writing or

59 electronically recorded and transmitted.

60 (5) "Financial transaction card" means:

61 (a) any credit card, credit plate, bank services card, banking card, check guarantee card,
62 debit card, telephone credit card, or any other card, issued by an issuer for the use of the card
63 holder in obtaining money, goods, services, or anything else of value on credit, or in certifying
64 or guaranteeing to a person or business the availability to the card holder of the funds on
65 deposit that are equal to or greater than the amount necessary to honor a draft or check payable
66 to the order of the person or business; or

67 (b) any instrument or device used in providing the card holder access to a demand or
68 time deposit account for the purpose of making deposits of money or checks in the account, or
69 withdrawing funds from the account in the form of money, money orders, travelers' checks or
70 other form representing value, or transferring funds from any demand or time deposit account
71 to any credit card account in full or partial satisfaction of any outstanding balance existing in
72 the credit card account.

73 (6) "Issuer" means a business organization or financial institution or its agent that
74 issues a financial transaction card.

75 (7) "Personal identification code" means any numerical or alphabetical code assigned
76 to a card holder by the issuer to permit the authorized electronic use of ~~[his]~~ the holder's
77 financial transaction card.

78 Section 2. Section **76-6-506.2** is amended to read:

79 **76-6-506.2. Financial transaction card offenses -- Unlawful use of card -- False**
80 **application for card.**

81 It is unlawful for any person to:

82 (1) ~~knowingly[, with intent to defraud,]~~ use a false, fictitious, altered, counterfeit,
83 revoked, expired, stolen, or fraudulently obtained financial transaction card to obtain or attempt
84 to obtain credit [or purchase or attempt to purchase], goods, property, or services[, by the use of
85 a false, fictitious, altered, counterfeit, revoked, expired, stolen, or fraudulently obtained
86 financial transaction card, by any financial transaction card credit number, personal
87 identification code, or by the use of a financial transaction card not authorized by the issuer or
88 the card holder];

89 (2) knowingly, with the intent to defraud, use a financial transaction card, ~~[with intent~~

90 to defraud, to knowingly and willfully exceed the actual balance of a demand or time deposit
 91 ~~account]~~ credit number, personal identification code, or any other information contained on the
 92 card or in the account from which the card is issued, to obtain or attempt to obtain credit,
 93 goods, or services;

94 (3) knowingly, with the intent to defraud, use a financial transaction card~~], with intent~~
 95 ~~to defraud,]~~ to willfully exceed an authorized credit line by \$500 or more, or by 50% or more
 96 of ~~[such]~~ the line of credit, whichever is greater;

97 ~~[(4) willfully, with intent to defraud, deposit into his or any other account by means of~~
 98 ~~an automated banking device a false, fictitious, forged, altered, or counterfeit check, draft,~~
 99 ~~money order, or any other similar document;]~~

100 ~~[(5)]~~ (4) (a) knowingly, with the intent to defraud, make application for a financial
 101 transaction card to an issuer~~], while knowingly making or causing]~~ and make or cause to be
 102 made a false statement or report ~~[relative to his]~~ of the person's name, occupation, financial
 103 condition, assets, or personal identifying information; or ~~[to]~~

104 (b) willfully and substantially undervalue or understate any indebtedness for the
 105 purposes of influencing the issuer to issue the financial transaction card; or

106 ~~[(6)]~~ (5) knowingly, with the intent to defraud ~~[any authorized credit card merchant,~~
 107 ~~card holder, or issuer, sell or attempt to sell credit card sales drafts to an authorized credit card~~
 108 ~~merchant or any other person or organization, for any consideration whether at a discount or~~
 109 ~~otherwise, or],~~ present or cause to be presented to the issuer or an authorized credit card
 110 merchant, for payment or collection, any ~~[such]~~ credit card sales draft, if:

111 (a) the draft is counterfeit or fictitious;

112 (b) the purported sales evidenced by any ~~[such]~~ credit card sales draft did not take
 113 place;

114 (c) the purported sale was not authorized by the card holder; or

115 (d) the items or services purported to be sold as evidenced by the credit card sales
 116 drafts are not delivered or rendered to the card holder or person intended to receive them~~]; or].~~

117 ~~[(e) when delivered or rendered, the goods or services are materially different or of~~
 118 ~~materially lesser value or quality than represented by the seller or his agent to the purchaser, or~~
 119 ~~have substantial discrepancies from goods or services impliedly represented by the purchase~~
 120 ~~price when compared with the actual goods or services delivered or rendered.]~~

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

122 **76-6-506.5. Financial transaction card offenses -- Classification -- Multiple**
123 **violations.**

124 (1) Any person found guilty of unlawful conduct described in Section 76-6-506.2,
125 76-6-506.4, or 76-6-506.6 [~~shall be punished for~~] is guilty of:

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

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

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

132 [~~(d)~~] (b) a second degree felony when the value of the property, money, or thing
133 obtained or [~~sought~~] attempted to be obtained is or exceeds \$5,000.

134 (2) Multiple violations of [~~Subsection 76-6-506.2(1), Sections 76-6-506.4, and~~
135 ~~76-6-506.6~~] this section may be aggregated into a single offense, and the degree of the offense
136 is determined by the total value of all property, money, or things obtained or [~~sought~~]
137 attempted to be obtained through the multiple violations.

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

140 [~~(a) another person uses the financial transaction card without the card holder's~~
141 ~~consent; and~~]

142 [~~(b) that person commits a crime in addition to a financial transaction card offense with~~
143 ~~the card holder's financial transaction card.~~]

144 Section 4. **Repealer.**

145 This bill repeals:

146 Section **76-6-506.1, Financial transaction card offenses -- Falsely making, coding,**
147 **or signing card -- Falsely signing evidence of card transaction.**

148 Section **76-6-506.3, Financial transaction card offenses -- Unlawful acquisition,**
149 **possession, or transfer of card.**

150 Section **76-6-506.4, Financial transaction card offenses -- Property obtained by**
151 **unlawful conduct.**

Legislative Review Note
as of 1-19-09 6:52 AM

Office of Legislative Research and General Counsel

H.B. 110 - Financial Transaction Card Offenses

Fiscal Note

2009 General Session
State of Utah

State Impact

The Department of Corrections will require General Fund appropriations of \$58,100 in FY 2010 and \$87,000 for FY 2011 and each fiscal year thereafter. The Courts will require \$115,200 per year from the General Fund beginning FY 2010. The bill will also generate \$60,800 per year in new General Fund revenue beginning in FY 2010.

	<u>2009</u> <u>Approp.</u>	<u>2010</u> <u>Approp.</u>	<u>2011</u> <u>Approp.</u>	<u>2009</u> <u>Revenue</u>	<u>2010</u> <u>Revenue</u>	<u>2011</u> <u>Revenue</u>
General Fund	\$0	\$202,200	\$202,200	\$0	\$60,800	\$60,800
General Fund, One-Time	\$0	(\$28,900)	\$0	\$0	\$0	\$0
Total	\$0	\$173,300	\$202,200	\$0	\$60,800	\$60,800

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals and businesses. Local governments (Justice Courts) will be impacted
