

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

## 1                   **Recodification Draft of Title 76, Chapter 6, Parts 1 through 13**

2

3

### 4                   **LONG TITLE**

### 5                   **General Description:**

6                   This bill

### 7                   **Highlighted Provisions:**

8                   This bill:

9                   ►

10                   ►

### 11                   **Money Appropriated in this Bill:**

12                   None

### 13                   **Other Special Clauses:**

14                   None

### 15                   **List of sections affected:**

### 16                   **AMENDS:**

17                   76-6-101

18                   76-6-102

19                   76-6-103

20                   76-6-104

21                   76-6-104.5

22                   76-6-105

23                   76-6-106

24                   76-6-107

25                   76-6-107.5

26                   76-6-108

27                   76-6-111

28                   76-6-112

29                   76-6-202

30                   76-6-203

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

- 31 76-6-204
- 32 76-6-204.5
- 33 76-6-205
- 34 76-6-206
- 35 76-6-206.1
- 36 76-6-206.2
- 37 76-6-206.3
- 38 76-6-206.4
- 39 76-6-301
- 40 76-6-302
- 41 76-6-404
- 42 76-6-404.5
- 43 76-6-404.7
- 44 76-6-405
- 45 76-6-406
- 46 76-6-407
- 47 76-6-408
- 48 76-6-409
- 49 76-6-409.1
- 50 76-6-409.3
- 51 76-6-409.6
- 52 76-6-409.7
- 53 76-6-409.8
- 54 76-6-409.9
- 55 76-6-409.10
- 56 76-6-410
- 57 76-6-410.5
- 58 76-6-413
- 59 76-6-501
- 60 76-6-502
- 61 76-6-503.5
- 62 76-6-503.7

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

63 76-6-504  
64 76-6-505  
65 76-6-506  
66 76-6-506.2  
67 76-6-506.3  
68 76-6-506.6  
69 76-6-506.7  
70 76-6-507  
71 76-6-508  
72 76-6-509  
73 76-6-510  
74 76-6-511  
75 76-6-512  
76 76-6-513  
77 76-6-514  
78 76-6-515  
79 76-6-516  
80 76-6-517  
81 76-6-518  
82 76-6-520  
83 76-6-521  
84 76-6-522  
85 76-6-523  
86 76-6-524  
87 76-6-601  
88 76-6-602  
89 76-6-608  
90 76-6-703  
91 76-6-705  
92 76-6-801  
93 76-6-802  
94 76-6-803

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

95 76-6-803.30

96 76-6-902

97 76-6-1002

98 76-6-1003

99 76-6-1101

100 76-6-1102

101 76-6-1105

102 76-6-1203

103 76-6-1303

104

105 ENACTS:

106 76-6-106.1

107 76-6-206.5

108 76-6-412.1

109 76-6-501.5

110 76-6-503.6

111 76-6-506.1

112 76-6-506.4

113 76-6-703.1

114 76-6-703.3

115 76-6-703.5

116 76-6-703.7

117 76-6-902.1

118 76-6-902.2

119

120 RENUMBERS AND AMENDS:

121 76-6-107.1 (Renumbered from 76-3-410)

122 76-6-109 (Renumbered from 76-3-203.15)

123 76-6-110 (Renumbered from 76-3-203.16)

124

125 REPEALS AND REENACTS:

126 76-6-1101

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

127 REPEALS:

128 76-6-412

129 76-6-506.5

130 76-6-606

131 76-6-701

132 76-6-804

133 76-6-805

134 76-6-903

135 76-6-1004

136 76-6-1201

137 76-6-1204

138 76-6-1301

139

140 Statutory text:

## 141 **76-6-101. Definitions.**

142 (1) [For purposes of this chapter] As used in this part:

143 (a) "Etching" means defacing, damaging, or destroying hard surfaces by means of an  
144 abrasive object, a knife, or an engraving device, or a chemical action which uses any caustic  
145 cream, gel, liquid, or solution.

146 (b) "Fire" means a flame, heat source capable of combustion, or material capable of  
147 combustion that is caused, set, or maintained by a person for any purpose.

148 (c) "Graffiti" means any form of unauthorized printing, writing, spraying, scratching,  
149 painting, affixing, etching, or inscribing on the property of another regardless of the content or  
150 the nature of the material used in the commission of the act.

151 [(b)] (d) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft,  
152 or watercraft used for lodging or assembling persons or conducting business whether a  
153 person is actually present or not.

154 [(c)] (e) "Property" means:

155 (i) any form of real property or tangible personal property which is capable of being  
156 damaged or destroyed and includes a habitable structure; and

157 (ii) the property of another, if anyone other than the actor has a possessory or  
158 proprietary interest in any portion of the property.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

159       [(d)] (f) "Value" means:

160           (i) the market value of the property, if totally destroyed, at the time and place of the  
161 offense, or where cost of replacement exceeds the market value; or

162           (ii) where the market value cannot be ascertained, the cost of repairing or replacing  
163 the property within a reasonable time following the offense.

164       (2) Terms defined in Section 76-1-101.5 apply to this part.

165       [(2)] (3) If the property damaged has a value that cannot be ascertained by the criteria  
166 set forth in Subsection (1)[(d)] (e), the property shall be considered to have a value less than  
167 \$500.

## 169       **76-6-102. Arson.**

170       (1) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

171       [(1)] (2) ~~A person is guilty of~~ An actor commits arson if, under circumstances not  
172 amounting to aggravated arson, the person by means of fire or explosives unlawfully and  
173 intentionally damages:

174           (a) any property with intention of defrauding an insurer; or  
175           (b) the property of another.

176       [(2)] (3)(a) A violation of Subsection [(1)] (2)(a) is a second degree felony.

177       [(3)] (b) A violation of Subsection [(1)] (2)(b) is a second degree felony if:

178           [(a)] (i) the damage caused is or exceeds \$5,000 in value;

179           [(b)] (ii) as a proximate result of the fire or explosion, any person not a participant in  
180 the offense suffers serious bodily injury as defined in Section 76-1-601;

181           [(c)] (iii)(A) the damage caused is or exceeds \$1,500 but is less than \$5,000 in  
182 value; and

183           [(iii)] (B) at the time of the offense the actor has been previously convicted of a  
184 violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior  
185 to the commission of the violation of Subsection [(1)] (2)(b).

186       [(4)] (c) A violation of Subsection [(1)] (2)(b) is a third degree felony if:

187           [(a)] (i) the damage caused is or exceeds \$1,500 but is less than \$5,000 in value;

188           [(b)] (ii) as a proximate result of the fire or explosion, any person not a participant in  
189 the offense suffers substantial bodily injury as defined in Section 76-1-601;

190           [(c)] (iii) the fire or explosion endangers human life; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

191 [§(d)(i)] (iv)(A) the damage caused is or exceeds \$500 but is less than \$1,500 in value;

192 and

193 [§(ii)] (B) at the time of the offense the actor has been previously convicted of a  
194 violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior  
195 to the commission of the violation of Subsection [§(1)] (2)(b).

196 [§(5)] (d) A violation of Subsection [§(1)] (2)(b) is a class A misdemeanor if the damage

197 caused:

198 [§(a)] (i) is or exceeds \$500 but is less than \$1,500 in value; or

199 [§(b)] (i) (ii)(A) is less than \$500; and

200 [§(ii)] (B) at the time of the offense the actor has been previously convicted of a  
201 violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior  
202 to the commission of the violation of Subsection [§(1)] (2)(b).

203 [§(6)] (e) A violation of Subsection [§(1)] (2)(b) is a class B misdemeanor if the damage

204 caused is less than \$500.

## 76-6-103. Aggravated arson.

207 (1) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

208 [§(2)] (2) A person is guilty of An actor commits aggravated arson if by means of fire or

209 explosives [he] the actor intentionally and unlawfully damages:

210 (a) a habitable structure; or

211 (b) any structure or vehicle when any person not a participant in the offense is in the  
212 structure or vehicle.

213 [§(2)] (3) [Aggravated arson] A violation of Subsection (2) is a first degree felony [of

214 the first degree].

## 76-6-104. Reckless burning.

217 (1) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

218 [§(1)] (2) [A person is guilty of an actor commits reckless burning if the [person] actor:

219 (a) recklessly starts a fire or causes an explosion which endangers human life;

220 (b) having started a fire, whether recklessly or not, and knowing that it is spreading  
221 and will endanger the life or property of another, either fails to take reasonable measures to  
222 put out or control the fire or fails to give a prompt fire alarm;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

223 (c) builds or maintains a fire without taking reasonable steps to remove all flammable  
224 materials surrounding the site of the fire as necessary to prevent the fire's spread or escape;  
225 or  
226 (d) damages the property of another by reckless use of fire or causing an explosion.  
227 [(2)] (3)(a) A violation of Subsection [(1)] (2)(a) or (b) is a class A misdemeanor.  
228 (b) A violation of Subsection [(1)] (2)(c) is a class B misdemeanor.  
229 (c) A violation of Subsection [(1)] (2)(d) is:  
230 (i) a class A misdemeanor if damage to property is or exceeds \$1,500 in value;  
231 (ii) a class B misdemeanor if the damage to property is or exceeds \$500 but is less  
232 than \$1,500 in value; and  
233 (iii) a class C misdemeanor if the damage to property is or exceeds \$150 but is less  
234 than \$500 in value.  
235 (d) Any other violation under Subsection [(1)] (2)(d) is an infraction.  
236

## 237 **76-6-104.5. [Abandoned] Abandonment of a fire -- Penalties.**

### 238 (1) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

239 [(1) ~~A person is guilty of abandoning~~] (2) An actor commits abandonment of a fire if, under  
240 circumstances not amounting to the offense of arson, aggravated arson, or causing a  
241 catastrophe, ~~[under Title 76, Chapter 6, Part 1, Property Destruction,]~~ the ~~[person]~~ actor  
242 leaves a fire:

243 (a) without first completely extinguishing it; and  
244 (b) with the intent to not return to the fire.

245 [(2) ~~A person does not commit a violation of Subsection (1) if the person leaves a fire~~  
246 ~~to report an uncontrolled fire.~~]

### 247 (3) A violation of Subsection [(1)] (2) :

248 (a) is a class C misdemeanor if there is no property damage;  
249 (b) is a class B misdemeanor if property damage is less than \$1,000 in value; and  
250 (c) is a class A misdemeanor if property damage is or exceeds \$1,000 in value.

251 (4) An actor does not commit a violation of Subsection (2) if the actor leaves a fire to  
252 report an uncontrolled fire.

253 [(4)] (5) If a violation of Subsection [(1)] (2) involves a wildland fire, the ~~[violator]~~  
254 actor is also liable for suppression costs under Section 65A-3-4.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

255        **[(5)] (6)** A fire spreading or reigniting is prima facie evidence that the **[person] actor**  
256 did not completely extinguish the fire as required by Subsection **[(1)] (2)** (a).

257

## 258        **76-6-105. Causing a catastrophe -- Penalties.**

259        **(1) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.**

260        **[(1)] Any person is guilty of** **(2) An actor commits** causing a catastrophe if the **[person]**  
261 **actor** causes widespread injury or damage to persons or property by:

262        (a) use of a weapon of mass destruction as defined in Section 76-10-401; or

263        (b) explosion, fire, flood, avalanche, collapse of a building, or other harmful or

264        destructive force or substance that is not a weapon of mass destruction.

265        **[(2)] Causing a catastrophe** **(3) A violation of Subsection (2)** is:

266        (a) a first degree felony if the **[person] actor** causes the catastrophe knowingly and by  
267        the use of a weapon of mass destruction;

268        (b) a second degree felony if the **[person] actor** causes the catastrophe knowingly and  
269        by a means other than a weapon of mass destruction; and

270        (c) a class A misdemeanor if the **[person] actor** causes the catastrophe recklessly.

271        **[(3)] (4)** In addition to any other penalty authorized by law, a court shall order **[any]**  
272 **person] an actor** convicted of any violation of this section to reimburse any federal, state, or  
273 local unit of government, or any private business, organization, individual, or entity for all  
274 expenses incurred in responding to the violation, unless the court states on the record the  
275 reasons why the reimbursement would be inappropriate.

276

## 277        **76-6-106. Criminal mischief.**

278        (1) **(a)** As used in this section, "critical infrastructure" includes:

279        **[(a)] (i)** information and communication systems;

280        **[(b)] (ii)** financial and banking systems;

281        **[(c)] (iii)** any railroads, airlines, airports, airways, highways, bridges, waterways, fixed  
282 guideways, or other transportation systems intended for the transportation of persons or  
283 property;

284        **[(d)] (iv)** any public utility service, including the power, energy, and water supply  
285 systems;

286        **[(e)] (v)** sewage and water treatment systems;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

287       ~~(f)~~ (vi) health care facilities as listed in Section 26-21-2, and emergency fire,  
288 medical, and law enforcement response systems;  
289       ~~(g)~~ (vii) public health facilities and systems;  
290       ~~(h)~~ (viii) food distribution systems; and  
291       ~~(i)~~ (ix) other government operations and services.

292 **(b) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.**

293       (2) ~~A~~person An actor commits criminal mischief if the ~~person~~ actor :

294       ~~(a) under circumstances not amounting to arson, damages or destroys property with~~  
295 ~~the intention of defrauding an insurer;]~~

296       ~~(b)~~ (a) intentionally and unlawfully tampers with the property of another and as a

297 result:

298       (i) recklessly endangers:

299           (A) human life; or

300           (B) human health or safety; or

301       (ii) recklessly causes or threatens a substantial interruption or impairment of any  
302 critical infrastructure; or

303       ~~(c) intentionally damages, defaces, or destroys the property of another; or]~~

304       ~~(d)~~ (b) recklessly or willfully shoots or propels a missile or other object at or against  
305 a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether  
306 moving or standing.

307       ~~(3) (a) (i) A violation of Subsection (2)(a) is a third degree felony.]~~

308       ~~(iii) (3)(a)~~ A violation of Subsection (2)~~(b)~~ (a)(i)(A) is a class A misdemeanor.

309       ~~(iii) (b)~~ A violation of Subsection (2)~~(b)~~ (a)(i)(B) is a class B misdemeanor.

310       ~~(iv) (c)~~ A violation of Subsection (2)~~(b)~~ (a)(ii) is a second degree felony.

311       ~~(b)~~ (d) Any other violation of this section is a:

312           (i) second degree felony if the actor's conduct causes or is intended to cause  
313 pecuniary loss equal to or in excess of \$5,000 in value;

314           (ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary  
315 loss equal to or in excess of \$1,500 but is less than \$5,000 in value;

316           (iii) class A misdemeanor if the actor's conduct causes or is intended to cause  
317 pecuniary loss equal to or in excess of \$500 but is less than \$1,500 in value; and

318           (iv) class B misdemeanor if the actor's conduct causes or is intended to cause

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

319 pecuniary loss less than \$500 in value.

320 (4) In determining the value of damages under this section, or for computer crimes  
321 under Section 76-6-703, the value of any item, computer, computer network, computer  
322 property, computer services, software, or data includes the measurable value of the loss of  
323 use of the items and the measurable cost to replace or restore the items.

324 (5) In addition to any other penalty authorized by law, a court shall order [any person]  
325 an actor convicted of any violation of this section to reimburse any federal, state, or local unit  
326 of government, or any private business, organization, individual, or entity for all expenses  
327 incurred in responding to a violation of Subsection (2)(b) (a) (ii), unless the court states on  
328 the record the reasons why the reimbursement would be inappropriate.

329

## **76-6-106.1. Property destruction.**

330 (1) Terms defined in Sections 76-1-101.5, 76-6-101, and 76-6-106 apply to this  
331 section.

333 (2) An actor commits property destruction if the actor :

334 (a) under circumstances not amounting to arson, damages or destroys property with  
335 the intention of defrauding an insurer; or

336 (b) intentionally damages, defaces, or destroys the property of another.

337 (3) (a) A violation of Subsection (2)(a) is a third degree felony.

338 (b) Any other violation of this section is a:

339 (i) second degree felony if the actor's conduct causes or is intended to cause  
340 pecuniary loss equal to or in excess of \$5,000 in value;

341 (ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary  
342 loss equal to or in excess of \$1,500 but is less than \$5,000 in value;

343 (iii) class A misdemeanor if the actor's conduct causes or is intended to cause  
344 pecuniary loss equal to or in excess of \$500 but is less than \$1,500 in value; and

345 (iv) class B misdemeanor if the actor's conduct causes or is intended to cause  
346 pecuniary loss less than \$500 in value.

347 (4) In determining the value of damages under this section, or for computer crimes  
348 under Section 76-6-703, the value of any item, computer, computer network, computer  
349 property, computer services, software, or data includes the measurable value of the loss of  
350 use of the items and the measurable cost to replace or restore the items.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

## 76-6-107. [Graffiti] Defacement by graffiti defined -- Penalties -- Removal costs

### -- Reimbursement liability -- Victim liability.

(1)(a) As used in this section~~[:] , "victim" means the person whose property is defaced or damaged by graffiti and who bears the expense for removal of the graffiti.~~

~~[(a)] "Etching" means defacing, damaging, or destroying hard surfaces by means of a chemical action which uses any caustic cream, gel, liquid, or solution.~~

~~[(b)] "Graffiti" means any form of unauthorized printing, writing, spraying, scratching, affixing, etching, or inscribing on the property of another regardless of the content or the nature of the material used in the commission of the act.~~

~~[(c)] "Victim" means the person whose property is defaced by graffiti and who bears the expense for removal of the graffiti.]~~

(b) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

(2) An actor commits defacement by graffiti if the actor, without permission, defaces or damages the property of another by graffiti.

~~[(2)] Except as provided in Section 76-6-107, graffiti is a:]~~

(3) A violation of Subsection (2) is a:

(a) second degree felony if the damage caused is in excess of \$5,000;

(b) third degree felony if the damage caused is equal to or in excess of \$1,000 but less than \$5,000;

(c) class A misdemeanor if the damage caused is equal to or in excess of \$300 but less than \$1,000; and

(d) class B misdemeanor if the damage caused is less than \$300.

~~[(3)] (4) Damages under Subsection [(2)] (3) include removal costs, repair costs, or replacement costs, whichever is less.~~

~~[(4)] (5) The court shall order an individual convicted under Subsection [(2)] (3) to pay restitution to the victim in an amount equal to the costs incurred by the victim as a result of the graffiti.~~

~~[(5)] (6) An additional amount of \$1,000 in restitution shall be added to removal costs if the graffiti is positioned on an overpass or an underpass, requires that traffic be interfered with in order to remove it, or the entity responsible for the area in which the clean-up is to take place must provide assistance in order for the removal to take place safely.~~

~~[(6)] (7) An individual who voluntarily, at the individual's own expense, and with the~~

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

383 consent of the property owner, removes graffiti for which the individual is responsible may be  
384 credited for the removal costs against restitution ordered by a court.

385 [(7)] (8) Before an authorized government agency may issue a citation or assess a  
386 fine to a victim for the victim's failure to remove graffiti from the victim's property, the agency  
387 shall:

- 388 (a) provide written notice to the victim alerting the victim of the graffiti;
- 389 (b) allow the victim one week after the day on which the agency provides written  
390 notice of the graffiti to remove the graffiti; and
- 391 (c) provide the victim with a list of resources available to assist the victim with removal  
392 of the graffiti.

393 [(8)] (9)(a) After receiving notification of graffiti under Subsection [(7)] (8)(a), a victim  
394 who is unable to remove the graffiti due to physical or financial hardship may alert the agency  
395 that provided notice under Subsection [(7)] (8)(a) of the hardship.

396 (b) If an authorized government agency finds a victim has demonstrated that the  
397 victim would experience significant hardship in removing the graffiti, the agency:

- 398 (i) may not issue a citation or assess a fee to the victim for failure to remove the  
399 graffiti; and
- 400 (ii) shall provide, or hire an outside entity to provide, the assistance necessary to  
401 remove the graffiti from the victim's property.

402 (c) An authorized government agency that provides, or hires an outside agency to  
403 provide, assistance under Subsection [(8)] (9)(b)(ii), may request reimbursement from a  
404 restitution order, under Subsection [(4)] (5), against an individual who used graffiti to  
405 damage the property that the agency removed, or paid another to remove.

## 406 76-6-107.5. Vandalism of Defacing by graffiti on public lands.

408 (1)(a) As used in this section~~[:] , "public lands" means state or federally owned  
409 property that is held substantially in its natural state, including canyons, parks owned or  
410 managed by the state, national parks, land managed by the Bureau of Land Management,  
411 and other lands owned or maintained by a government entity for outdoor recreational use.~~

412 ~~[(a)] "Etching" means defacing, damaging, or destroying a hard surface by using a  
413 chemical, an abrasive object, a knife, or an engraving device.~~

414 ~~(b) "Graffiti" means unauthorized printing, spraying, scratching, affixing, etching, or~~

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

415 ~~inscribing on property owned by the state regardless of the content or the nature of the~~  
416 ~~material used in the commission of the act.]~~

417 ~~[(c) "Public lands" means state or federally owned property that is held substantially in~~  
418 ~~its natural state, including canyons, parks owned or managed by the state, national parks,~~  
419 ~~land managed by the Bureau of Land Management, and other lands owned or maintained by~~  
420 ~~a government entity for outdoor recreational use.]~~

421 **(b) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.**

422 (2) An ~~individual is guilty of~~ actor commits defacing by graffiti on public lands  
423 vandalism if the ~~individual~~ actor creates, or assists in creating, graffiti on any public lands or  
424 state-owned object permanently located on public lands.

425 (3) ~~An individual convicted under~~ A violation of Subsection (2) is ~~guilty of~~ a class B  
426 misdemeanor.

427 (4) If an ~~individual~~ actor is convicted of public lands vandalism, the court shall  
428 sentence the ~~individual~~ actor to a term of community service as follows:

429 (a) for a first conviction, the court shall sentence the ~~individual~~ actor to 100 hours of  
430 community service, to be completed within 90 days after the day on which the court issues  
431 the order;

432 (b) for a second conviction, the court shall sentence the ~~individual~~ actor to 200 hours  
433 of community service, to be completed within 180 days after the day on which the court  
434 issues the order; or

435 (c) for a third or subsequent conviction, the court shall sentence the ~~individual~~ actor  
436 to 300 hours of community service, to be completed within 270 days after the day on which  
437 the court issues the order.

438 (5) If an ~~individual~~ actor is enrolled in school or maintains full or part-time  
439 employment, the ordered community service may not be scheduled at a time the ~~individual~~  
440 actor is scheduled to be in school or performing the individual's employment duties.

441 (6) A sentence of community service described in Subjection (4) shall, to the greatest  
442 extent possible, be for the benefit of public lands.

443 (7) If an ~~individual~~ actor is convicted of public lands vandalism, the court may  
444 impose a fine up to the full amount of the estimated cost to restore the damaged land,  
445 caused by the ~~individual~~ actor, to the land's original state.

446 (8) An ~~individual~~ actor who voluntarily, at the ~~individual's~~ actor's own expense, and

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

447 with the consent of the property owner, removes graffiti for which the [individual] actor is  
448 responsible shall be credited for costs ordered by the court under Subsection (7).

449

## 76-6-108. Damage to or interruption of a communication device -- Penalty.

450 (1)(a) As used in this section:

451 [¶] (i) "Communication device" means any device, including a telephone, cellular  
452 telephone, computer, or radio, which may be used in an attempt to summon police, fire,  
453 medical, or other emergency aid.

454 [¶] (ii) "Emergency aid" means aid or assistance, including law enforcement, fire, or  
455 medical services, commonly summoned by persons concerned with imminent or actual:

456 [¶] (A) jeopardy to any person's health or safety; or

457 [¶] (B) damage to any person's property.

458 (b) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

459 (2) [A person is guilty of] An actor commits damage to or interruption of a  
460 communication device if the actor attempts to prohibit or interrupt, or prohibits or interrupts,  
461 another person's use of a communication device when the other person is attempting to  
462 summon emergency aid or has communicated a desire to summon emergency aid, and in  
463 the process the actor:

464 (a) uses force, intimidation, or any other form of violence;

465 (b) destroys, disables, or damages a communication device; or

466 (c) commits any other act in an attempt to prohibit or interrupt the person's use of a  
467 communication device to summon emergency aid.

468 (3) [Damage to or interruption of a communication device] A violation of Subsection  
469 (2) is a class B misdemeanor.

## 76-6-111. Wanton destruction of livestock -- Penalties -- Restitution criteria -- 471 Seizure and disposition of property.

472 (1)(a) As used in this section:

473 [¶] (i) "Law enforcement officer" means the same as that term is defined in Section  
474 53-13-103.

475 [¶] (ii) "Livestock" means a domestic animal or fur bearer raised or kept for profit or  
476 as an asset, including:

477 [¶] (A) cattle;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

479 [({iii})] (B) sheep;  
480 [({iv})] (C) goats;  
481 [({v})] (D) swine;  
482 [({vi})] (E) horses;  
483 [({vii})] (F) mules;  
484 [({viii})] (G) poultry;  
485 [({ix})] (H) domesticated elk as defined in Section 4-39-102; and  
486 [({x})] (I) livestock guardian dogs.

487 [({e})] (iii) "Livestock guardian dog" means a dog that is being used to live with and  
488 guard livestock, other than itself, from predators.

489 (b) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

490 (2) Unless authorized by Section 4-25-201, 4-25-202, 4-25-401, 4-39-401, or 18-1-3,

491 ~~[a person is guilty of]~~ an actor commits wanton destruction of livestock if ~~[that person]~~ the  
492 actor:

493 (a) injures, physically alters, releases, or causes the death of livestock; and  
494 (b) does so:  
495 (i) intentionally or knowingly; and  
496 (ii) without the permission of the owner of the livestock.

497 ~~[({3}) For purposes of this section, a livestock guardian dog is presumed to belong to~~  
498 ~~an owner of the livestock with which the livestock guardian dog was living at the time of an~~  
499 ~~alleged violation of Subsection (2).]~~

500 ~~[({4})~~ (3) ~~[Wanton destruction of livestock]~~ A violation of Subsection (2) is

501 ~~[punishable as]~~ a:

502 (a) class B misdemeanor if the aggregate value of the livestock is \$250 or less;  
503 (b) class A misdemeanor if the aggregate value of the livestock is more than \$250,  
504 but does not exceed \$750;  
505 (c) third degree felony if the aggregate value of the livestock is more than \$750, but  
506 does not exceed \$5,000; and  
507 (d) second degree felony if the aggregate value of the livestock is more than \$5,000.

508 (4) For purposes of this section, a livestock guardian dog is presumed to belong to an  
509 owner of the livestock with which the livestock guardian dog was living at the time of an  
510 alleged violation of Subsection (2).

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

511       (5) When a court orders [a person] an actor who is convicted of wanton destruction  
512 of livestock to pay restitution under Title 77, Chapter 38b, Crime Victims Restitution Act, the  
513 court shall consider the restitution guidelines in Subsection (6) when setting the amount of  
514 restitution under Section 77-38b-205.

515       (6) The minimum restitution value for cattle and sheep is the sum of the following,  
516 unless the court states on the record why it finds the sum to be inappropriate:

517           (a) the fair market value of the animal, using as a guide the market information  
518 obtained from the Department of Agriculture and Food created under Section 4-2-102; and (b)  
519 10 years times the average annual value of offspring, for which average annual value is  
520 determined using data obtained from the National Agricultural Statistics Service within the  
521 United States Department of Agriculture, for the most recent 10-year period available.

522       (7) A material, device, or vehicle used in violation of Subsection (2) is subject to  
523 forfeiture under the procedures and substantive protections established in Title 24, Forfeiture  
524 and Disposition of Property Act.

525       (8) A peace officer may seize a material, device, or vehicle used in violation of  
526 Subsection (2):

527           (a) upon notice and service of process issued by a court having jurisdiction over the  
528 property; or

529           (b) without notice and service of process if:

530              (i) the seizure is incident to an arrest under:

531               (A) a search warrant; or

532               (B) an inspection under an administrative inspection warrant;

533              (ii) the material, device, or vehicle has been the subject of a prior judgment in favor of  
534 the state in a criminal injunction or forfeiture proceeding under this section; or

535              (iii) the peace officer has probable cause to believe that the property has been used  
536 in violation of Subsection (2).

537       (9) (a) A material, device, or vehicle seized under this section is not repleviable but is  
538 in custody of the law enforcement agency making the seizure, subject only to the orders and  
539 decrees of a court or official having jurisdiction.

540           (b) A peace officer who seizes a material, device, or vehicle under this section may:

541              (i) place the property under seal;

542              (ii) remove the property to a place designated by the warrant under which it was

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

543 seized; or

544 (iii) take custody of the property and remove it to an appropriate location for  
545 disposition in accordance with law.

546

## 76-6-112. Agricultural operation interference -- Penalties.

548 (1)(a) As used in this section, "agricultural operation" means private property used for  
549 the production of livestock, poultry, livestock products, or poultry products.

550 (b) Terms defined in Sections 76-6-101 and 76-1-101.5 apply to this section.

551 (2) ~~[A person is guilty of]~~ An actor commits agricultural operation interference if the  
552 ~~[person]~~ actor :

553 (a) without consent from the owner of the agricultural operation, or the owner's agent,  
554 knowingly or intentionally records an image of, or sound from, the agricultural operation by  
555 leaving a recording device on the agricultural operation;

556 (b) obtains access to an agricultural operation under false pretenses;

557 (c) (i) applies for employment at an agricultural operation with the intent to record an  
558 image of, or sound from, the agricultural operation;

559 (ii) knows, at the time that the ~~[person]~~ actor accepts employment at the agricultural  
560 operation, that the owner of the agricultural operation prohibits the employee from recording  
561 an image of, or sound from, the agricultural operation; and

562 (iii) while employed at, and while present on, the agricultural operation, records an  
563 image of, or sound from, the agricultural operation; or

564 (d) without consent from the owner of the operation or the owner's agent, knowingly  
565 or intentionally records an image of, or sound from, an agricultural operation while the person  
566 is committing criminal trespass, as described in Section 76-6-206, on the agricultural  
567 operation.

568 (3)(a) A ~~[person who commits agricultural operation interference described in]~~  
569 violation of Subsection (2)(a) is ~~[guilty of]~~ a class A misdemeanor.

570 ~~[{4}]~~ (b) A ~~[person who commits agricultural operation interference described in]~~  
571 violation of Subsection (2)(b), (c), or (d) is ~~[guilty of]~~ a class B misdemeanor.

572

## 76-6-202. Burglary.

573 (1) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

575 [¶] (2) An actor ~~is guilty of~~ commits burglary ~~who~~ if the actor:  
576 (a) enters or remains unlawfully in a building or any portion of a building ~~with intent~~ ; and  
577 (b) intends to commit:  
578 (a) (i) a felony;  
579 (b) (ii) theft;  
580 (c) (iii) an assault on any person;  
581 (d) (iv) lewdness, ~~a~~ in violation of Section 76-9-702;  
582 (e) (v) sexual battery, ~~a~~ in violation of Section 76-9-702.1;  
583 (f) (vi) lewdness involving a child, in violation of Section 76-9-702.5; or  
584 (g) (vii) voyeurism ~~under~~ , in violation of Section 76-9-702.7.  
585 ~~(2) Burglary~~ (3) (a) Except as provided in Subsection (2)(b), a violation of  
586 Subsection (2) is a third degree felony ~~unless it was committed in a dwelling, in which event~~  
587 ~~it is a second degree felony~~.  
588 (b) A violation of Subsection (2) is a second degree felony if the violation is committed in a  
589 dwelling.  
590 (3) (4) A violation of this section is a separate offense from any of the offenses  
591 listed in Subsections ~~(1)(a) through (g)~~ (2)(b)(i) through (vii), and which may be committed  
592 by the actor while in the building.  
593 **76-6-203. Aggravated burglary.**  
594 (1) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.  
595 ~~(1) A person is guilty of~~ (2) An actor commits aggravated burglary if in attempting,  
596 committing, or fleeing from a burglary the actor or another participant in the crime:  
597 (a) causes bodily injury to any person who is not a participant in the crime;  
598 (b) uses or threatens the immediate use of a dangerous weapon against any person  
599 who is not a participant in the crime; or  
600 (c) possesses or attempts to use any explosive or dangerous weapon.  
601 ~~(2) Aggravated burglary~~ (3) A violation of Subsection (2) is a first degree felony.  
602 ~~(3) As used in this section, "dangerous weapon" has the same definition as under~~  
603 Section 76-1-101.5.]  
604 **76-6-204. Burglary of a vehicle -- Charge of other offense.**  
605 (1) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.  
606 ~~(1) Any person who~~ (2) An actor commits burglary of a vehicle if the actor unlawfully

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

607 enters any vehicle with intent to commit a felony or theft ~~[is guilty of a burglary of a vehicle]~~.  
608 ~~[(2) Burglary of a vehicle]~~ (3) A violation of Subsection (2) is a class A misdemeanor.  
609 ~~[(3)]~~ (4) A charge against ~~[any person]~~ an actor for a violation of Subsection ~~[(1)]~~  
610 ~~shall~~ (2) does not preclude a charge for a commission of any other offense.

## 76-6-204.5. Burglary of a railroad car -- Charge of other offenses.

612 (1) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

613 ~~[(1) Any person]~~ (2) An actor commits burglary of a railroad car ~~[when the person]~~ if  
614 the actor breaks the lock or seal on any railroad car, with the intent to commit a felony or  
615 theft.

616 ~~[(2) Burglary of a railroad car]~~ (3) A violation of Subsection (2) is a third degree  
617 felony.

618 ~~[(3)]~~ (4) Charging a person for a violation of Subsection ~~[(1)]~~ (2) does not preclude  
619 charging the person for any other offense.

## 76-6-205. Manufacture or possession of instrument for burglary or theft.

621 (1) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

622 ~~[Any person who]~~ (2) An actor commits manufacture or possession of an instrument for  
623 burglary or theft if the actor manufactures or possesses any instrument, tool, device, article,  
624 or other thing adapted, designed, or commonly used in advancing or facilitating the  
625 commission of any offense under circumstances manifesting an intent to use or knowledge  
626 that ~~[some]~~ another person intends to use the same in the commission of a burglary or theft  
627 ~~[is guilty of]~~.

628 (3) A violation of Subsection (2) is a class B misdemeanor.

## 76-6-206. Criminal trespass.

630 (1) (a) As used in this section:

631 ~~[(a)]~~ (i) "Enter" means intrusion of the entire body or the entire unmanned aircraft.

632 (ii) "Graffiti" means the same as that term is defined in Section 76-6-101.

633 ~~[(b)]~~ (iii) "Remain unlawfully," as that term relates to an unmanned aircraft, means  
634 remaining on or over private property when:

635 ~~[(i)]~~ (A) the private property or any portion of the private property is not open to the  
636 public; and

637 ~~[(ii)]~~ (B) the person operating the unmanned aircraft is not otherwise authorized to fly  
638 the unmanned aircraft over the private property or any portion of the private property.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

639                   (b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

640                   (2) [A person is guilty of] An actor commits criminal trespass if, under circumstances  
641 not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204    or a  
642 violation of Section 76-10-2402 regarding commercial obstruction:

643                   (a) the [person] actor enters or remains unlawfully on or causes an unmanned  
644 aircraft to enter and remain unlawfully over property and:

645                   (i) intends to cause annoyance or injury to any person or damage to any property,  
646 including the use of graffiti [as defined in Section 76-6-107];

647                   (ii) intends to commit any crime, other than theft or a felony; or  
648                   (iii) is reckless as to whether the [person's] actor's or unmanned aircraft's presence  
649 will cause fear for the safety of another;

650                   (b) knowing the [person's] actor's or unmanned aircraft's entry or presence is  
651 unlawful, the [person] actor enters or remains on or causes an unmanned aircraft to enter or  
652 remain unlawfully over property to which notice against entering is given by:

653                   (i) personal communication to the [person] actor by the owner or someone with  
654 apparent authority to act for the owner;

655                   (ii) fencing or other enclosure obviously designed to exclude intruders; or  
656                   (iii) posting of signs reasonably likely to come to the attention of intruders; or

657                   (c) the [person] actor enters a condominium unit in violation of Subsection 57-8-7(8).

658                   (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless the  
659 violation is committed in a dwelling, in which event the violation is a class A misdemeanor.

660                   (b) A violation of Subsection (2)(c) is an infraction.

661                   (4) It is a defense to prosecution under this section that:

662                   (a) the property was at the time open to the public; and

663                   (b) the [actor] defendant complied with all lawful conditions imposed on access to or  
664 remaining on the property.

665                   (5) In addition to an order for restitution under Section 77-38b-205, [a person] an  
666 actor who commits a violation of Subsection (2) may also be liable for:

667                   (a) statutory damages in the amount of three times the value of damages resulting  
668 from the violation of Subsection (2) or \$500, whichever is greater; and

669                   (b) reasonable attorney fees not to exceed \$250, and court costs.

670                   (6) Civil damages under Subsection (5) may be collected in a separate action by the

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

671 property owner or the owner's assignee.

## 76-6-206.1. Criminal trespass of abandoned or inactive mines [--Penalty].

673 (1) (a) For purposes of this section:

674 [~~(a)~~ (i)] "Abandoned or inactive mine" means an underground mine which is no  
675 longer open for access or no longer under excavation and has been clearly marked as closed  
676 or protected from entry.

677 (ii) "Burglary" means the same as that term is defined in Section 76-6-202, 76-6-203,  
678 or 76-6-204.

679 [~~(b)~~ (iii)] "Enter" means intrusion of the entire body.

680 (b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

681 (2) [A person is guilty of] An actor commits criminal trespass of an abandoned or  
682 inactive mine if, under circumstances not amounting to burglary [as defined in Section  
683 76-6-202, 76-6-203, or 76-6-204] , the actor :

684 (a) [the person] intentionally enters and remains unlawfully in the underground  
685 workings of an abandoned or inactive mine; or

686 (b) intentionally and without authority removes, destroys, or tampers with any warning  
687 sign, covering, fencing, or other method of protection from entry placed on, around, or over  
688 any mine shaft, mine portal, or other abandoned or inactive mining excavation property.

689 (3) (a) A violation of Subsection (2)(a) is a class B misdemeanor.

690 [~~(4)~~ (b)] A violation of Subsection (2)(b) is a class A misdemeanor.

## 76-6-206.2. Criminal trespass on state park lands [--Penalties].

692 (1) (a) As used in this section:

693 [~~(a)~~ (i)] "Authorization" means specific written permission by, or contractual  
694 agreement with, the Division of State Parks.

695 [~~(b)~~ (ii)] "Criminal trespass" means the elements of the crime of criminal trespass, as  
696 set forth in Section 76-6-206.

697 [~~(c)~~ (iii)] "Division" means the Division of State Parks created in Section 79-4-201.

698 [~~(d)~~ (iv)] "State park lands" means all lands administered by the division.

699 (b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

700 (2) [A person is guilty of] An actor commits criminal trespass on state park lands and  
701 is liable for the civil damages prescribed in Subsection (5) if, under circumstances not  
702 amounting to a greater offense, and without authorization, the [person] actor :

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

703 (a) constructs improvements or structures on state park lands;  
704 (b) uses or occupies state park lands for more than 30 days after the cancellation or  
705 expiration of authorization;  
706 (c) knowingly or intentionally uses state park lands for commercial gain;  
707 (d) intentionally or knowingly grazes livestock on state park lands, except as provided  
708 in Section 72-3-112; or  
709 (e) remains, after being ordered to leave by someone a person with actual authority  
710 to act for the division, or by a law enforcement officer.

711 (3) A violation of Subsection (2) is a class B misdemeanor.

712 [~~(3) A person is not guilty of~~ (4) A person does not commit criminal trespass if that  
713 person enters onto state park lands:

714 (a) without first paying the required fee; and  
715 (b) for the sole purpose of pursuing recreational activity.

716 [~~(4) A violation of Subsection (2) is a class B misdemeanor.~~]

717 (5) (a) In addition to an order for restitution under Section 77-38b-205, [a person] an  
718 actor who commits any act described in Subsection (2) may also be liable for civil damages  
719 in the amount of three times the value of:

720 [~~(a)~~ (i) damages resulting from a violation of Subsection (2);

721 [~~(b)~~ (ii) the water, mineral, vegetation, improvement, or structure on state park lands  
722 that is removed, destroyed, used, or consumed without authorization;

723 [~~(c)~~ (iii) the historical, prehistorical, archaeological, or paleontological resource on  
724 state park lands that is removed, destroyed, used, or consumed without authorization; or

725 [~~(d)~~ (iv) the consideration which would have been charged by the division for  
726 unauthorized use of the land and resources during the period of trespass.

727 [~~(e)~~ (b) Civil damages awarded under Subsection (5) (a):

728 (i) may be collected in a separate action by the division~~[,]~~ ; and

729 (ii) shall be deposited in the State Parks Fees Restricted Account as established in  
730 Section 79-4-402.

## 76-6-206.3. Criminal trespass on agricultural land or range land.

733 (1) (a) As used in this section:

734 [~~(a)~~ (i) "Agricultural or range land" and "land" mean land as defined under

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

735 Subsections (1)~~(d)~~ and ~~(e)~~ (a)(iv) and (v) .

736 ~~(b)~~ (ii) "Authorization" means specific written permission by, or contractual  
737 agreement with, the owner or manager of the property.

738 ~~(c)~~ (iii) "Criminal trespass" means the elements of the crime of criminal trespass  
739 under Section 76-6-206.

740 ~~(d)~~ (iv) "Land in agricultural use" has the same meaning as in Section 59-2-502.

741 ~~(e)~~ (v)(A) "Range land" means privately owned land that is not fenced or divided  
742 into lots and that is generally unimproved.

743 [This land] (B) "Range land" includes land used for livestock.

744 (b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

745 (2) ~~A person is guilty of the class B misdemeanor criminal offense of~~ An actor  
746 commits criminal trespass on agricultural or range land and is liable for the civil damages  
747 under Subsection (5) if, under circumstances not amounting to a greater offense, and without  
748 authorization or a right under state law, the ~~person~~ actor enters or remains on agricultural  
749 or range land regarding which notice prohibiting entry is given by:

750 (a) personal communication to the ~~person~~ actor by the owner of the land, an  
751 employee of the owner, or a person with apparent authority to act for the owner;

752 (b) fencing or other form of enclosure a reasonable person would recognize as  
753 intended to exclude intruders; or

754 (c) posted signs or markers that would reasonably be expected to be seen by persons  
755 in the area of the borders of the land.

756 ~~(3) A person is guilty of the class B misdemeanor criminal offense of cutting,~~  
757 ~~destroying, or rendering ineffective the fencing of agricultural or range land if the person~~  
758 ~~willfully cuts, destroys, or renders ineffective any fencing as described under Subsection~~  
759 ~~(2)(b):~~

760 (3) A violation of Subsection (2) is a class B misdemeanor.

761 (4) In addition to an order for restitution under Section 77-38b-205, ~~[a person]~~ an  
762 actor who commits any violation of Subsection (2) ~~[or (3)]~~ may also be liable for:

763 (a) statutory damages in the amount of three times the value of damages resulting  
764 from the violation of Subsection (2) or \$500, whichever is greater; ~~[and]~~

765 (b) reasonable attorney fees not to exceed \$250~~;~~ and

766 (c) court costs.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

767       (5) Civil damages under Subsection (4) may be collected in a separate action by the  
768 owner of the agricultural or range land or the owner's assignee.

769

770       **76-6-206.4. Criminal trespass by long-term guest to a residence.**

771       (1) (a) As used in this section:

772           (i) "Burglary" means the same as that term is defined in Section 76-6-202, 76-6-203,

773 or 76-6-204.

774           [~~(a)~~ (ii)] "Long-term guest" means an individual who is not a tenant but who is given  
775 express or implied permission by the person who is the primary occupant of the residence or  
776 someone with apparent authority to act for the primary occupant to enter a portion of a  
777 residence or temporarily occupy a portion of a residence:

778           [~~(i)~~ (A)] for a period of time longer than 48 hours; and

779           [~~(ii)~~ (B)] without providing the owner or primary occupant of the residence  
780 compensation or entering into an agreement that the individual provide labor in lieu of  
781 providing the owner or primary occupant compensation for occupying the residence.

782           [~~(b)~~ (iii)] "Residence" means an improvement to real property used or occupied as a  
783 primary or secondary dwelling.

784           [~~(c)~~ (iv)] "Tenant" means a person who has the right to occupy a residence under a  
785 rental agreement or lease, or has a tenancy by operation of law.

786           (b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

787           [~~(2) A long-term guest is guilty of criminal trespass of a residence if, under~~  
788 ~~circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or~~  
789 ~~76-6-204, the long-term guest]~~

790           (2) An actor commits criminal trespass of a residence if the actor:

791           (a) is a long-term guest; and

792           (b) in circumstances not amounting to burglary, remains in a residence after the  
793 [long-term guest] actor receives notice against remaining in the residence by personal  
794 communication to the [long-term guest] actor by the person who is the primary occupant of  
795 the residence or someone with apparent authority to act for the primary occupant.

796           (3) A violation of Subsection (2) is a class B misdemeanor.

797           (4) Before a law enforcement officer escorts an [individual] actor from a residence  
798 for a violation of [this section] Subsection (2), the law enforcement officer shall provide the

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

799 [individual] actor a reasonable time for the [individual] actor to collect the [individual's]  
800 actor's personal belongings.

801

802 **76-6-206.5. Cutting, destroying, or rendering ineffective fencing of agricultural or**  
803 **range land.**

804 (1) Terms defined in Sections 76-1-101.5, 76-6-201, and 76-6-206.3 apply to this  
805 section.

806 (2) An actor commits cutting, destroying, or rendering ineffective the fencing of  
807 agricultural or range land if the person willfully cuts, destroys, or renders ineffective any  
808 fencing or other form of enclosure a reasonable person would recognize as intended to  
809 exclude intruders.

810 (3) A violation of Subsection (2) is a class B misdemeanor.

811 (4) In addition to an order for restitution under Section 77-38b-205, an actor who  
812 commits a violation of Subsection (2) may also be liable for:

813 (a) reasonable attorney fees not to exceed \$250; and  
814 (b) court costs.

815 (5) Civil damages under Subsection (4) may be collected in a separate action by the  
816 owner of the agricultural or range land or the owner's assignee.

817

818 **76-6-301. Robbery.**

819 [(1) A person] (1) (a) As used in this section, an act is considered to be "in the  
820 course of committing a theft or unauthorized possession of property" if the act occurs:  
821 (i) in the course of an attempt to commit theft or unauthorized possession of property;  
822 (ii) in the commission of theft or unauthorized possession of property; or  
823 (iii) in the immediate flight after the attempt or commission.

824 (b) Terms defined in Section 76-1-101.5 apply to this section.

825 (2) An actor commits robbery if the actor :

826 (a) [the person] unlawfully and intentionally takes or attempts to take personal  
827 property in the possession of [another] an individual from [his] the individual's person, or  
828 immediate presence, against [his] the individual's will, by means of force or fear, and with a  
829 purpose or intent to deprive the [person] individual permanently or temporarily of the  
830 personal property; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

831 (b) [the person] intentionally or knowingly uses force or fear of immediate force  
832 against [another] an individual in the course of committing a theft or [wrongful appropriation]  
833 unauthorized possession of property.

834 [(2) An act is considered to be "in the course of committing a theft or wrongful  
835 appropriation" if it occurs:

- 836 (a) ~~in the course of an attempt to commit theft or wrongful appropriation;~~
- 837 (b) ~~in the commission of theft or wrongful appropriation; or~~
- 838 (c) ~~in the immediate flight after the attempt or commission.]~~

839 [(3) Robbery is a felony of the] (3) A violation of Subsection (2) is a second degree  
840 felony.

841

## 842 76-6-302. Aggravated robbery.

843 (1) (a) As used in this section, an act is considered to be "in the course of committing a  
844 robbery" if the act occurs in an attempt to commit, during the commission of, or in the  
845 immediate flight after the attempt or commission of a robbery.

846 (b) Terms defined in Section 76-1-101.5 apply to this section.

847 [(1) A person] (2) An actor commits aggravated robbery if in the course of  
848 committing a robbery, [he] the actor:

- 849 (a) uses or threatens to use a dangerous weapon [as defined in Section 76-1-101.5];
- 850 (b) causes serious bodily injury [upon another] to another individual; or
- 851 (c) takes or attempts to take an operable motor vehicle.

852 [(2) Aggravated robbery is a first degree felony.

853 [(3) For the purposes of this part, an act shall be considered to be "in the course of  
854 committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the  
855 immediate flight after the attempt or commission of a robbery.] (3) A violation of Subsection  
856 (2) is a first degree felony.

857

## 858 76-6-404. Theft -- Elements.

859 (1) Terms defined in Section 76-1-101.5 apply to this section.

860 (2) [A person] An actor commits theft if [he] the actor obtains or exercises  
861 unauthorized control over [the] another person's property [of another] with a purpose to  
862 deprive [him thereof] the person of the person's property.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

863 (3) A violation of Subsection (2) is:

864 (a) a second degree felony if the:

865 (i) value of the property is or exceeds \$5,000;

866 (ii) property stolen is a firearm or an operable motor vehicle; or

867 (iii) property is stolen from the person of another;

868 (b) a third degree felony if:

869 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

870 (ii) the property is a catalytic converter as defined under Section 76-6-1402;

871 (iii) the value of the property is or exceeds \$500 and the actor has been twice before

872 convicted of any of the following offenses, if each prior offense was committed within 10

873 years before the date of the current conviction or the date of the offense upon which the

874 current conviction is based and at least one of those convictions is for a class A

875 misdemeanor:

876 (A) any theft, any robbery, or any burglary with intent to commit theft;

877 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

878 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

879 (iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;

880 (B) the theft occurs on a property where the offender has committed any theft within the past

881 five years; and

882 (C) the offender has received written notice from the merchant prohibiting the offender from

883 entering the property pursuant to Subsection 78B-3-108(4); or

884 (v) the actor has been previously convicted of a felony violation of any of the offenses listed

885 in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10

886 years before the date of the current conviction or the date of the offense upon which the

887 current conviction is based;

888 (c) a class A misdemeanor if:

889 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

890 (ii) (A) the value of property is less than \$500;

891 (B) the theft occurs on a property where the offender has committed any theft within the past

892 five years; and

893 (C) the offender has received written notice from the merchant prohibiting the offender from

894 entering the property pursuant to Subsection 78B-3-108(4); or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

895 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections  
896 (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
897 the date of the current conviction or the date of the offense upon which the current conviction  
898 is based; or  
899 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft  
900 is not an offense under Subsection (3)(c).

901

## 902 **76-6-404.5. [Wrongful appropriation -- Penalties] Unauthorized possession of 903 property.**

904 (1) Terms defined in Section 76-1-101.5 apply to this section.

905 ~~[—— (1) A person] (2) An actor~~ commits ~~wrongful appropriation~~ unauthorized  
906 possession of property if ~~[he]~~ the actor obtains or exercises unauthorized control over ~~[the]~~  
907 another person's property ~~[of another,]~~ without the consent of the property's owner or legal  
908 custodian , and with the intent to temporarily appropriate, possess, or use the property or  
909 to temporarily deprive the property's owner or legal custodian of possession of the property.

910 (3) A violation of Subsection (2) is:

911 (a) a third degree felony if:

912 (i) the value of the property is or exceeds \$5,000;  
913 (ii) the property is a firearm or an operable motor vehicle; or  
914 (iii) the property is taken from the person of another;

915 (b) a class A misdemeanor if:

916 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;  
917 (ii) the property is a catalytic converter as defined under Section 76-6-1402;  
918 (iii) the value of the property is or exceeds \$500 and the actor has been twice before  
919 convicted of any of the following offenses, if each prior offense was committed within 10  
920 years before the date of the current conviction or the date of the offense upon which the  
921 current conviction is based and at least one of those convictions is for a class A  
922 misdemeanor:

923 (A) any theft, any robbery, or any burglary with intent to commit theft;  
924 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or  
925 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);  
926 (iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

927 (B) the unauthorized possession of property occurs on a property where the offender has  
928 committed any theft within the past five years; and  
929 (C) the offender has received written notice from the merchant prohibiting the offender from  
930 entering the property pursuant to Subsection 78B-3-108(4); or  
931 (v) the actor has been previously convicted of a felony violation of any of the offenses listed  
932 in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10  
933 years before the date of the current conviction or the date of the offense upon which the  
934 current conviction is based;  
935 (c) a class B misdemeanor if:  
936 (i) the value of the property is or exceeds \$500 but is less than \$1,500;  
937 (ii) (A) the value of property is less than \$500;  
938 (B) the unauthorized possession of property occurs on a property where the offender has  
939 committed any theft within the past five years; and  
940 (C) the offender has received written notice from the merchant prohibiting the offender from  
941 entering the property pursuant to Subsection 78B-3-108(4); or  
942 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections  
943 (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
944 the date of the current conviction or the date of the offense upon which the current conviction  
945 is based; or  
946 (d) a class C misdemeanor if the value of the property is less than \$500 and the  
947 unauthorized possession of property is not an offense under Subsection (3)(c).

948 [ (2) The consent of the owner or legal custodian of the property to its control by the  
949 actor is not presumed or implied because of the owner's or legal custodian's [consent on a  
950 previous occasion to the control of the property by any person.] ]

951 [ (3) Wrongful appropriation is punishable one degree lower than theft, as provided in  
952 Section 76-6-412, so that a violation which would have been: ]

953 [ (a) a second degree felony under Section 76-6-412 if it had been theft is a third  
954 degree felony if it is wrongful appropriation;  
955 (b) a third degree felony under Section 76-6-412 if it had been theft is a class A  
956 misdemeanor if it is wrongful appropriation;  
957 (c) a class A misdemeanor under Section 76-6-412 if it had been theft is a class B  
958 misdemeanor if it is wrongful appropriation; and ]

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

959 ~~(d) a class B misdemeanor under Section 76-6-412 if it had been theft is a class C~~  
960 ~~misdemeanor if it is wrongful appropriation.]~~

961 (4) ~~[Wrongful appropriation]~~ Unauthorized possession of property is a lesser  
962 included offense of the offense of theft under Section 76-6-404.

963 (5) The consent of the owner or legal custodian of the property to the property's control by  
964 the actor is not presumed or implied because of the owner's or legal custodian's consent on  
965 a previous occasion to the control of the property by any person.

966

## 967 76-6-404.7. Theft of motor vehicle fuel.

968 (1) (a) As used in this section, "motor vehicle fuel" means any combustible gas,  
969 liquid, matter, or substance that is used in an internal combustion engine for the generation  
970 of power.

971 (b) Terms defined in Section 76-1-101.5 apply to this section.

972 ~~[(2) A person is guilty of]~~ (2) An actor commits theft of motor vehicle fuel ~~[who]~~ if  
973 the actor:

974 (a) causes a motor vehicle to leave any premises where motor vehicle fuel is offered  
975 for retail sale when motor fuel has been dispensed into:

976 (i) the fuel tank of the motor vehicle; or

977 (ii) any other container that is then removed from the premises by means of the motor  
978 vehicle; and

979 (b) commits the act under Subsection (2)(a) with the intent to deprive the owner or  
980 operator of the premises of the motor vehicle fuel without making full payment for the fuel.

981 (3) A violation of Subsection (2) is:

982 (a) a second degree felony if the value of the motor vehicle fuel is or exceeds \$5,000;

983 (b) a third degree felony if:

984 (i) the value of the motor vehicle fuel is or exceeds \$1,500 but is less than \$5,000; or

985 (ii) the value of the motor vehicle fuel is or exceeds \$500 and the actor has been twice

986 before convicted of any of the following offenses, if each prior offense was committed within  
987 10 years before the date of the current conviction or the date of the offense upon which the  
988 current conviction is based and at least one of those convictions is for a class A  
989 misdemeanor:

990 (A) any theft, any robbery, or any burglary with intent to commit theft;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

991 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or  
992 (C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);  
993 (iii) (A) the value of the motor vehicle fuel is or exceeds \$500 but is less than \$1,500;  
994 (B) the theft occurs on a property where the offender has committed any theft within the past  
995 five years; and  
996 (C) the offender has received written notice from the merchant prohibiting the offender from  
997 entering the property pursuant to Subsection 78B-3-108(4); or  
998 (v) the actor has been previously convicted of a felony violation of any of the offenses listed  
999 in Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if the prior offense was committed within 10  
1000 years before the date of the current conviction or the date of the offense upon which the  
1001 current conviction is based;  
1002 (c) a class A misdemeanor if:  
1003 (i) the value of the motor vehicle fuel is or exceeds \$500 but is less than \$1,500;  
1004 (ii) (A) the value of the motor vehicle fuel is less than \$500;  
1005 (B) the theft occurs on a property where the offender has committed any theft within the past  
1006 five years; and  
1007 (C) the offender has received written notice from the merchant prohibiting the offender from  
1008 entering the property pursuant to Subsection 78B-3-108(4); or  
1009 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections  
1010 (3)(b)(ii)(A) through (3)(b)(ii)(C), if each prior offense was committed within 10 years before  
1011 the date of the current conviction or the date of the offense upon which the current conviction  
1012 is based; or  
1013 (d) a class B misdemeanor if the value of the motor vehicle fuel is less than \$500 and the  
1014 theft is not an offense under Subsection (3)(c).

1015 [ (3) ] (4) (a) In addition to the penalties [for theft under Section 76-6-412] described  
1016 in Subsection (3), the sentencing court may order the suspension of the driver license of [a  
1017 person] an actor convicted of theft of motor vehicle fuel.  
1018 (b) The suspension described in Subsection (4)(a) may not be for more than 90 days as  
1019 provided in Section 53-3-220.

## 1021 76-6-405. Theft by deception.

1022 (1) (a) As used in this section, "puffing" means an exaggerated commendation of

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1023 wares or worth in a communication addressed to an individual, group, or the public. 1

1024 **(b) Terms defined in Section 76-1-101.5 apply to this section.**

1025 (2) (a) [A person] An actor commits theft by deception if the [person] actor obtains  
1026 or exercises control over property of another person:

1027 (i) by deception; and

1028 (ii) with a purpose to deprive the other person of property.

1029 (b) The deception described in Subsection (2)(a)(i) and the deprivation described in  
1030 Subsection (2)(a)(ii) may occur at separate times.

1031 **(3) A violation of Subsection (2) is:**

1032 **(a) a second degree felony if the:**

1033 **(i) value of the property is or exceeds \$5,000; or**

1034 **(ii) property stolen is a firearm or an operable motor vehicle;**

1035 **(b) a third degree felony if:**

1036 **(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;**

1037 **(ii) the property is a catalytic converter as defined under Section 76-6-1402;**

1038 **(iii) the value of the property is or exceeds \$500 and the actor has been twice before**  
1039 **convicted of any of the following offenses, if each prior offense was committed within 10**  
1040 **years before the date of the current conviction or the date of the offense upon which the**  
1041 **current conviction is based and at least one of those convictions is for a class A**

1042 **misdemeanor:**

1043 **(A) any theft, any robbery, or any burglary with intent to commit theft;**

1044 **(B) any offense under Title 76, Chapter 6, Part 5, Fraud; or**

1045 **(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);**

1046 **(iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;**

1047 **(B) the theft occurs on a property where the offender has committed any theft within the past**  
1048 **five years; and**

1049 **(C) the offender has received written notice from the merchant prohibiting the offender from**  
1050 **entering the property pursuant to Subsection 78B-3-108(4); or**

1051 **(v) the actor has been previously convicted of a felony violation of any of the offenses listed**  
1052 **in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10**  
1053 **years before the date of the current conviction or the date of the offense upon which the**  
1054 **current conviction is based;**

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1055 (c) a class A misdemeanor if:  
1056 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;  
1057 (ii) (A) the value of property is less than \$500;  
1058 (B) the theft occurs on a property where the offender has committed any theft within the past  
1059 five years; and  
1060 (C) the offender has received written notice from the merchant prohibiting the offender from  
1061 entering the property pursuant to Subsection 78B-3-108(4); or  
1062 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections  
1063 (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
1064 the date of the current conviction or the date of the offense upon which the current conviction  
1065 is based; or  
1066 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft  
1067 is not an offense under Subsection (3)(c).

1068 [③] (4) Theft by deception does not occur when there is only:

1069 (a) falsity as to matters having no pecuniary significance; or  
1070 (b) puffing by statements unlikely to deceive an ordinary person in the group  
1071 addressed.

1072

## 76-6-406. Theft by extortion.

1074 [—— (1) An actor is guilty of theft if the actor obtains or exercises control over the property  
1075 of another person by extortion and with a purpose to deprive the person of the person's  
1076 property.]

1077 [—— (2) ] (1) (a) As used in this section, extortion occurs when an actor threatens to:

1078 [①] (i) cause physical harm in the future to the person threatened [or] , to any  
1079 other person , or to property at any time;

1080 [②] (ii) subject the person threatened or any other person to physical confinement or  
1081 restraint;

1082 [③] (iii) engage in other conduct constituting a crime;

1083 [④] (iv) accuse any person of a crime or expose any person to hatred, contempt, or  
1084 ridicule;

1085 [⑤] (v) reveal any information sought to be concealed by the person threatened;

1086 [⑥] (vi) testify [or] , provide information , or withhold testimony or information with

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1087 respect to a person's legal claim or defense;

1088 [({g})] (vii) take action as an official against anyone or anything, or withhold official

1089 action, or cause such action or withholding;

1090 [({h})] (viii) bring about or continue a strike, boycott, or other similar collective action to

1091 obtain property that is not demanded or received for the benefit of the group that the actor

1092 purports to represent; or

1093 [({i})] (ix) do any other act which would not in itself substantially benefit the actor but

1094 which would harm substantially any other person with respect to that person's health, safety,

1095 business, calling, career, financial condition, reputation, or personal relationships.

1096 (b) Terms defined in Section 76-1-101.5 apply to this section.

1097 (2) An actor commits theft by extortion if the actor obtains or exercises control over the

1098 property of another person by extortion and with a purpose to deprive the person of the

1099 person's property.

1100 (3) A violation of Subsection (2) is:

1101 (a) a second degree felony if the:

1102 (i) value of the property is or exceeds \$5,000;

1103 (ii) property stolen is a firearm or an operable motor vehicle; or

1104 (iii) property is stolen from the person of another;

1105 (b) a third degree felony if:

1106 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

1107 (ii) the property is a catalytic converter as defined under Section 76-6-1402;

1108 (iii) the value of the property is or exceeds \$500 and the actor has been twice before

1109 convicted of any of the following offenses, if each prior offense was committed within 10

1110 years before the date of the current conviction or the date of the offense upon which the

1111 current conviction is based and at least one of those convictions is for a class A

1112 misdemeanor:

1113 (A) any theft, any robbery, or any burglary with intent to commit theft;

1114 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

1115 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

1116 (iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;

1117 (B) the theft occurs on a property where the offender has committed any theft within the past

1118 five years; and

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1119 (C) the offender has received written notice from the merchant prohibiting the offender from  
1120 entering the property pursuant to Subsection 78B-3-108(4); or  
1121 (v) the actor has been previously convicted of a felony violation of any of the offenses listed  
1122 in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10  
1123 years before the date of the current conviction or the date of the offense upon which the  
1124 current conviction is based;  
1125 (c) a class A misdemeanor if:  
1126 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;  
1127 (ii) (A) the value of property is less than \$500;  
1128 (B) the theft occurs on a property where the offender has committed any theft within the past  
1129 five years; and  
1130 (C) the offender has received written notice from the merchant prohibiting the offender from  
1131 entering the property pursuant to Subsection 78B-3-108(4); or  
1132 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections  
1133 (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
1134 the date of the current conviction or the date of the offense upon which the current conviction  
1135 is based; or  
1136 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft  
1137 is not an offense under Subsection (3)(c).

1138 [ (3) ] (4) (a) A person who is adversely impacted by the conduct prohibited in  
1139 Subsection [ (1) ] (2) may bring a civil action for equitable relief and damages.  
1140 (b) In accordance with Section 78B-2-305, a person who brings an action under  
1141 Subsection [ (3) ] (4) (a) shall commence the action within three years after the day on which  
1142 the cause of action arises.

1143  
1144 **76-6-407. Theft of lost, mislaid, or mistakenly delivered property.**  
1145 (1) Terms defined in Section 76-1-101.5 apply to this section.

1146 [A person commits theft when:] (2) An actor commits theft of lost, mislaid, or mistakenly  
1147 delivered property if the actor:  
1148 [(1) He] (a) obtains another person's property [of another which he] and knows the  
1149 property to have been lost or mislaid, or to have been delivered under a mistake as to the  
1150 identity of the recipient or as to the nature or amount of the property, without taking

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1151 reasonable measures to return [it] the property to the owner; and

1152 [({2}) He] (b) has the purpose to deprive the owner of the property when [he] the actor  
1153 obtains the property or at any time prior to before taking the measures designated in  
1154 paragraph (1)] described in Subsection (2)(a) .

1155 (3) A violation of Subsection (2) is:

1156 (a) a second degree felony if the:

1157 (i) value of the property is or exceeds \$5,000;

1158 (ii) property stolen is a firearm or an operable motor vehicle; or

1159 (iii) property is stolen from the person of another;

1160 (b) a third degree felony if:

1161 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

1162 (ii) the property is a catalytic converter as defined under Section 76-6-1402;

1163 (iii) the value of the property is or exceeds \$500 and the actor has been twice before  
1164 convicted of any of the following offenses, if each prior offense was committed within 10  
1165 years before the date of the current conviction or the date of the offense upon which the  
1166 current conviction is based and at least one of those convictions is for a class A  
1167 misdemeanor:

1168 (A) any theft, any robbery, or any burglary with intent to commit theft;

1169 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

1170 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

1171 (iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;

1172 (B) the theft occurs on a property where the offender has committed any theft within the past  
1173 five years; and

1174 (C) the offender has received written notice from the merchant prohibiting the offender from  
1175 entering the property pursuant to Subsection 78B-3-108(4); or

1176 (v) the actor has been previously convicted of a felony violation of any of the offenses listed  
1177 in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10  
1178 years before the date of the current conviction or the date of the offense upon which the  
1179 current conviction is based;

1180 (c) a class A misdemeanor if:

1181 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

1182 (ii) (A) the value of property is less than \$500;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1183 (B) the theft occurs on a property where the offender has committed any theft within the past  
1184 five years; and  
1185 (C) the offender has received written notice from the merchant prohibiting the offender from  
1186 entering the property pursuant to Subsection 78B-3-108(4); or  
1187 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections  
1188 (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
1189 the date of the current conviction or the date of the offense upon which the current conviction  
1190 is based; or  
1191 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft  
1192 is not an offense under Subsection (3)(c).

1193

1194 **76-6-408. [Receiving] Theft by receiving stolen property -- Duties of pawnbrokers,**  
1195 **secondhand businesses, coin dealers, and catalytic converter purchasers.**

1196 (1) (a) As used in this section:

1197 [(a)] (i) "Catalytic converter purchaser" means the same as that term is defined in  
1198 Section 13-32a-102.

1199 [(b)] (ii) "Coin dealer" means the same as that term is defined in Section  
1200 13-32a-102.

1201 [(c)] (iii) "Pawnbroker" means the same as that term is defined in Section  
1202 13-32a-102.

1203 [(d)] (iv) "Receives" means acquiring possession, control, title, or lending on the  
1204 security of the property.

1205 [(e)] (v) "Scrap metal processor" means the same as that term is defined in Section  
1206 76-6-1402.

1207 [(f)] (vi) "Secondhand actor" means:

1208 [(f)] (A) a pawnbroker;

1209 [(f)] (B) a person who has or operates a business dealing in or collecting used or  
1210 secondhand merchandise or personal property; or

1211 [(f)] (C) an agent, employee, or representative of a pawnbroker or person who  
1212 buys, receives, or obtains property. .

1213 (b) Terms defined in Section 76-1-101.5 apply to this section.

1214 [(2) A person] (2) An actor commits theft by receiving stolen property if the

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1215 [person] actor receives, retains, or disposes of the property of another knowing that the  
1216 property is stolen, or believing that the property is probably stolen, or who conceals, sells,  
1217 withholds, or aids in concealing, selling, or withholding the property from the owner, knowing  
1218 or believing the property to be stolen, intending to deprive the owner of the property. 1

1219 (3) A violation of Subsection (2) is:

1220 (a) a second degree felony if:

1221 (i) the value of the property is or exceeds \$5,000; or

1222 (ii) the property is a firearm or an operable motor vehicle;

1223 (b) a third degree felony if:

1224 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

1225 (ii) the property is a catalytic converter as defined under Section 76-6-1402;

1226 (iii) the value of the property is or exceeds \$500 and the actor has been twice before  
convicted of any of the following offenses, if each prior offense was committed within 10

1227 years before the date of the current conviction or the date of the offense upon which the  
current conviction is based and at least one of those convictions is for a class A

1228 misdemeanor:

1231 (A) any theft, any robbery, or any burglary with intent to commit theft;

1232 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

1233 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B); or

1234 (iv) the actor has been previously convicted of a felony violation of any of the offenses listed  
in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10  
years before the date of the current conviction or the date of the offense upon which the  
current conviction is based;

1238 (c) a class A misdemeanor if:

1239 (i) the value of the property is or exceeds \$500 but is less than \$1,500; or

1240 (ii) the actor has been twice before convicted of any of the offenses listed in Subsections  
(3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
the date of the current conviction or the date of the offense upon which the current conviction  
is based; or

1244 (d) a class B misdemeanor if the value of the property is less than \$500 and the theft is not  
an offense under Subsection (3)(c).

1246 [— (3)] (4) Except as provided in Subsection [4] (5), the knowledge or belief required

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1247 under Subsection (2) is presumed in the case of an actor who:

1248       (a) is found in possession or control of other property stolen on a separate occasion;

1249       or

1250       (b) has received other stolen property within the year preceding the receiving offense

1251 charged.

1252       [(4)] (5) (a) The knowledge or belief required under Subsection (2) may only be

1253 presumed of a secondhand actor if the secondhand actor does not substantially comply with

1254 the material requirements of Section 13-32a-104.

1255       (b) The knowledge or belief required under Subsection (2) may only be presumed of a

1256 coin dealer or an employee of a coin dealer if the coin dealer or the employee of the coin

1257 dealer does not substantially comply with the requirements of Section 13-32a-104.5.

1258       (c) The knowledge or belief required under Subsection (2) may only be presumed of a

1259 catalytic converter purchaser if the catalytic converter purchaser does not substantially

1260 comply with the material requirements of Section 13-32a-104.7.

1261       [(5)] (6) Unless acting as a catalytic converter purchaser, Subsection [(4)] (5)(c)

1262 does not apply to a scrap metal processor.

1263       [(6)] (7) This section does not preclude the admission of evidence in accordance

1264 with the Utah Rules of Evidence.

1265 (8) An actor who violates Subsection (2) is civilly liable for three times the amount of actual

1266 damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

1267

1268 **76-6-409. Theft of [services] service .**

1269       (1) (a) As used in this section, "service" includes:

1270       (i) labor, professional service, a public utility or transportation service, restaurant, hotel,

1271       motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, a

1272       tool, a vehicle, or a trailer for temporary use, telegraph service, steam, admission to

1273       entertainment, an exhibition, a sporting event, or other event for which a charge is made;

1274       (ii) gas, electricity, water, sewer, or cable television service, only if the service is obtained by

1275       threat, force, or a form of deception not described in Section 76-6-409.3; and

1276       (iii) telephone service, only if the service is obtained by threat, force, or a form of deception

1277       not described in Sections 76-6-409.5 through 76-6-409.9.

1278       (b) Terms defined in Section 76-1-101.5 apply to this section.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1279 ~~[(1) A person] (2) An actor~~ commits theft ~~if he~~ of service if:

1280 (a) the actor, by deception, threat, force, or another means designed to avoid due payment,

1281 obtains [services which he] a service that the actor knows [are] is available only for

1282 compensation[by deception, threat, force, or any other means designed to avoid the due

1283 payment for them.] ; or

1284 ~~[(2) A person commits theft if] (b) the actor:~~

1285 (i) has control over the disposition of another person's service; and

1286 (ii) (A) diverts the other person's service to the benefit of the actor, knowing that the actor is

1287 not entitled to the service; or

1288 (B) diverts the other person's service to the benefit of a third person, knowing that the third

1289 person is not entitled to the service. [, having control over the disposition of services of

1290 another, to which he knows he is not entitled, he diverts the services to his own benefit or to

1291 the benefit of another who he knows is not entitled to them.]

1292 ~~[(3) In this section "services" includes, but is not limited to, labor, professional service,~~

1293 ~~public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming~~

1294 ~~house, and like accommodations, the supplying of equipment, tools, vehicles, or trailers for~~

1295 ~~temporary use, telephone or telegraph service, steam, admission to entertainment,~~

1296 ~~exhibitions, sporting events, or other events for which a charge is made.~~

1297 ~~[(4) Under this section "services" includes gas, electricity, water, sewer, or cable~~

1298 ~~television services, only if the services are obtained by threat, force, or a form of deception~~

1299 ~~not described in Section 76-6-409.3.~~

1300 ~~[(5) Under this section "services" includes telephone services only if the services are~~

1301 ~~obtained by threat, force, or a form of deception not described in Sections 76-6-409.5~~

1302 ~~through 76-6-409.9.]~~

1303 (3) A violation of Subsection (2) is:

1304 (a) a second degree felony if the value of the service is or exceeds \$5,000;

1305 (b) a third degree felony if:

1306 (i) the value of the service is or exceeds \$1,500 but is less than \$5,000;

1307 (ii) the value of the service is or exceeds \$500 and the actor has been twice before

1308 convicted of any of the following offenses, if each prior offense was committed within 10

1309 years before the date of the current conviction or the date of the offense upon which the

1310 current conviction is based and at least one of those convictions is for a class A

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1311 misdemeanor:

1312 (A) any theft, any robbery, or any burglary with intent to commit theft;

1313 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

1314 (C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);

1315 (iii) (A) the value of the service is or exceeds \$500 but is less than \$1,500;

1316 (B) the theft occurs on a property where the offender has committed any theft within the past

1317 five years; and

1318 (C) the offender has received written notice from the merchant prohibiting the offender from

1319 entering the property pursuant to Subsection 78B-3-108(4); or

1320 (iv) the actor has been previously convicted of a felony violation of any of the offenses listed

1321 in Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if the prior offense was committed within 10

1322 years before the date of the current conviction or the date of the offense upon which the

1323 current conviction is based;

1324 (c) a class A misdemeanor if:

1325 (i) the value of the service stolen is or exceeds \$500 but is less than \$1,500;

1326 (ii) (A) the value of the service is less than \$500;

1327 (B) the theft occurs on a property where the offender has committed any theft within the past

1328 five years; and

1329 (C) the offender has received written notice from the merchant prohibiting the offender from

1330 entering the property pursuant to Subsection 78B-3-108(4); or

1331 (iii) the actor has been twice before convicted of any of the offenses listed in Subsections

1332 (3)(b)(ii)(A) through (3)(b)(ii)(C), if each prior offense was committed within 10 years before

1333 the date of the current conviction or the date of the offense upon which the current conviction

1334 is based; or

1335 (d) a class B misdemeanor if the value of the service is less than \$500 and the theft is not an

1336 offense under Subsection (3)(c).

1337

1338 **76-6-409.1. [Devices] Unlawful device for theft of [services] service -- Seizure and**

1339 **destruction -- Civil actions for damages.**

1340 (1) Terms defined in Section 76-1-101.5 apply to this section.

1341 [—— (1) A person may not knowingly:] (2) An actor commits unlawful device for theft of

1342 service if the actor:

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1343 (a) make or possess any makes or possesses an instrument, apparatus,  
1344 equipment, or device for the use of, or for the purpose of, committing or attempting to commit  
1345 theft under Section 76-6-409 or 76-6-409.3; or  
1346 (b) sell, offer to sell, advertise, give, transport, or otherwise transfer sells, offers to  
1347 sell, advertises, gives, transports, or otherwise transfers to another person:  
1348 (i) any information, ] an instrument, apparatus, equipment, or device~~[,]~~ ; or  
1349 (ii) any information, plan, or instruction for obtaining, making, or assembling the same an  
1350 instrument, apparatus, equipment, or device, with intent that it the instrument, apparatus,  
1351 equipment, or device be used, or caused to be used, to commit or attempt to commit theft  
1352 under Section 76-6-409 or 76-6-409.3.

1353 [2] (a) Any information, instrument, apparatus, equipment, or device, or information,  
1354 plan, or instruction referred to in Subsection (1) may be seized pursuant to a court order,  
1355 lawful search and seizure, lawful arrest, or other lawful process.

1356 (b) Upon the conviction of any person for a violation of any provision of this section,  
1357 any information, instrument, apparatus, equipment, device, plan, or instruction shall be  
1358 destroyed as contraband by the sheriff of the county in which the person was convicted.]

1359 [§3-A person who violates any provision] (3) (a) A violation of Subsection (1) or  
1360 (2) is guilty of a class A misdemeanor.

1361 (b) Any instrument, apparatus, equipment, device, information, plan, or instruction referred  
1362 to in Subsection (2) may be seized pursuant to a court order, lawful search and seizure,  
1363 lawful arrest, or other lawful process.

1364 (c) Upon the conviction of an actor for a violation of this section, the sheriff of the county in  
1365 which the actor was convicted shall destroy as contraband any instrument, apparatus,  
1366 equipment, device, information, plan, or instruction.

[4] ~~Criminal prosecutions~~ (4) A criminal prosecution under this section ~~do~~ does not affect any person's right of civil action for redress for damages suffered as a result of ~~any~~ a violation of this section.

1371 76-6-409.3. Theft of utility or cable television **[services]** **service** -- Restitution -- Civil  
1372 action for damages.

1373 (1) (a) As used in this section:

1374 [a)] (i) "Cable television service" means [any] an audio, video, or data service

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1375 provided for payment by a cable television company over [its] the cable television  
1376 company's cable system facilities[for payment], but does not include the use of a satellite  
1377 dish or antenna.

1378 (ii) "Occupant" includes a person, including the owner, who occupies the whole or part  
1379 of a building, whether alone or with others.

1380 [(b)] (iii) "Owner" includes [any part-owner] a partial owner, joint owner, tenant in  
1381 common, joint tenant, or tenant by the entirety of the whole or a part of [any] a building and  
1382 the property on which [it] the building is located.

1383 [(c)] (iv) "Person" means [any] an individual, firm, partnership, corporation,  
1384 company, association, or other legal entity.

1385 (v) "Prohibited act" includes:

1386 (A) connecting a tube, pipe, wire, cable, or other instrument with a meter, device, or other  
1387 instrument used for conducting gas, electricity, water, sewer, or cable television in a manner  
1388 as permits the use of the gas, electricity, water, sewer, or cable television without the gas,  
1389 electricity, water, sewer, or cable television passing through a meter or other instrument  
1390 recording the usage for billing;

1391 (B) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or other  
1392 instrument used for measuring quantities of gas, electricity, water, or sewer service, or  
1393 making or maintaining any modification or alteration to a device installed with the  
1394 authorization of a cable television company for the purpose of intercepting or receiving any  
1395 program or other service carried by the company that the actor is not authorized by the  
1396 company to receive;

1397 (C) reconnecting a gas, electricity, water, sewer, or cable television connection or otherwise  
1398 restoring service when one or more of those utilities or cable service has been lawfully  
1399 disconnected or turned off by the provider of the utility or cable service;

1400 (D) intentionally breaking, defacing, or causing to be broken or defaced a seal, locking  
1401 device, or other part of a metering device for recording usage of gas, electricity, water, or  
1402 sewer service, or a security system for the recording device, or a cable television control  
1403 device;

1404 (E) removing a metering device designed to measure quantities of gas, electricity, water, or  
1405 sewer service;

1406 (F) transferring from one location to another location a metering device for measuring

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1407 quantities of public utility services of gas, electricity, water, or sewer service;  
1408 (G) changing the indicated consumption, jamming the measuring device, bypassing the  
1409 meter or measuring device with a jumper so that it does not indicate use or registers use  
1410 incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from  
1411 the utility without the gas, electricity, water, or sewer service passing through a metering  
1412 device for measuring quantities of consumption for billing purposes;  
1413 (H) using a metering device belonging to the utility that has not been assigned to the location  
1414 and installed by the utility;  
1415 (I) fabricating or using a device to pick or otherwise tamper with the locks used to deter utility  
1416 service diversion, meter tampering, meter thefts, or unauthorized cable television service;  
1417 (J) assisting or instructing a person in obtaining or attempting to obtain a cable television  
1418 service without payment of all lawful compensation to the company providing the service;  
1419 (K) making or maintaining a connection or connections, whether physical, electrical,  
1420 mechanical, acoustical, or by other means, with a cable, wire, component, or other device  
1421 used for the distribution of cable television service without authority from the cable television  
1422 company; and  
1423 (L) possessing without authority a device or printed circuit board designed in whole or in part  
1424 to receive cable television programming or service offered for sale over a cable television  
1425 system, unless the device or printed circuit board includes the use of a satellite dish or  
1426 antenna, with the intent that the device or printed circuit be used for the reception of the  
1427 cable television company's services without payment.

1428 [¶] (vi) "Tenant [or occupant]" includes [any] a person, including the owner, who

1429 occupies the whole or part of any building, whether alone or with others.

1430 [¶] (vii) "Utility" means any public utility, municipally[-]owned utility, or cooperative

1431 utility [which] that provides electricity, gas, water, or sewer, or any combination of [them]

1432 electricity, gas, water, or sewer, for sale to consumers.

1433 (b) Terms defined in Section 76-1-101.5 apply to this section.

1434 [— (2) A person is guilty of] (2) An actor commits theft of a utility or cable television

1435 service if the [person commits any prohibited acts which make] actor commits a prohibited

1436 act that makes gas, electricity, water, sewer, or cable television available to a tenant or

1437 occupant, including [himself] to the actor, with intent to avoid due payment to the utility or

1438 cable television company. [Any person aiding and abetting in these prohibited acts is a party]

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1439 to the offense under Section 76-2-202.] [Prohibited acts include:

1440 (a) connecting any tube, pipe, wire, cable, or other instrument with any meter, device,  
1441 or other instrument used for conducting gas, electricity, water, sewer, or cable television in a  
1442 manner as permits the use of the gas, electricity, water, sewer, or cable television without its  
1443 passing through a meter or other instrument recording the usage for billing;]  
1444 [(b) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or  
1445 other instrument used for measuring quantities of gas, electricity, water, or sewer service, or  
1446 making or maintaining any modification or alteration to any device installed with the  
1447 authorization of a cable television company for the purpose of intercepting or receiving any  
1448 program or other service carried by the company which the person is not authorized by the  
1449 company to receive;]

1450 [(c) reconnecting gas, electricity, water, sewer, or cable television connections or  
1451 otherwise restoring service when one or more of those utilities or cable service have been  
1452 lawfully disconnected or turned off by the provider of the utility or cable service;]  
1453 [(d) intentionally breaking, defacing, or causing to be broken or defaced any seal,  
1454 locking device, or other part of a metering device for recording usage of gas, electricity,  
1455 water, or sewer service, or a security system for the recording device, or a cable television  
1456 control device;]

1457 [(e) removing a metering device designed to measure quantities of gas, electricity,  
1458 water, or sewer service;]  
1459 [(f) transferring from one location to another a metering device for measuring  
1460 quantities of public utility services of gas, electricity, water, or sewer service;]  
1461 [(g) changing the indicated consumption, jamming the measuring device, bypassing  
1462 the meter or measuring device with a jumper so that it does not indicate use or registers use  
1463 incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from  
1464 the utility without their passing through a metering device for measuring quantities of  
1465 consumption for billing purposes;]  
1466 [(h) using a metering device belonging to the utility that has not been assigned to the  
1467 location and installed by the utility;]  
1468 [(i) fabricating or using a device to pick or otherwise tamper with the locks used to  
1469 deter utility service diversion, meter tampering, meter thefts, and unauthorized cable  
1470 television service;]

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1471 [—— (j) assisting or instructing any person in obtaining or attempting to obtain any cable  
1472 television service without payment of all lawful compensation to the company providing the  
1473 service;]  
1474 [—— (k) making or maintaining a connection or connections, whether physical, electrical,  
1475 mechanical, acoustical, or by other means, with any cables, wires, components, or other  
1476 devices used for the distribution of cable television services without authority from the cable  
1477 television company; or]  
1478 [—— (l) possessing without authority any device or printed circuit board designed in whole  
1479 or in part to receive any cable television programming or services offered for sale over a  
1480 cable television system with the intent that the device or printed circuit be used for the  
1481 reception of the cable television company's services without payment. For purposes of this  
1482 subsection, device or printed circuit board does not include the use of a satellite dish or  
1483 antenna.]

1484 [—— (3) ]

1485 (3) (a) A violation of Subsection (2), if the violation is a theft of a utility service, is:  
1486 (i) a second degree felony if:  
1487 (A) the value of the gas, electricity, water, or sewer service is or exceeds \$5,000; or  
1488 (B) if the actor previously has been convicted of a violation of this section;  
1489 (ii) a third degree felony if the value of the gas, electricity, water, or sewer service is or  
1490 exceeds \$1,500 but is not more than \$5,000;  
1491 (iii) a class A misdemeanor if the value of the gas, electricity, water, or sewer service is or  
1492 exceeds \$500 but is not more than \$1,500; or  
1493 (iv) a class B misdemeanor if the value of the gas, electricity, water, or sewer service is less  
1494 than \$500.  
1495 (b) A violation of Subsection (2), if the violation is a theft of a cable television service, is:  
1496 (i) a second degree felony if the value of the service is or exceeds \$5,000;  
1497 (ii) a third degree felony if:  
1498 (A) the value of the service is or exceeds \$1,500 but is less than \$5,000;  
1499 (B) the value of the service is or exceeds \$500 and the actor has been twice before  
1500 convicted of any of the following offenses, if each prior offense was committed within 10  
1501 years before the date of the current conviction or the date of the offense upon which the  
1502 current conviction is based and at least one of those convictions is for a class A

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1503 misdemeanor:

1504 (I) any theft, any robbery, or any burglary with intent to commit theft;

1505 (II) any offense under Title 76, Chapter 6, Part 5, Fraud; or

1506 (III) any attempt to commit any offense under Subsection (3)(b)(ii)(B)(I) or (II); or

1507 (C) the actor has been previously convicted of a felony violation of any of the offenses listed

1508 in Subsections (3)(b)(ii)(B)(I) through (3)(b)(ii)(B)(III), if the prior offense was committed within

1509 10 years before the date of the current conviction or the date of the offense upon which the

1510 current conviction is based;

1511 (iii) a class A misdemeanor if:

1512 (A) the value of the service stolen is or exceeds \$500 but is less than \$1,500; or

1513 (B) the actor has been twice before convicted of any of the offenses listed in Subsections

1514 (3)(b)(ii)(B)(I) through (3)(b)(ii)(B)(III), if each prior offense was committed within 10 years

1515 before the date of the current conviction or the date of the offense upon which the current

1516 conviction is based; or

1517 (iv) a class B misdemeanor if the value of the service is less than \$500 and the theft is not

1518 an offense under Subsection (3)(b)(iii).

1519 (c) (i) An actor who violates this section shall make restitution to the utility or cable television

1520 company for the value of the gas, electricity, water, sewer, or cable television service

1521 consumed in violation of this section plus all reasonable expenses and costs incurred on

1522 account of the violation of this section.

1523 (ii) Reasonable expenses and costs include expenses and costs for investigation,

1524 disconnection, reconnection, service calls, employee time, and equipment use.

1525 (4) (a) The presence on property in the possession of [a person of any device] an actor of a

1526 device or alteration [which] that permits the diversion or use of utility or cable service to

1527 avoid the registration of the use by or on a meter installed by the utility or to otherwise avoid

1528 the recording of use of the service for payment or otherwise avoid payment gives rise to an

1529 inference that the [person] actor in possession of the property installed the device or caused

1530 the alteration if:

1531 [(a)] (i) the presence of the device or alteration can be attributed only to a deliberate

1532 act in furtherance of an intent to avoid payment for utility or cable television service; and

1533 [(b)] (ii) the [person] actor charged has received the direct benefit of the reduction

1534 of the cost of the utility or cable television service.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1535 (b) An actor who aids or abets in a prohibited act is a party to the offense under Section  
1536 76-2-202.

1537 [ (4) A person who violates this section is guilty of the offense of theft of utility or cable  
1538 television service.]

1539 [ (a) In the case of theft of utility services, if the value of the gas, electricity, water, or  
1540 sewer service:

1541 (i) is less than \$500, the offense is a class B misdemeanor;

1542 (ii) is or exceeds \$500 but is not more than \$1,500, the offense is a class A  
1543 misdemeanor;]

1544 [ (iii) is or exceeds \$1,500 but is not more than \$5,000, the offense is a third degree  
1545 felony; and

1546 [ (iv) is or exceeds \$5,000 or if the offender has previously been convicted of a  
1547 violation of this section, the offense is a second degree felony.]

1548 [ (b) In the case of theft of cable television services, the penalties are prescribed in  
1549 Section 76-6-412.]

1550 [ (5) A person who violates this section shall make restitution to the utility or cable  
1551 television company for the value of the gas, electricity, water, sewer, or cable television  
1552 service consumed in violation of this section plus all reasonable expenses and costs incurred  
1553 on account of the violation of this section. Reasonable expenses and costs include  
1554 expenses and costs for investigation, disconnection, reconnection, service calls, employee  
1555 time, and equipment use.]

1556 [ (6) ] (5) (a) Criminal prosecution under this section does not affect the right of a  
1557 utility or cable television company to bring a civil action for redress for damages suffered as a  
1558 result of the commission of any of the acts prohibited by this section.

1559 [ (7) ] (b) This section does not abridge or alter any other right, action, or remedy  
1560 otherwise available to a utility or cable television company.

1561

1562 **76-6-409.6. Use of telecommunication device to avoid lawful charge for service** [--  
1563 **Penalty**].

1564 (1) Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

1565 [ (1) Any person who uses] (2) An actor commits use of a telecommunication device  
1566 to avoid lawful charge for service if the actor uses a telecommunication device :

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1567 (a) with the intent to avoid the payment of [any] a lawful charge for telecommunication  
1568 service ; or

1569 (b) with the knowledge that [it] the use of the telecommunication device was to avoid the  
1570 payment of [any] a lawful charge for telecommunication service [~~is guilty of:~~] .

1571 (3) (a) A violation of Subsection (2) is:

1572 [(a)] (i) a class B misdemeanor, if the value of the telecommunication service is  
1573 less than \$300 or cannot be ascertained;

1574 [(b)] (ii) a class A misdemeanor, if the value of the telecommunication service  
1575 charge is or exceeds \$300 but is not more than \$1,000;

1576 [(c)] (iii) a third degree felony, if the value of the telecommunication service is or  
1577 exceeds \$1,000 but is not more than \$5,000; or

1578 [(d)] (iv) a second degree felony, if:

1579 [(i)] (A) the value of the telecommunication service is or exceeds \$5,000; or

1580 [(ii)] (B) the cloned cellular telephone was used to facilitate the commission of a  
1581 felony~~;~~ or

1582 (C) the actor previously has been convicted of a violation of this section.

1583 [— (2) ~~Any person who has been convicted previously of an offense under this section is  
guilty of a second degree felony upon a second conviction and any subsequent conviction.~~]

1585 (b) An actor who violates this section is subject to the restitution and civil action provisions  
1586 described in Section 76-6-409.10.

1587

1588 **76-6-409.7. Possession of [any] unlawful telecommunication device [--Penalty].**

1589 (1) Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

1590 [— (1) ~~Any person who~~] (2) An actor commits possession of unlawful telecommunication  
1591 device if the actor knowingly possesses an unlawful telecommunication device [~~is guilty of a  
1592 class B misdemeanor~~].

1593 [— (2) ~~Any person~~] (3) (a) Except as provided in Subsection (3)(b) or (3)(c), a violation of  
1594 Subsection (2) is a class B misdemeanor.

1595 (b) Except as provided in Subsection (3)(c), a violation of Subsection (2) is a third degree  
1596 felony if the actor [~~who~~] knowingly possesses five or more unlawful telecommunication  
1597 devices in the same criminal episode~~[is guilty of a third degree felony]~~.

1598 [— (3) ~~Any person is guilty of a~~] (c) A violation of Subsection (2) is a second degree

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1599 felony [who:] if the actor:

1600 [(a)] (i) knowingly and unlawfully possesses an instrument capable of intercepting  
1601 electronic serial number and mobile identification number combinations under circumstances  
1602 evidencing an intent to clone; or  
1603 [(b)] (ii) knowingly and unlawfully possesses cloning paraphernalia under  
1604 circumstances evidencing an intent to clone.

1605 (d) An actor who violates this section is subject to the restitution and civil action provisions  
1606 described in Section 76-6-409.10.

1607

1608 **76-6-409.8. Sale of an unlawful telecommunication device**[--Penalty].

1609 (1) Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

1610 [(1) Any person is guilty of a third degree felony who] (2) An actor commits sale of  
1611 unlawful telecommunication device if the actor intentionally sells an unlawful  
1612 telecommunication device or material, including hardware, data, computer software, or other  
1613 information or equipment, knowing that the purchaser or a third person intends to use such  
1614 material in the manufacture of an unlawful telecommunication device.

1615 (3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree  
1616 felony.

1617 [(2) If] (b) A violation of Subsection (2) is a second degree felony if the offense [under this  
1618 section] involves the intentional sale of five or more unlawful telecommunication devices  
1619 within a six-month period[(the person committing the offense is guilty of a second degree  
1620 felony)].

1621 (c) An actor who violates this section is subject to the restitution and civil action provisions  
1622 described in Section 76-6-409.10.

1623

1624 **76-6-409.9. Manufacture of an unlawful telecommunication device**[--Penalty].

1625 (1) Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

1626 [(1) Any person who] (2) An actor commits manufacture of unlawful  
1627 telecommunication device if the actor intentionally manufactures an unlawful  
1628 telecommunication device [is guilty of a third degree felony].

1629 [(2) If the offense under this section] (3) (a) Except as provided in Subsection (3)(b),  
1630 a violation of Subsection (2) is a third degree felony.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1631 (b) A violation of Subsection (2) is a second degree felony if the offense involves the  
1632 intentional manufacture of five or more unlawful telecommunication devices within a  
1633 six-month period, ~~the person committing the offense is guilty of a second degree felony~~.  
1634 (c) An actor who violates this section is subject to the restitution and civil action provisions  
1635 described in Section 76-6-409.10.

1636

## 1637 76-6-409.10. Payment of restitution -- Civil action -- Other remedies retained.

1638 (1) Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

1639 [ (1) A person] (2) (a) (i) An actor who violates ~~Sections 76-6-409.5 through~~  
1640 Section 76-6-409.6, 76-6-409.7, 76-6-409.8, or 76-6-409.9 shall make restitution to the  
1641 telecommunication service provider for the value of the telecommunication service consumed  
1642 in ~~violation of this section~~ the violation plus all reasonable expenses and costs incurred on  
1643 account of the violation ~~of this section~~.

1644 (ii) Reasonable expenses and costs include expenses and costs for investigation, service  
1645 calls, employee time, and equipment use.

1646 [ (2) Criminal] (b) A criminal prosecution under ~~this section~~ Section 76-6-409.6,  
1647 76-6-409.7, 76-6-409.8, or 76-6-409.9 does not affect the right of a telecommunication  
1648 service provider to bring a civil action for redress for damages suffered as a result of the  
1649 commission of any of the acts prohibited by ~~this section~~ Section 76-6-409.6, 76-6-409.7,  
1650 76-6-409.8, or 76-6-409.9.

1651 (3) This section does not abridge or alter any other right, action, or remedy otherwise  
1652 available to a telecommunication service provider.

1653

## 1654 76-6-410. Theft by ~~person having custody~~ custodian of property pursuant to repair 1655 or rental agreement.

1656 [ A person is guilty of theft if:] (1) Terms defined in Section 76-1-101.5 apply to this  
1657 section.

1658 [ (1) Having] (2) An actor commits theft by custodian of property pursuant to repair or  
1659 rental agreement if:

1660 (a) (i) the actor has custody of property pursuant to an agreement between ~~himself~~ the  
1661 actor or another person and the property's owner ;

1662 [thereof whereby] (ii) the actor or another person is to perform for compensation a

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1663 specific service for the property's owner involving the maintenance, repair, or use of such  
1664 the owner's property~~[-he]~~ ; and

1665 (iii) the actor intentionally uses or operates [it] the owner's property, without the consent of  
1666 the owner, for [his] the actor's own purposes in a manner constituting a gross deviation from  
1667 the agreed purpose; or

1668 [(2) Having] (b) (i) the actor has custody of any property pursuant to a rental or  
1669 lease agreement [where it] in which the property is to be returned in a specified manner or  
1670 at a specified time~~[-]~~ ; and

1671 (ii) the actor intentionally fails to comply with the terms of the agreement concerning return  
1672 so as to render such failure a gross deviation from the agreement.

1673 (3) A violation of Subsection (2) is:

1674 (a) a second degree felony if the:

1675 (i) value of the property is or exceeds \$5,000; or

1676 (ii) property stolen is a firearm or an operable motor vehicle;

1677 (b) a third degree felony if:

1678 (i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

1679 (ii) the property is a catalytic converter as defined under Section 76-6-1402;

1680 (iii) the value of the property is or exceeds \$500 and the actor has been twice before  
1681 convicted of any of the following offenses, if each prior offense was committed within 10  
1682 years before the date of the current conviction or the date of the offense upon which the  
1683 current conviction is based and at least one of those convictions is for a class A  
1684 misdemeanor:

1685 (A) any theft, any robbery, or any burglary with intent to commit theft;

1686 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

1687 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B); or

1688 (iv) the actor has been previously convicted of a felony violation of any of the offenses listed  
1689 in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed within 10  
1690 years before the date of the current conviction or the date of the offense upon which the  
1691 current conviction is based;

1692 (c) a class A misdemeanor if:

1693 (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or

1694 (ii) the actor has been twice before convicted of any of the offenses listed in Subsections

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1695 (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
1696 the date of the current conviction or the date of the offense upon which the current conviction  
1697 is based; or  
1698 (d) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft  
1699 is not an offense under Subsection (3)(c).

1700

## 1701 **76-6-410.5. Theft of a rental vehicle.**

1702 (1) (a) As used in this section:

1703 [(a)] (i) "Motor vehicle" means a self-propelled vehicle that is intended primarily for  
1704 use and operation on the highways.

1705 [(b)] (ii) "Rental agreement" means [any] a written agreement stating the terms and  
1706 conditions governing the use of a motor vehicle provided by a rental company.

1707 [(c)] (iii) "Rental company" means [any] a person or organization in the business of  
1708 providing motor vehicles to the public.

1709 [(d)] (iv) "Renter" means [any] a person or organization obtaining the use of a  
1710 motor vehicle from a rental company under the terms of a rental agreement.

### 1711 (b) Terms defined in Section 76-1-101.5 apply to this section.

1712 [(b)] (2) A renter is guilty of (2) An actor commits theft of a rental vehicle if[-] the actor:  
1713 (a) is a renter; and

1714 (b) without notice to and permission of the rental company, [the renter] knowingly fails  
1715 without good cause to return the vehicle within 72 hours after the time established for the  
1716 return in the rental agreement.

### 1717 (3) A violation of Subsection (2) is a second degree felony.

1718 [(b)] (3) If the (4) If a motor vehicle is not rented on a periodic tenancy basis, the rental  
1719 company shall include the following information, legibly written, as part of the terms of the  
1720 rental agreement:

1721 (a) the date and time the motor vehicle is required to be returned; and  
1722 (b) the maximum penalties under state law if the motor vehicle is not returned within  
1723 72 hours from the date and time stated in compliance with Subsection [(3)] (4) (a).

1724

## 1725 **76-6-412.1. Civil remedy for animal theft.**

1726 In addition a criminal penalty under this chapter, an actor who commits theft of a stallion,

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1727 mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine,  
1728 poultry, or a fur-bearing animal raised for commercial purposes, or a livestock guardian dog,  
1729 is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff,  
1730 and for costs of suit and reasonable attorney fees.

1731

1732 **76-6-413. Release of a fur-bearing [animals -- Penalty] animal -- Finding.**

1733 (1) Terms defined in Section 76-1-101.5 apply to this section.

1734 [ (1) In any case not amounting to a felony of the second degree, any person who] (2)  
1735 An actor commits release of a fur-bearing animal if the actor intentionally and without  
1736 permission of the owner releases [any] a fur-bearing animal raised for commercial  
1737 purposes[is guilty of a felony of the third degree.]

1738 (3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third  
1739 degree felony.

1740 (b) A violation of Subsection (2) is a second degree felony if the value of the property is or  
1741 exceeds \$5,000.

1742 [ (2) ] (4) The Legislature finds that the release of a fur-bearing [animals] animal

1743 raised for commercial purposes subjects the [animals] animal to unnecessary suffering

1744 through deprivation of food and shelter and compromises [their] the animal's genetic

1745 integrity, thereby permanently depriving the owner of substantial value.

1746 (5) An actor who violates Subsection (2) is civilly liable for three times the amount of actual  
1747 damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees.

1748

1749 **76-6-501. Definitions -- Forgery [and producing false identification -- Elements**  
1750 **of offense -- Definitions].**

1751 (1) (a) As used in this [part] section :

1752 [ (a) (i) "Authentication feature" means any hologram, watermark, certification,  
1753 symbol, code, image, sequence of numbers or letters, or other feature that either individually  
1754 or in combination with another feature is used by the issuing authority on an identification  
1755 document, document-making implement, or means of identification to determine if the  
1756 document is counterfeit, altered, or otherwise falsified.

1757 [ (b) (ii) "Document-making implement" means any implement, impression, template,  
1758 computer file, computer disc, electronic device, computer hardware or software, or scanning,

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1759 printing, or laminating equipment that is specifically configured or primarily used for making  
1760 an identification document, a false identification document, or another document-making  
1761 implement.

1762 [¶] (iii) "False authentication feature" means an authentication feature that:

1763 [¶] (A) is genuine in origin but that, without the authorization of the issuing authority,  
1764 has been tampered with or altered for purposes of deceit;

1765 [¶] (B) is genuine, but has been distributed, or is intended for distribution, without  
1766 the authorization of the issuing authority and not in connection with a lawfully made  
1767 identification document, document-making implement, or means of identification to which the  
1768 authentication feature is intended to be affixed or embedded by the issuing authority; or

1769 [¶] (C) appears to be genuine, but is not.

1770 [¶] (iv) "False identification document" means a document of a type intended or  
1771 commonly accepted for the purposes of identification of individuals, and that:

1772 [¶] (A) is not issued by or under the authority of a governmental entity or was issued  
1773 under the authority of a governmental entity but was subsequently altered for purposes of  
1774 deceit; and

1775 [¶] (B) appears to be issued by or under the authority of a governmental entity.

1776 [¶] (v) "Governmental entity" means the United States government, a state, a  
1777 political subdivision of a state, a foreign government, a political subdivision of a foreign  
1778 government, an international governmental organization, or a quasi-governmental  
1779 organization.

1780 [¶] (vi) "Identification document" means a document made or issued by or under the  
1781 authority of a governmental entity, which, when completed with information concerning a  
1782 particular individual, is of a type intended or commonly accepted for the purpose of  
1783 identification of individuals.

1784 [¶] (vii) "Issuing authority" means:

1785 [¶] (A) any governmental entity that is authorized to issue identification documents,  
1786 means of identification, or authentication features; or

1787 [¶] (B) a business organization or financial institution or its agent that issues a  
1788 financial transaction card as defined in Section 76-6-506.

1789 [¶] (viii) "Means of identification" means any name or number that may be used,  
1790 alone or in conjunction with any other information, to identify a specific individual, including:

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1791 [¶] (A) name, social security number, date of birth, government issued driver license  
1792 or identification number, alien registration number, government passport number, or  
1793 employer or taxpayer identification number;

1794 [¶] (B) unique biometric data, such as fingerprint, voice print, retina or iris image, or  
1795 other unique physical representation; or

1796 [¶] (C) unique electronic identification number, address, or routing code.

1797 [¶] (ix) "Personal identification card" means an identification document issued by a  
1798 governmental entity solely for the purpose of identification of an individual.

1799 [¶] (x) "Produce" includes altering, authenticating, or assembling.

1800 [¶] (xi) "State" includes any state of the United States, the District of Columbia, the  
1801 Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the  
1802 United States.

1803 [¶] (xii) "Traffic" means to:

1804 [¶] (A) transport, transfer, or otherwise dispose of an item to another, as  
1805 consideration for anything of value; or

1806 [¶] (B) make or obtain control of with intent to transport, transfer, or otherwise  
1807 dispose of an item to another.

1808 [¶] (xiii) "Writing" includes printing, electronic storage or transmission, or any other  
1809 method of recording valuable information including forms such as:

1810 [¶] (A) checks, tokens, stamps, seals, credit cards, badges, trademarks, money,  
1811 and any other symbols of value, right, privilege, or identification;

1812 [¶] (B) a security, revenue stamp, or any other instrument or writing issued by a  
1813 government or any agency; or

1814 [¶] (C) a check, an issue of stocks, bonds, or any other instrument or writing  
1815 representing an interest in or claim against property, or a pecuniary interest in or claim  
1816 against any person or enterprise.

1817 (b) Terms defined in Section 76-1-101.5 apply to this section.

1818 (2) [A person is guilty of] An actor commits forgery if, with purpose to defraud  
1819 anyone, or with knowledge that the [person] actor is facilitating a fraud to be perpetrated by  
1820 anyone, the [person] actor:

1821 (a) alters any writing of another person without [his] the person's authority or utters  
1822 the altered writing; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1823 (b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters  
1824 any writing so that the writing or the making, completion, execution, authentication, issuance,  
1825 transference, publication, or utterance:

1826 (i) purports to be the act of another person, whether the person is existent or  
1827 nonexistent;

1828 (ii) purports to be an act on behalf of another party with the authority of that other  
1829 party; or

1830 (iii) purports to have been executed at a time or place or in a numbered sequence  
1831 other than was in fact the case, or to be a copy of an original when an original did not exist.

## (3) A violation of Subsection (2) is a third degree felony.

1833 ~~[{3}] (4)~~ It is not a defense to a charge of forgery under Subsection (2)(b)(ii) if an  
1834 actor signs his own name to the writing if the actor does not have authority to make,  
1835 complete, execute, authenticate, issue, transfer, publish, or utter the writing on behalf of the  
1836 party for whom the actor purports to act.

1837 ~~[(4) A person is guilty of producing or transferring any false identification document~~  
1838 ~~who:~~

1839 ~~— (a) knowingly and without lawful authority produces, attempts, or conspires to produce~~  
1840 ~~an identification document, authentication feature, or a false identification document that is or~~  
1841 ~~appears to be issued by or under the authority of an issuing authority;~~

1842 ~~— (b) transfers, or possesses with intent to transfer, an identification document,~~  
1843 ~~authentication feature, or a false identification document knowing that the document or~~  
1844 ~~feature was stolen or produced without lawful authority;~~

1845 ~~— (c) produces, transfers, or possesses a document-making implement or~~  
1846 ~~authentication feature with the intent that the document-making implement or the~~  
1847 ~~authentication feature be used in the production of a false identification document or another~~  
1848 ~~document-making implement or authentication feature; or~~

1849 ~~— (d) traffics in false or actual authentication features for use in false identification~~  
1850 ~~documents, document-making implements, or means of identification.~~

1851 ~~— (5) A person who violates:~~

1852 ~~— (a) Subsection (2) is guilty of a third degree felony; and~~

1853 ~~— (b) Subsection (4) is guilty of a second degree felony.]~~

1854 ~~[{6}] (5) This [part] section may not be construed to impose criminal or civil liability~~

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1855 on any law enforcement officer acting within the scope of a criminal investigation.

1856        ~~(7)~~ (6) The forfeiture of property under this [part] section, including any seizure  
1857 and disposition of the property and any related judicial or administrative proceeding, shall be  
1858 conducted in accordance with Title 24, Forfeiture and Disposition of Property Act.

1859        ~~(8)~~ (7) The court shall order, in addition to the penalty prescribed for any person  
1860 convicted of a violation of this section, the forfeiture and destruction or other disposition of all  
1861 illicit authentication features, identification documents, false transaction cards,  
1862 document-making implements, or means of identification.

1863

1864        **76-6-501.5. Producing or transferring false identification.**

1865        (1) Terms defined in Sections 76-1-101.5 and 76-6-501 apply to this section.

1866        (2) An actor commits producing or transferring a false identification document if the  
1867 actor:

1868        (a) knowingly and without lawful authority produces, attempts, or conspires to produce  
1869 an identification document, authentication feature, or a false identification document that is or  
1870 appears to be issued by or under the authority of an issuing authority;

1871        (b) transfers, or possesses with intent to transfer, an identification document,  
1872 authentication feature, or a false identification document knowing that the document or  
1873 feature was stolen or produced without lawful authority;

1874        (c) produces, transfers, or possesses a document-making implement or  
1875 authentication feature with the intent that the document-making implement or the  
1876 authentication feature be used in the production of a false identification document or another  
1877 document-making implement or authentication feature; or

1878        (d) traffics in false or actual authentication features for use in false identification  
1879 documents, document-making implements, or means of identification.

1880        (3) A violation of Subsection (2) is a second degree felony.

1881        (4) This section may not be construed to impose criminal or civil liability on any law  
1882 enforcement officer acting within the scope of a criminal investigation.

1883        (5) The forfeiture of property under this section, including any seizure and disposition  
1884 of the property and any related judicial or administrative proceeding, shall be conducted in  
1885 accordance with Title 24, Forfeiture and Disposition of Property Act.

1886        (6) The court shall order, in addition to the penalty prescribed for a person convicted

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1887 of a violation of this section, the forfeiture and destruction or other disposition of all illicit  
1888 authentication features, identification documents, false transaction cards, document-making  
1889 implements, or means of identification.

1890

1891 **76-6-502. Possession of forged writing or device for a forgery writing [--**  
1892 **Penalty].**

1893 (1) (a) As used in this section[,"device"] :  
1894 (i) "Device" means any equipment, mechanism, material, or program.  
1895 (ii) "Writing" means the same as that term is defined in Section 76-6-501.  
1896 (b) Terms defined in Section 76-1-101.5 apply to this section.  
1897 (2) An individual actor who, with intent to defraud, knowingly possesses a writing [  
1898 ~~as defined in Section 76-6-501,~~] that is a forgery under Section 76-6-501 or 76-6-501.5, or  
1899 who with intent to defraud knowingly possesses a device for making a writing [~~as defined in~~  
1900 ~~Section 76-6-501,~~] that is a forgery under Section 76-6-501 or 76-6-501.5, ~~[is guilty of a third~~  
1901 ~~degree felony]~~ commits possession of a forged writing or device for making a forgery writing  
1902 .  
1903 (3) A violation of Subsection (2) is a third degree felony.

1904

1905 **76-6-503.5. Wrongful liens ~~[and fraudulent handling of recordable writings --~~**  
1906 **Penalties].**

1907 [(1) "Lien"] (1)(a) As used in this section, "lien" means:  
1908 [(a)] (i) an instrument or document filed pursuant to Section 70A-9a-516;  
1909 [(b)] (ii) a nonconsensual common law document as defined in Section 38-9-102;  
1910 [(c)] (iii) a wrongful lien as defined in Section 38-9-102; or  
1911 [(d)] (iv) any instrument or document that creates or purports to create a lien or  
1912 encumbrance on an owner's interest in real or personal property or a claim on another's  
1913 assets.

1914 (b) Terms defined in Section 76-1-101.5 apply to this section.  
1915 (2) [A person is guilty of] An actor commits the crime of wrongful lien if [that person]  
1916 the actor knowingly makes, utters, records, or files a lien:  
1917 (a) having no objectively reasonable basis to believe [he] that the actor has a  
1918 present and lawful property interest in the property or a claim on the assets; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1919 (b) if the person actor files the lien in violation of a civil wrongful lien injunction  
1920 pursuant to Title 38, Chapter 9a, Wrongful Lien Injunctions.

1921 (3) A violation of this section (a) Except as provided in Subsection (3)(b), a violation

1922 of Subsection (2) is a third degree felony unless the person ...

1923 (b) If an actor has been previously convicted of an offense under this section or  
1924 Section 76-6-503.6, [in which case the violation] a violation of Subsection (2) is a second  
1925 degree felony.

1926 ~~(4) (a) Any person who with intent to deceive or injure anyone falsifies, destroys,~~  
1927 ~~removes, records, or conceals any will, deed, mortgage, security instrument, lien, or other~~  
1928 ~~writing for which the law provides public recording is guilty of fraudulent handling of~~  
1929 ~~recordable writings.~~

1930 ~~(b) A violation of Subsection (4)(a) is a third degree felony unless the person has~~  
1931 ~~been previously convicted of an offense under this section, in which case the violation is a~~  
1932 ~~second degree felony.]~~

1933 [5] (4) This section does not prohibit prosecution for any act in violation of Section  
1934 76-8-414 or for any offense greater than an offense under this section.

1935

1936 **76-6-503.6. Fraudulent handling of recordable writings.**

1937 (1) Terms defined in Sections 76-1-101.5 and 76-6-503.5 apply to this section.

1938 (2) An actor commits fraudulent handling of recordable writings if the actor:

1939 (a) has intent to deceive or injure; and

1940 (b) falsifies, destroys, removes, records, or conceals any will, deed, mortgage,  
1941 security instrument, lien, or other writing for which the law provides public recording.

1942 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third  
1943 degree felony.

1944 (b) If an actor has been previously convicted of an offense under this section or  
1945 76-6-503.5, a violation of Subsection (2) is a second degree felony.

1946 (4) This section does not prohibit prosecution for any act in violation of Section  
1947 76-8-414 or for any offense greater than an offense under this section.

1948

1949 **76-6-503.7. Records filed with intent to harass or defraud.**

1950 (1)(a) As used in this section, "filing office" means the same as that term is defined in

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1951 Section 70A-9a-513.5.  
1952       (b) Terms defined in Section 76-1-101.5 apply to this section.  
1953       [(1) ~~No person shall cause a record to be communicated to the filing office, as defined in Section 70A-9a-513.5, for filing if:~~  
1954       (a) ~~the person is not authorized to file the record under Section 70A-9a-509, 70A-9a-708, or 70A-9a-807;~~  
1955       (2) An actor commits filing a record with intent to harass or defraud if:  
1956       (a) the actor causes a record to be communicated to the filing office for filing;  
1957       (b) the record is not related to an existing or anticipated transaction that is or will be  
1958       governed by Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and  
1959       (c) the record is filed knowingly or intentionally to:  
1960       (i) harass the person identified as the debtor in the record; or  
1961       (ii) defraud the person identified as the debtor in the record.  
1962       [(2)(a) ~~A person who violates~~ (3)(a) A violation of Subsections [(1)] (2) (a), (b), and  
1963       (c)(i) is ~~guilty of~~ a class B misdemeanor for a first offense and a class A misdemeanor for a  
1964       second or subsequent offense.  
1965       (b) ~~A person who violates~~ A violation of Subsections [(1)] (2) (a), (b), and (c)(ii) is  
1966       ~~guilty of~~ a third degree felony.

1967  
1968  
1969  
1970       **76-6-504. Tampering with records [--Penalty].**  
1971       (1) Terms defined in Section 76-1-101.5 apply to this section.  
1972       [(1) ~~Any person who;~~ (2) An actor commits tampering with records if the actor:  
1973       (a) having no privilege to do so, knowingly falsifies, destroys, removes, or conceals  
1974 any writing, other than the writings enumerated in Section 76-6-503.5 for which the law  
1975 provides public recording or any record, public or private[;] ; and  
1976       (b) executes an action described in Subsection (1)(a) with intent to :  
1977       (i) deceive or injure any person ; or  
1978       (ii) [to] conceal any wrongdoing [is guilty of tampering with records].  
1979       [(2) ~~Tampering with records~~ (3) A violation of Subsection (2) is a class B  
1980       misdemeanor.

1981  
1982       **76-6-505. Issuing a bad check or draft -- Presumption.**

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

1983        (1) Terms defined in Section 76-1-101.5 apply to this section.

1984        [1] (a) Any person who (2)(a)(i) An actor commits issuing a bad check or draft if:

1985        (A) the actor issues or passes a check or draft for the payment of money, for the  
1986 purpose of obtaining from any person, firm, partnership, or corporation, any money, property,  
1987 or other thing of value or paying for any services, wages, salary, labor, or rent~~[, knowing it]~~ ;

1988        (B) the actor knows the check or draft will not be paid by the drawee ; and

1989        (C) payment is refused by the drawee~~[, is guilty of issuing a bad check or draft]~~.

1990        [b] (ii) For purposes of this Subsection [1], a person (2)(a), an actor who issues  
1991 a check or draft for which payment is refused by the drawee is presumed to know the check  
1992 or draft would not be paid if ~~[he]~~ the actor had no account with the drawee at the time of  
1993 issue.

1994        [2] Any person who (b) An actor commits issuing a bad check or draft if:

1995        (i) the actor issues or passes a check or draft for ;

1996        (A) the payment of money, for the purpose of obtaining from any person, firm,  
1997 partnership, or corporation, any money, property, or other thing of value ; or

1998        (B) paying for any services, wages, salary, labor, or rent~~[,]~~ ;

1999        (ii) payment of [which] the check or draft is legally refused by the drawee~~[, is guilty of~~  
2000 ~~issuing a bad check or draft if he]~~ ; and

2001        (ii) the actor fails to make good and actual payment to the payee in the amount of the  
2002 refused check or draft within 14 days of ~~[his]~~ the actor receiving actual notice of the check  
2003 or draft's nonpayment.

2004        (3) [An offense of issuing a bad check or draft shall be] A violation of Subsection

2005 (2)(a) or (b) is punished as follows:

2006        (a) [If] if the check or draft or series of checks or drafts made or drawn in this state  
2007 within a period not exceeding six months amounts to a sum that is less than \$500, the  
2008 offense is a class B misdemeanor~~[,]~~ ;

2009        (b) [If] if the check or draft or checks or drafts made or drawn in this state within a  
2010 period not exceeding six months amounts to a sum that is or exceeds \$500 but is less than  
2011 \$1,500, the offense is a class A misdemeanor~~[,]~~ ;

2012        (c) [If] if the check or draft or checks or drafts made or drawn in this state within a  
2013 period not exceeding six months amounts to a sum that is or exceeds \$1,500 but is less than  
2014 \$5,000, the offense is a third degree felony ~~[of the third degree.]~~ ; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2015 (d) If if the check or draft or checks or drafts made or drawn in this state within a  
2016 period not exceeding six months amounts to a sum that is or exceeds \$5,000, the offense is  
2017 a second degree felony.

## 2018 2019 **76-6-506. Financial transaction card offenses -- Definitions.**

2020 As used in [this part] Sections 76-6-506.1, 76-6-506.2, 76-6-506.3, 76-6-506.4,  
2021 76-6-506.5, 76-6-506.6, 76-6-506.7 :

2022 (1) "Authorized credit card merchant" means a person who is authorized by an issuer  
2023 to furnish money, goods, services, or anything else of value upon presentation of a financial  
2024 transaction card by a card holder and to present valid credit card sales drafts to the issuer for  
2025 payment.

2026 (2) "Automated banking device" means any machine which, when properly activated  
2027 by a financial transaction card or a personal identification code, may be used for any of the  
2028 purposes for which a financial transaction card may be used.

2029 (3) "Card holder" means any person or organization named on the face of a financial  
2030 transaction card to whom or for whose benefit a financial transaction card is issued.

2031 (4) "Credit card sales draft" means any sales slip, draft, or other written or electronic  
2032 record of a sale of money, goods, services, or anything else of value made or purported to be  
2033 made to or at the request of a card holder with a financial transaction card, financial  
2034 transaction card credit number, or personal identification code, whether the record of the sale  
2035 or purported sale is evidenced by a sales draft, voucher, or other similar document in writing  
2036 or electronically recorded and transmitted.

2037 (5) "Financial transaction card" means:

2038 (a) any credit card, credit plate, bank services card, banking card, check guarantee  
2039 card, debit card, telephone credit card, or any other card, issued by an issuer for the use of  
2040 the card holder in obtaining money, goods, services, or anything else of value on credit, or in  
2041 certifying or guaranteeing to a person or business the availability to the card holder of the  
2042 funds on deposit that are equal to or greater than the amount necessary to honor a draft or  
2043 check payable to the order of the person or business; or

2044 (b) any instrument or device used in providing the card holder access to a demand or  
2045 time deposit account for the purpose of making deposits of money or checks in the account,  
2046 or withdrawing funds from the account in the form of money, money orders, travelers' checks

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2047 or other form representing value, or transferring funds from any demand or time deposit  
2048 account to any credit card account in full or partial satisfaction of any outstanding balance  
2049 existing in the credit card account.

2050 (6) "Issuer" means a business organization or financial institution or its agent that  
2051 issues a financial transaction card.

2052 (7) "Personal identification code" means any numerical or alphabetical code assigned  
2053 to a card holder by the issuer to permit the authorized electronic use of the holder's financial  
2054 transaction card.

## 2055 2056 **76-6-506.1. False application for financial transaction card.**

2057 (1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

2058 (2) An actor commits false application for a card if the actor:

2059 (a) knowingly, with the intent to defraud:

2060 (i) makes application for a financial transaction card to an issuer; and

2061 (ii) makes or causes to be made a false statement or report of the actor's name,

2062 occupation, financial condition, assets, or personal identifying information; or

2063 (b) willfully and substantially undervalues or understates any indebtedness for the  
2064 purposes of influencing the issuer to issue the financial transaction card.

2065 (3) A violation of Subsection (2) is:

2066 (a) a class B misdemeanor if the value of the property, money, or thing obtained or  
2067 sought to be obtained is less than \$500;

2068 (b) a class A misdemeanor if the value of the property, money, or thing obtained or  
2069 sought to be obtained is or exceeds \$500 but is less than \$1,500;

2070 (c) a third degree felony if the value of the property, money, or thing obtained or  
2071 attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

2072 (d) a second degree felony if the value of the property, money, or thing obtained or  
2073 attempted to be obtained is or exceeds \$5,000.

2074 (4) The court shall make appropriate findings in any prosecution under this section  
2075 that the card holder did not commit the crime.

## 2076 2077 **76-6-506.2. [Financial transaction card offenses--] Unlawful use of financial**

2078 **transaction card[-- False application for card].**

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2079 (1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

2080 [It is unlawful for any person to:]

2081 (2) An actor commits unlawful use of financial transaction card if the actor:

2082 [(1)] (a) knowingly [use a false, fictitious, altered, counterfeit;] uses a revoked,  
2083 expired, stolen, or fraudulently obtained financial transaction card to obtain or attempt to  
2084 obtain credit, goods, property, or services;

2085 [(2)] (b) knowingly, with the intent to defraud, [use] uses a financial transaction  
2086 card, credit number, personal identification code, or any other information contained on the  
2087 card or in the account from which the card is issued, to obtain or attempt to obtain credit,  
2088 goods, or services;

2089 [(3)] (c) knowingly, with the intent to defraud, [use] uses a financial transaction card  
2090 to willfully exceed an authorized credit line by \$500 or more, or by 50% or more of the line of  
2091 credit, whichever is greater; or

2092 [(4)] (a) knowingly, with the intent to defraud, make application for a financial  
2093 transaction card to an issuer and make or cause to be made a false statement or report of  
2094 the person's name, occupation, financial condition, assets, or personal identifying  
2095 information; or

2096 [(b)] (b) willfully and substantially undervalue or understate any indebtedness for the  
2097 purposes of influencing the issuer to issue the financial transaction card; or

2098 [(5)] (d) knowingly, with the intent to defraud, [present or cause] presents or causes  
2099 to be presented to the issuer or an authorized credit card merchant, for payment or  
2100 collection, any credit card sales draft, if:

2101 [(a)] (i) the draft is counterfeit or fictitious;

2102 [(b)] (ii) the purported sales evidenced by any credit card sales draft did not take  
2103 place;

2104 [(c)] (iii) the purported sale was not authorized by the card holder; or

2105 [(d)] (iv) the items or services purported to be sold as evidenced by the credit card  
2106 sales drafts are not delivered or rendered to the card holder or person intended to receive  
2107 them.

2108 (3)(a) A violation of Subsection (2) is:

2109 (i) a class B misdemeanor if the value of the property, money, or thing obtained or  
2110 sought to be obtained is less than \$500;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2111        (ii) a class A misdemeanor if the value of the property, money, or thing obtained or  
2112        sought to be obtained is or exceeds \$500 but is less than \$1,500;

2113        (iii) a third degree felony if the value of the property, money, or thing obtained or  
2114        attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

2115 (iv) a second degree felony if the value of the property, money, or thing obtained or  
2116 attempted to be obtained is or exceeds \$5,000.

2117 (b) Multiple violations of Subsection (2)(a) may be aggregated into a single offense,  
2118 and the degree of the offense is determined by the total value of all property, money, or  
2119 things obtained or attempted to be obtained through the multiple violations.

2120                   (4) The court shall make appropriate findings in any prosecution under this section  
2121                   that the card holder did not commit the crime.

2123 76-6-506.3. [Financial transaction card offenses--]Unlawful acquisition,  
2124 possession, or transfer of financial transaction card.

2125 (1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

2126 [ (1) Under circumstances that do not constitute a violation of Subsection (2) , an  
2127 individual is guilty of a third degree felony who] (2) An actor commits unlawful acquisition,  
2128 possession, or transfer of a financial transaction card if the actor :

2129 (a) under circumstances that do not constitute a violation of Subsection (2)(b):

2130 [a] (i) acquires a financial transaction card from another without the consent of the  
2131 card holder or the issuer;

2132 [b] (ii) receives a financial transaction card with intent to use the financial  
2133 transaction card in violation of Section 76-6-506.2;

2134 [e)] (iii) sells or transfers a financial transaction card to a person with knowledge  
2135 that the financial transaction card will be used in violation of Section 76-6-506.2;

2136 [§(d)-(i)] (iv)(A) acquires a financial transaction card that the individual knows was  
2137 lost, mislaid, stolen, or delivered under a mistake as to the identity or address of the card  
2138 holder; and

2139 [ii] (A) (B)(I) retains possession with intent to use the financial transaction card in  
2140 violation of Section 76-6-506.2; or

2141 [B] (II) sells or transfers the financial transaction card to a person with knowledge  
2142 that the financial transaction card will be used in violation of Section 76-6-506.2; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2143 [e] (v) possesses, sells, or transfers any information necessary for the use of a  
2144 financial transaction card, including the credit number of the card, the expiration date of the  
2145 card, or the personal identification code related to the card:

2146 [f] (A) (I) without the consent of the card holder or the issuer; or

2147 [f] (B) (II) with knowledge that the information has been acquired without consent of  
2148 the card holder or the issuer; and

2149 [f] (B) (III) with intent to use the information in violation of Section 76-6-506.2; or

2150 [f] (2) ~~An individual is guilty of a second degree felony who~~ (b) possesses, sells, or  
2151 transfers any information necessary for the use of 100 or more financial transaction cards,  
2152 including the credit number of a card, the expiration date of a card, or the personal  
2153 identification code related to a card:

2154 [f] (a) (I) with intent to use the information in violation of Section 76-6-506.2; or

2155 [f] (b) (II) with knowledge that the information will be used by another in violation of  
2156 Section 76-6-506.2.

2157 (3)(a) A violation of Subsection (2)(a) is a third degree felony.

2158 (b) A violation of Subsection (2)(b) is a second degree felony.

2159

## 76-6-506.4. Use of fraudulent financial transaction card.

2161 (1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

2162 (2) An actor commits fraudulent use of a financial transaction card if the actor  
2163 knowingly uses a false, fictitious, altered, counterfeit, or fraudulently obtained financial  
2164 transaction card to obtain or attempt to obtain credit, goods, property, or services.

2165 (3)(a) A violation of Subsection (2) is:

2166 (i) a class B misdemeanor if the value of the property, money, or thing obtained or  
2167 sought to be obtained is less than \$500;

2168 (ii) a class A misdemeanor if the value of the property, money, or thing obtained or  
2169 sought to be obtained is or exceeds \$500 but is less than \$1,500;

2170 (iii) a third degree felony if the value of the property, money, or thing obtained or  
2171 attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

2172 (iv) a second degree felony if the value of the property, money, or thing obtained or  
2173 attempted to be obtained is or exceeds \$5,000.

2174 (b) Multiple violations of Subsection (2) may be aggregated into a single offense, and

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2175 the degree of the offense is determined by the total value of all property, money, or things  
2176 obtained or attempted to be obtained through the multiple violations.

2177 (3) The court shall make appropriate findings in any prosecution under this section  
2178 that the card holder did not commit the crime.

2179

2180 **76-6-506.6. [Financial transaction card offenses --] Unauthorized factoring of**  
2181 **credit card sales drafts.**

2182 (1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

2183 [It is unlawful for any person,] (2) An actor commits an unauthorized factoring of credit  
2184 card sales draft if the actor acts:

2185 (a) knowingly, with intent to defraud[, acting] :

2186 (b) without the express authorization of the issuer[.] ; and

2187 (c) to employ, solicit, or otherwise cause an authorized credit card merchant, or for  
2188 the authorized credit card merchant himself or herself, to present any credit card sales draft  
2189 to the issuer :

2190 (i) for payment pertaining to any sale or purported sale of goods or services [which  
2191 was] ; and

2192 (ii) the sale or purported sale was not made by the authorized credit card merchant in  
2193 the ordinary course of business.

2194 (3)(a) A violation of Subsection (2) is:

2195 (i) a class B misdemeanor if the value of the property, money, or thing obtained or  
2196 sought to be obtained is less than \$500;

2197 (ii) a class A misdemeanor if the value of the property, money, or thing obtained or  
2198 sought to be obtained is or exceeds \$500 but is less than \$1,500;

2199 (iii) a third degree felony if the value of the property, money, or thing obtained or  
2200 attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

2201 (iv) a second degree felony if the value of the property, money, or thing obtained or  
2202 attempted to be obtained is or exceeds \$5,000.

2203 (b) Multiple violations of Subsection (2) may be aggregated into a single offense, and  
2204 the degree of the offense is determined by the total value of all property, money, or things  
2205 obtained or attempted to be obtained through the multiple violations.

2206 (4) The court shall make appropriate findings in any prosecution under this section

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2207 that the card holder did not commit the crime.

2208

2209 **76-6-506.7. Obtaining encoded information on a financial transaction card with**  
2210 **the intent to defraud the issuer, holder, or merchant.**

2211 (1) (a) As used in this section:

2212 [~~(a)~~ (i)] "Financial transaction card" or "card" means any credit card, credit plate,  
2213 bank services card, banking card, check guarantee card, debit card, telephone credit card, or  
2214 any other card, issued by an issuer for the use of the card holder in:

2215 [~~(f)~~ (A)] obtaining money, goods, services, or anything else of value on credit; or

2216 [~~(f)~~ (B)] certifying or guaranteeing to a merchant the availability to the card holder of  
2217 the funds on deposit that are equal to or greater than the amount necessary to honor a draft  
2218 or check as the instrument for obtaining, purchasing, or receiving goods, services, money, or  
2219 any other thing of value from the merchant.

2220 [~~(b)~~ (~~f~~) (ii)(A)] "Merchant" means an owner or operator of any retail mercantile  
2221 establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or  
2222 independent contractor of the owner or operator.

2223 [~~(f)~~ (B)] "Merchant" also means a person:

2224 [~~(A)~~ (I)] who receives from a card holder, or a third person the merchant believes to  
2225 be the card holder, a financial transaction card or information from a financial transaction  
2226 card, or what the merchant believes to be a financial transaction card or information from a  
2227 card; and

2228 [~~(B)~~ (II)] who accepts the financial transaction card or information from a card under  
2229 Subsection (1)(a)[~~(f)~~ (i)(B)] as the instrument for obtaining, purchasing, or receiving goods,  
2230 services, money, or any other thing of value from the merchant.

2231 [~~(e)~~ (iii)] "Reencoder" means an electronic device that places encoded information  
2232 from the magnetic strip or stripe of a financial transaction card onto the magnetic strip or  
2233 stripe of a different financial transaction card.

2234 [~~(e)~~ (iv)] "Scanning device" means a scanner, reader, or any other electronic device  
2235 used to access, read, scan, obtain, memorize, or store, temporarily or permanently,  
2236 information encoded on the magnetic strip or stripe of a financial transaction card.

2237 (b) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

2238 (2)[~~(a)~~ A person is guilty of a third-degree felony who uses:] An actor commits

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2239 obtaining encoded information on a financial transaction card with the intent to defraud the  
2240 issuer, holder, or merchant if the actor uses:

2241 [(i)] (a) a scanning device to access, read, obtain, memorize, or store, temporarily or  
2242 permanently, information encoded on the magnetic strip or stripe of a financial transaction  
2243 card :

2244 (i) without the permission of the card holder ; and  
2245 (ii) with intent to defraud the card holder, the issuer, or a merchant; or  
2246 [(iii)] (b) a reencoder to place information encoded on the magnetic strip or stripe of a  
2247 financial transaction card onto the magnetic strip or stripe of a different card :

2248 (i) without the permission of the authorized user of the card from which the  
2249 information is being reencoded ; and

2250 (ii) with the intent to defraud the card holder, the issuer, or a merchant.

2251 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third  
2252 degree felony.

2253 [(b) Any person] (b) An actor who has been convicted previously of an offense under  
2254 Subsection (2)[(a)] is guilty of a second degree felony upon a second conviction and any  
2255 subsequent conviction for the offense.

2256

2257 **76-6-507. Deceptive business practices** [--Definitions--Defense].

2258 [(1) A person is guilty of a class B misdemeanor if, in the course of business, he]  
2259 (1)(a) As used in this section:

2260 (i) "Adulterated" means varying from the standard of composition or quality  
2261 prescribed, or pursuant to any statute providing criminal penalties for a variance, or set by  
2262 established commercial usage.

2263 (ii) "Mislabeled" means varying from the standard of truth or disclosure in labeling  
2264 prescribed by or pursuant to any statute providing criminal penalties for a variance, or set by  
2265 established commercial usage.

2266 (b) Terms defined in Section 76-1-101.5 apply to this section.

2267 (2) An actor commits deceptive business practices if the actor, in the course of  
2268 business :

2269 (a) uses or possesses for use a false weight or measure, or any other device for  
2270 falsely determining or recording any quality or quantity;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2271 (b) takes or attempts to take more than the represented quantity of any commodity or  
2272 service when as buyer ~~[he]~~ the actor furnishes the weight or measure; or  
2273 (c) sells, offers, or exposes for sale adulterated or mislabeled commodities.

2274 ~~[(2)(a) "Adulterated" means varying from the standard of composition or quality~~  
2275 ~~prescribed, or pursuant to any statute providing criminal penalties for a variance, or set by~~  
2276 ~~established commercial usage.~~

2277 ~~[(b) "Mislabeled" means varying from the standard of truth or disclosure in labeling~~  
2278 ~~prescribed by or pursuant to any statute providing criminal penalties for a variance, or set by~~  
2279 ~~established commercial usage.]~~

2280 (3) A violation of Subsection (2) is a class B misdemeanor.

2281 ~~[(3)]~~ (4) It is an affirmative defense to prosecution under this section that the  
2282 defendant's conduct was not knowing or reckless.

2283

2284 **76-6-508. Bribery of or receiving bribe by person in the business of selection,**  
2285 **appraisal, or criticism of goods or services.**

2286 (1) Terms defined in Section 76-1-101.5 apply to this section.

2287 ~~[(1) A person is guilty of a class A misdemeanor when;]~~ (2) An actor is commits  
2288 bribery or receiving a bribe if the actor:

2289 (a) without the consent of the employer or principal, and contrary to the interests of  
2290 the employer or principal:

2291 ~~[(a) he]~~ (i) confers, offers, or agrees to confer upon the employee, agent, or fiduciary  
2292 of an employer or principal any benefit with the purpose of influencing the conduct of the  
2293 employee, agent, or fiduciary in relating to his employer's or principal's affairs; or

2294 ~~[(b) he;]~~ (ii) as an employee, agent, or fiduciary of an employer or principal, solicits,  
2295 accepts, or agrees to accept any benefit from another upon an agreement or understanding  
2296 that such benefit will influence ~~[his]~~ the actor's conduct in relation to ~~[his]~~ the actor's  
2297 employer's or principal's affairs; ~~provided that this section does not apply to inducements~~  
2298 ~~made or accepted solely for the purpose of causing a change in employment by an~~  
2299 ~~employee, agent, or fiduciary.]~~ ; or

2300 ~~[(2) A person is guilty of violation of this section if he]~~ (b)(i) holds ~~[himself]~~ the  
2301 actor's self out to the public as being engaged in the business of making disinterested  
2302 selection, appraisal, or criticism of goods or services ; and

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2303 [he] (ii) solicits, accepts, or agrees to accept any benefit to influence [his] the actor's  
2304 selection, appraisal, or criticism.

2305 (3) A violation of Subsection (2) is a class A misdemeanor.

2306 (4) This section does not apply to inducements made or accepted solely for the  
2307 purpose of causing a change in employment by an employee, agent, or fiduciary.

2308

2309 **76-6-509. Bribery of a labor official.**

2310 (1) Terms defined in Section 76-1-101.5 apply to this section.

2311 [{1} Any person who] (2) An actor commits bribery of a labor official if the actor:  
2312 (a) offers, confers, or agrees to confer upon a labor official any benefit [with] ; and  
2313 (b) has intent to influence [him] the labor official in respect to any of [his] the labor

2314 official's acts, decisions, or duties as a labor official [is guilty of bribery of a labor official].

2315 [{2} Bribery of a labor official] (3) A violation of Subsection (2) is a third degree

2316 felony [of the third degree].

2317

2318 **76-6-510. Bribe receiving by a labor official.**

2319 (1) Terms defined in Section 76-1-101.5 apply to this section.

2320 [{1} Any labor official who] (2) A labor official commits receiving a bribe by a labor  
2321 official if the labor official solicits, accepts, or agrees to accept any benefit from another  
2322 person upon an agreement or understanding that the benefit will influence [him] the labor  
2323 official in any of [his] the labor official's acts, decisions, or duties as a labor official [is guilty

2324 of bribe receiving by a labor official].

2325 [{2} Bribe receiving by a labor official] (3) A violation of Subsection (2) is a third

2326 degree felony of [the third degree].

2327

2328 **76-6-511. Defrauding of creditors.**

2329 (1) Terms defined in Section 76-1-101.5 apply to this section.

2330 [A person is guilty of a class A misdemeanor if] (2) An actor commits defrauding of  
2331 creditors if the actor :

2332 [{1} he] (a) destroys, removes, conceals, encumbers, transfers, or otherwise deals  
2333 with property subject to a security interest with a purpose to hinder enforcement of that  
2334 interest; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2335 [¶] (b) knowing that proceedings have been or are about to be instituted for the  
2336 appointment of a person entitled to administer property for the benefit of creditors [he]:  
2337 [¶] (i) destroys, removes, conceals, encumbers, transfers, or otherwise deals with  
2338 any property with a purpose to defeat or obstruct the claim of any creditor, or otherwise to  
2339 obstruct the operation of any law relating to administration of property for the benefit of  
2340 creditors; or  
2341 [¶] (ii) presents to any creditor or to an assignee for the benefit of creditors, orally  
2342 or in writing, any statement relating to the debtor's estate, knowing that a material part of  
2343 such statement is false.

2344 (3) A violation of Subsection (2) is a class A misdemeanor.

2345  
2346 **76-6-512. Acceptance of deposit by insolvent financial institution.**  
2347 (1)(a) As used in this section, "financial institution" means the same as that term is  
2348 defined in Section 7-1-103.

2349 (b) Terms defined in Section 76-1-101.5 apply to this section.  
2350 ~~[A person is guilty of a felony of the third degree]~~ (2) An actor commits acceptance of  
2351 a deposit by an insolvent financial institution if:  
2352 [¶] (a) as an officer, manager, or other person participating in the direction of a  
2353 financial institution, as defined in Section 7-1-103, [he] the actor receives or permits receipt  
2354 of a deposit or other investment knowing that the institution is or is about to become unable,  
2355 from any cause, to pay its obligations in the ordinary course of business; and  
2356 [¶] (b) the actor knows that the person making the payment to the institution is  
2357 unaware of such present or prospective inability.

2358 (3) A violation of Subsection (2) is a third degree felony.

2359  
2360 **76-6-513. [Definitions--] Unlawful dealing of property by a fiduciary [--**  
2361 **Penalties].**

2362 (1) (a) As used in this section:  
2363 [¶] (i) "Fiduciary" means the same as that term is defined in Section 22-1-1.  
2364 [¶] (ii) "Financial institution" means "depository institution" and "trust company" as  
2365 defined in Section 7-1-103.  
2366 [¶] (iii) "Governmental entity" is as defined in Section 63G-7-102.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2367 [¶] (iv) "Person" does not include a financial institution whose fiduciary functions  
2368 are supervised by the Department of Financial Institutions or a federal regulatory agency.

2369 [¶] (v) "Property" means the same as that term is defined in Section 76-6-401.

2370 (b) Terms defined in Section 76-1-101.5 apply to this section.

2371 (2) [A person is guilty of] An actor commits unlawfully dealing with property by a  
2372 fiduciary if the [person] actor:

2373 (a) deals with property :

2374 (i) that has been entrusted to [him] the actor as a fiduciary, or property of a  
2375 governmental entity, public money, or of a financial institution[;] ; and

2376 (i) in a manner which :

2377 (A) the [person] actor knows is a violation of the [person's] actor's duty ; and  
2378 [which]

2379 (B) involves substantial risk of loss or detriment to the property owner or to a person  
2380 for whose benefit the property was entrusted[;] ; or

2381 (b) acting as a fiduciary pledges:

2382 (i) as collateral for a personal loan, or as collateral for the benefit of some party, other  
2383 than the owner or the person for whose benefit the property was entrusted, the property that  
2384 has been entrusted to the fiduciary; and

2385 (ii) without permission of the owner of the property or some other authorized person.

2386 [A violation of this Subsection (2) is punishable under Section 76-6-412.]

2387 (3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if,  
2388 without permission of the owner of the property or some other person with authority to give  
2389 permission, the person pledges as collateral for a personal loan, or as collateral for the  
2390 benefit of some party, other than the owner or the person for whose benefit the property was  
2391 entrusted, the property that has been entrusted to the fiduciary.]

2392 [(b) An offense under Subsection (3)(a) is punishable as:]

2393 (3)(a) A violation of Subsection (2)(a) is:

2394 (i) a second degree felony if the:

2395 (A) value of the property is or exceeds \$5,000; or

2396 (B) property is stolen from the person of another;

2397 (ii) a third degree felony if:

2398 (A) the value of the property is or exceeds \$1,500 but is less than \$5,000;

WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2399 (B) the value of the property is or exceeds \$500 and the actor has been twice before  
2400 convicted of any of the following offenses, if each prior offense was committed within 10  
2401 years before the date of the current conviction or the date of the offense upon which the  
2402 current conviction is based and at least one of those convictions is for a class A  
2403 misdemeanor:

2404 (I) any theft, any robbery, or any burglary with intent to commit theft;

2405 (ii) any offense under Title 76, Chapter 6, Part 5, Fraud; or

2406 (III) any attempt to commit any offense under Subsection (3)(a)(ii)(C)(I) or (II);

2407 (C) the value of property is or exceeds \$500 but is less than \$1,500; or

2408 (D) the actor has been previously convicted of a felony violation of any of the offenses

2409 listed in Subsections (3)(a)(ii)(C)(I) through (3)(a)(ii)(C)(III), if the prior offense was committed

2410 within 10 years before the date of the current conviction or the date of the offense upon

2411 which the current conviction is based;

2412 (iii) a class A misdemeanor if:

2413 (A) the value of the property stolen is or exceeds \$500 but is less than \$1,500;

2414 (B) the value of property is less than \$500;

2415 (C) the actor has been twice before convicted of any of the offenses listed in

2416 Subsections (3)(a)(ii)(C)(I) through (3)(a)(ii)(C)(III), if each prior offense was committed within

2417 10 years before the date of the current conviction or the date of the offense upon which the

2418 current conviction is based; or

2419 (iv) a class B misdemeanor if the value of the property stolen is less than \$500 and

2420 the theft is not an offense under Subsection (3)(c).

2421 (b) A violation of Subsection (2)(b) is:

(i) a **felony of the** second degree **felony** if the value of the property wrongfully

2423 pledged is or exceeds \$5,000:

2424 (ii) a ~~felony of the~~ third degree **felony** if the value of the property wrongfully pledged

2425 is or exceeds \$1 500 but is less than \$5 000:

2426 (iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less

2427 than \$1 500 or the actor has been twice before convicted of theft, robbery, burglary with

2428 intent to commit theft or unlawful dealing with property by a fiduciary; or

2429 (iv) a class B misdemeanor if the value of the property is less than \$500

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

## 76-6-514. ~~Bribery or threat to influence contest~~ Unlawful influence of a contest.

(1) Terms defined in Section 76-1-101.5 apply to this section.

~~[A person is guilty of a felony of the third degree if]~~ (2) An actor commits unlawful influence of a contest if the actor:

~~[(1) With]~~ (a) with a purpose to influence any participant or prospective participant not to give ~~[his]~~ the participant's or prospective participant's best efforts in a publicly exhibited contest, ~~[he]~~ confers or offers or agrees to confer any benefit upon or threatens any injury to a participant or prospective participant; ~~[or]~~

~~[(2) With]~~ (b) with a purpose to influence an official in a publicly exhibited contest to perform ~~[his]~~ the official's duties improperly, ~~[he]~~ confers or offers or agrees to confer any benefit upon or threatens any injury to such official; ~~[or]~~

~~[(3) With]~~ (c) with a purpose to influence the outcome of a publicly exhibited contest, ~~[he]~~ tampers with any person, animal, or thing contrary to the rules and usages purporting to govern the contest; or

~~[(4) He]~~ (d) knowingly solicits, accepts, or agrees to accept any benefit, the giving of which would be criminal under Subsection ~~[(1) or]~~ (2) (a) or (b).

(3) A violation of Subsection (2) is a third degree felony.

## 76-6-515. Using or making slugs.

~~[(1) A person is guilty of a class B misdemeanor if:~~

~~(a) With a purpose to defraud the supplier of property or a service offered or sold by means of a coin machine, he inserts, deposits, or uses a slug in that machine; or~~

~~(b) He makes, possesses, or disposes of a slug with the purpose of enabling a person to use it fraudulently in a coin machine.]~~

~~[(2)]~~ (1)(a) As used in this section:

~~[(a)]~~ (i) "Coin machine" means any mechanical or electronic device or receptacle designed to receive a coin or bill of a certain denomination, or a token made for the purpose, and, in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or a public or private service.

~~[(b)]~~ (ii) "Slug" means any object which, by virtue of its size, shape, or other quality, is capable of being inserted, deposited, or otherwise used in a coin machine as an improper

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2463 substitute for a genuine coin, bill, or token.

2464 (b) Terms defined in Section 76-1-101.5 apply to this section.

2465 (2) An actor commits using or making slugs if the actor:

2466 (a) with a purpose to defraud the supplier of property or a service offered or sold by

2467 means of a coin machine, inserts, deposits, or uses a slug in that machine; or

2468 (b) makes, possesses, or disposes of a slug with the purpose of enabling a person to

2469 use it fraudulently in a coin machine.

2470 (3) A violation of Subsection (2) is a class B misdemeanor.

2471

2472 **76-6-516. [Conveyance of real estate by married man without wife's consent]**

2473 **Fraudulent conveyance of marital real estate .**

2474 (1) Terms defined in Section 76-1-101.5 apply to this section.

2475 [Any married man who] (2) An actor commits fraudulent conveyance of marital real  
2476 estate if the actor:

2477 (a) is married;

2478 (b) falsely represents himself or herself as unmarried ; and

2479 (c) [under such representation] knowingly conveys or mortgages real estate [situate]  
2480 situated in this state, without the assent or concurrence of [his wife] the actor's spouse  
2481 when such consent or concurrence is necessary to relinquish [her] the spouse's inchoate  
2482 statutory interest [therein, is guilty of a felony of the third degree.]

2483 (3) A violation of Subsection (2) is a third degree felony.

2484

2485 **76-6-517. Making a false credit report.**

2486 (1) Terms defined in Section 76-1-101.5 apply to this section.

2487 [(1) Any person who] (2) An actor commits making a false credit report if the actor  
2488 knowingly makes a materially false or misleading written statement to obtain property or  
2489 credit for himself or another [is guilty of making a false credit report].

2490 [(2) Making a false credit report] (3) A violation of Subsection (2) is a class A  
2491 misdemeanor.

2492

2493 **76-6-518. Criminal simulation.**

2494 (1) Terms defined in Section 76-1-101.5 apply to this section.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2495 [1] A person is guilty of] (2) An actor commits criminal simulation if, with intent to  
2496 defraud another , the actor :

2497 (a) [he] makes or alters an object in whole or in part so that it appears to have value  
2498 because of age, antiquity, rarity, source, or authorship that it does not have;

2499 (b) [he] sells, passes, or otherwise utters an object so made or altered;

2500 (c) [he] possesses an object so made or altered with intent to sell, pass, or otherwise  
2501 utter it; or

2502 (d) [he] authenticates or certifies an object so made or altered as genuine or as  
2503 different from what it is.

2504 [(2) Criminal simulation] (3) A violation of Subsection (3) is punishable as follows:

2505 (a) [If] if the value defrauded or intended to be defrauded is less than \$500, the  
2506 offense is a class B misdemeanor[.];

2507 (b) [If] if the value defrauded or intended to be defrauded is or exceeds \$500 but is  
2508 less than \$1,500, the offense is a class A misdemeanor[.];

2509 (c) [If] if the value defrauded or intended to be defrauded is or exceeds \$1,500 but is  
2510 less than \$5,000, the offense is a third degree felony [of the third degree.] ; or

2511 (d) [If] if the value defrauded or intended to be defrauded is or exceeds \$5,000, the  
2512 offense is a second degree felony [of the second degree].

2513

2514 **76-6-520. Criminal usury.**

2515 (1) Terms defined in Section 76-1-101.5 apply to this section.

2516 [(1) A person is guilty of criminal usury when he] (2) An actor commits criminal usury if  
2517 the actor knowingly engages in , or directly or indirectly provides financing for , the  
2518 business of making loans at a higher rate of interest or consideration therefor than is  
2519 authorized by law.

2520 [(2) Criminal usury] (3) A violation of Subsection (2) is a third degree felony of [the  
2521 third degree].

2522

2523 **76-6-521. [Fraudulent insurance act] Insurance fraud .**

2524 (1)(a) As used in this section, "runner" means the same as that term is defined in  
2525 Section 31A-31-102.

2526 (b) Terms defined in Section 76-1-101.5 apply to this section.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2527 [1] A person [2] An actor commits a fraudulent insurance act if [that person] the  
2528 actor with intent to deceive or defraud:

2529 (a) presents or causes to be presented any oral or written statement or representation  
2530 knowing that the statement or representation contains false or fraudulent information  
2531 concerning any fact material to an application for the issuance or renewal of an insurance  
2532 policy, certificate, or contract, as part of or in support of:

2533 (i) obtaining an insurance policy the insurer would otherwise not issue on the basis of  
2534 underwriting criteria applicable to the person;

2535 (ii) a scheme or artifice to avoid paying the premium that an insurer charges on the  
2536 basis of underwriting criteria applicable to the person; or

2537 (iii) a scheme or artifice to file an insurance claim for a loss that has already occurred;

2538 (b) presents, or causes to be presented, any oral or written statement or  
2539 representation:

2540 (i) (A) as part of or in support of a claim for payment or other benefit pursuant to an  
2541 insurance policy, certificate, or contract; or

2542 (B) in connection with any civil claim asserted for recovery of damages for personal or  
2543 bodily injuries or property damage; and

2544 (ii) knowing that the statement or representation contains false, incomplete, or  
2545 fraudulent information concerning any fact or thing material to the claim;

2546 (c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance  
2547 act;

2548 (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees  
2549 for professional services, or anything of value by means of false or fraudulent pretenses,  
2550 representations, promises, or material omissions;

2551 (e) knowingly employs, uses, or acts as a runner [as defined in Section 31A-31-102];  
2552 for the purpose of committing a fraudulent insurance act;

2553 (f) knowingly assists, abets, solicits, or conspires with another to commit a fraudulent  
2554 insurance act;

2555 (g) knowingly supplies false or fraudulent material information in any document or  
2556 statement required by the Department of Insurance; or

2557 (h) knowingly fails to forward a premium to an insurer in violation of Section  
2558 31A-23a-411.1.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2559 [2] (3) (a) A violation of Subsection [1] (2)(a)(i) is a class A misdemeanor.  
2560 (b) A violation of Subsections [1] (2)(a)(ii) or [1] (2)(b) through [1] (2)(h) is  
2561 punishable as in the manner prescribed by Section 76-10-1801 for communication fraud for  
2562 property of like value.  
2563 (c) A violation of Subsection [1] (2)(a)(iii):  
2564 (i) is a class A misdemeanor if the value of the loss is less than \$1,500 or unable to  
2565 be determined; or  
2566 (ii) if the value of the loss is \$1,500 or more, is punishable as in the manner  
2567 prescribed by Section 76-10-1801 for communication fraud for property of like value.  
2568 [3] (4) A corporation or association is guilty of the offense of insurance fraud under  
2569 the same conditions as those set forth in Section 76-2-204.  
2570 [4] (5) The determination of the degree of any offense under Subsections [1] (2)  
2571 (a)(ii) and [1] (2)(b) through [1] (2)(h) shall be measured by the total value of all  
2572 property, money, or other things obtained or sought to be obtained by the fraudulent  
2573 insurance act or acts described in Subsections [1] (2)(a)(ii) and [1] (2)(b) through [1]  
2574 (2)(h).

## 2575 2576 76-6-522. **[Definitions--] Equity skimming of a vehicle [--Penalties].**

2577 (1) (a) As used in this section:  
2578 (i) "Actor" means a broker, dealer, or a person in collusion with a dealer or broker.  
2579 (a) (ii) "Broker" means any person who, for compensation of any kind, arranges for  
2580 the sale, lease, sublease, or transfer of a vehicle.  
2581 (b) (iii) "Dealer" means any person engaged in the business of selling, leasing, or  
2582 exchanging vehicles for compensation of any kind.  
2583 (c) (iv) "Lease" means any grant of use or possession of a vehicle for  
2584 consideration, with or without an option to buy.  
2585 (d) (v) "Security interest" means an interest in a vehicle that secures payment or  
2586 performance of an obligation.  
2587 (e) (vi) "Transfer" means any delivery or conveyance of a vehicle to another from  
2588 one person to another.  
2589 (f) (vii) "Vehicle" means every device in, upon, or by which any person or property  
2590 is or may be transported or drawn upon a highway, or through the air or water, or over land

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2591 and includes a manufactured home or mobile home as defined in Section 41-1a-102.

2592 (b) Terms defined in Section 76-1-101.5 apply to this section.

2593 ~~(2) [A dealer or broker or any other person in collusion with a dealer or broker is guilty~~

2594 ~~of]~~ An actor commits equity skimming of a vehicle if ~~[he]~~ the actor:

2595 (a)(i) transfers or arranges the transfer of a vehicle for consideration or profit~~[, when~~

2596 ~~he]~~ ; and

2597 (ii) has not first obtained written authorization of the lessor or holder of the security  
2598 interest; and

2599 (b) knows or should have known the vehicle is subject to a lease or security interest~~[,~~

2600 ~~without first obtaining written authorization of the lessor or holder of the security interest].~~

2601 ~~(3) [Equity skimming of a vehicle] A violation of Subsection (2)~~ is a third degree  
2602 felony.

2603 ~~(4) It is a defense to [the crime of equity skimming of a vehicle if the accused] a~~  
2604 ~~violation of Subsection (2) if the defendant~~ proves by a preponderance of the evidence that  
2605 the lease obligation or security interest has been satisfied within 30 days following the  
2606 transfer of the vehicle.

2607

2608 **76-6-523. Obstruction of the leasing of real property for natural resource or**  
2609 **agricultural production ~~--Criminal penalties~~.**

2610 (1) (a) As used in this section:

2611 ~~[(a)]~~ (i) "Competitive process" includes public auction or other public competitive  
2612 bidding process.

2613 ~~[(b)]~~ (ii) "Natural resource or agricultural production" means:

2614 ~~[(i)]~~ (A) the extraction or production of oil, gas, hydrocarbons, or other minerals;

2615 ~~[(ii)]~~ (B) production for commercial purposes of crops, livestock, and livestock  
2616 products, including grazing; or

2617 ~~[(iii)]~~ (C) activities similar in purpose to those listed in Subsections (1)~~[(b)(i) and (ii)]~~  
2618 (a)(ii)(A) and (B).

2619 (b) Terms defined in Section 76-1-101.5 apply to this section.

2620 ~~(2) [A person is guilty of]~~ An actor commits obstruction of the leasing of real property  
2621 for natural resource or agricultural production if the ~~[person]~~ actor:

2622 (a) bids for a lease as part of a competitive process for the lease;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2623        (b) does not intend to pay for the lease at the time the person actor makes the bid  
2624 described in Subsection (2)(a); and  
2625        (c) does not pay the lessor in full for the lease as required by the lease agreement.  
2626        (3) ~~The offense of obstruction of the leasing of real property for natural resource or~~  
2627 ~~agricultural production~~ A violation of Subsection (2) is:  
2628        (a) a third degree felony; and  
2629        (b) subject to a minimum fine of not less than \$7,500.

2630

2631        **76-6-524. Falsifying information for preconstruction lien purposes.**  
2632        (1) Terms defined in Section 76-1-101.5 apply to this section.  
2633        ~~[A person who knowingly falsifies]~~ (2) An actor commits falsifying information for the  
2634 purpose of obtaining priority of a preconstruction lien if the actor knowingly falsifies  
2635 information for the purpose of obtaining priority of a preconstruction lien under Title 38,  
2636 Chapter 1a, Preconstruction and Construction Liens ~~[, is guilty of a class B misdemeanor]~~.  
2637        (3) A violation of Subsection (2) is a class B misdemeanor.

2638

2639        **76-6-601. Definitions.**  
2640        As used in this chapter part :  
2641        (1) "Merchandise" means any personal property displayed, held , or offered for sale  
2642 by a merchant.  
2643        (2) "Merchant" means an owner or operator of any retail mercantile establishment  
2644 where merchandise is displayed, held , or offered for sale and includes the merchant's  
2645 employees, servants , or agents.  
2646        (3) "Minor" means any unmarried person under 18 years of age.  
2647        (4) "Peace officer" has the same meaning as provided in Title 53, Chapter 13, Peace  
2648 Officer Classifications.  
2649        (5) "Premises of a retail mercantile establishment" includes, but is not limited to, the  
2650 retail mercantile establishment; any common use areas in shopping centers and all parking  
2651 lots or areas set aside for the benefit of those patrons of the retail mercantile establishment.  
2652        (6) "Retail mercantile establishment" means any place where merchandise is  
2653 displayed, held, or offered for sale to the public.  
2654        (7) "Retail value" means the merchant's stated or advertised price of the

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2655 merchandise.

2656 (8) "Shopping cart" means those push carts of the types which are commonly  
2657 provided by grocery stores, drug stores, or other mercantile establishments    or markets for  
2658 the use of the public in transporting commodities in stores and markets from the store to a  
2659 place outside the store.

2660 (9) "Under-ring" means to cause the cash register or other sales recording device to  
2661 reflect less than the retail value of the merchandise.

2662

## 2663 **76-6-602. Retail theft~~, acts constituting~~.**

2664 (1) Terms defined in Sections 76-1-101.5 and 76-6-601 apply to this section.

2665 ~~[A person commits the offense of retail theft when he] (2) An actor commits retail theft  
2666 if the actor~~ knowingly:

2667 ~~[(1) Takes] (a) takes~~ possession of, conceals, carries away, transfers or causes to  
2668 be carried away or transferred, any merchandise displayed, held, stored    or offered for sale  
2669 in a retail mercantile establishment with the intention of   :

2670 ~~(i) retaining [such] the~~ merchandise    or

2671 ~~[with the intention of] (ii)~~ depriving the merchant permanently of the possession, use  
2672 or benefit of ~~[such]~~ the merchandise without paying the retail value of such merchandise;  
2673 ~~[or]~~

2674 ~~[(2) Alters,] (b)(i) alters~~ transfers, or removes any label, price tag, marking, indicia of  
2675 value    or any other markings which aid in determining value of any merchandise displayed,  
2676 held, stored    or offered for sale, in a retail mercantile establishment    and

2677 ~~(ii) attempts to purchase [such] the~~ merchandise described in Subsection (2)(b)(i)  
2678 personally or in consort with another at less than the retail value with the intention of  
2679 depriving the merchant of the retail value of ~~[such]~~ the merchandise; ~~[or]~~

2680 ~~[(3) Transfers] (c) transfers~~ any merchandise displayed, held, stored    or offered for  
2681 sale in a retail mercantile establishment from the container in or on which ~~[such]~~ the  
2682 merchandise is displayed to any other container with the intention of depriving the merchant  
2683 of the retail value of ~~[such]~~ the merchandise; ~~[or]~~

2684 ~~[(4) Under-rings] (d) under-rings~~ with the intention of depriving the merchant of the  
2685 retail value of the merchandise; or

2686 ~~[(5) Removes] (e) removes~~ a shopping cart from the premises of a retail mercantile

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2687 establishment with the intent of depriving the merchant of the possession, use \_ or benefit of  
2688 [such] the shopping cart.

2689 (3) A violation of Subsection (2) is:

2690 (a) a second degree felony if the:

2691 (i) value of the merchandise or shopping cart is or exceeds \$5,000;

2692 (ii) merchandise stolen is a firearm or an operable motor vehicle; or

2693 (b) a third degree felony if:

2694 (i) the value of the merchandise is or exceeds \$1,500 but is less than \$5,000;

2695 (ii) the merchandise is a catalytic converter as defined under Section 76-6-1402;

2696 (iii) the value of the merchandise or shopping cart is or exceeds \$500 and the actor

2697 has been twice before convicted of any of the following offenses, if each prior offense was

2698 committed within 10 years before the date of the current conviction or the date of the offense

2699 upon which the current conviction is based and at least one of those convictions is for a class

2700 A misdemeanor:

2701 (A) any theft, any robbery, or any burglary with intent to commit theft;

2702 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

2703 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

2704 (iv) (A) the value of merchandise or shopping cart is or exceeds \$500 but is less than

2705 \$1,500;

2706 (B) the theft occurs in a retail mercantile establishment or on the premises of a retail

2707 mercantile establishment where the offender has committed any theft within the past five

2708 years; and

2709 (C) the offender has received written notice from the merchant prohibiting the

2710 offender from entering the retail mercantile establishment or premises of a retail mercantile

2711 establishment pursuant to Subsection 78B-3-108(4); or

2712 (v) the actor has been previously convicted of a felony violation of any of the offenses

2713 listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed

2714 within 10 years before the date of the current conviction or the date of the offense upon

2715 which the current conviction is based;

2716 (c) a class A misdemeanor if:

2717 (i) the value of the merchandise or shopping cart stolen is or exceeds \$500 but is less

2718 than \$1,500;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2719       (ii) (A) the value of merchandise or shopping cart is less than \$500;  
2720           (B) the theft occurs in a retail mercantile establishment or premises of a retail  
2721       mercantile establishment where the offender has committed any theft within the past five  
2722       years; and  
2723           (C) the offender has received written notice from the merchant prohibiting the  
2724       offender from entering the retail mercantile establishment or premises of a retail mercantile  
2725       establishment pursuant to Subsection 78B-3-108(4); or  
2726       (iii) the actor has been twice before convicted of any of the offenses listed in Subsections  
2727       (3)(b)(iii)(A) through (3)(b)(iii)(C), if each prior offense was committed within 10 years before  
2728       the date of the current conviction or the date of the offense upon which the current conviction  
2729       is based; or  
2730           (d) a class B misdemeanor if the value of the merchandise or shopping cart stolen is  
2731       less than \$500 and the theft is not an offense under Subsection (3)(c).

2732

2733       **76-6-608. Theft detection shielding devices prohibited [--Penalties].**

2734       (1) Terms defined in Sections 76-1-101.5 and 76-6-601 apply to this section.  
2735       [(1) A person may not] (2) An actor commits the unlawful shielding of a theft  
2736       detection device if the actor knowingly:  
2737           (a) [make or possess] makes or possesses any container or device used for,  
2738       intended for use for, or represented as having the purpose of shielding merchandise from  
2739       any electronic or magnetic theft alarm sensor, with the intent to commit a theft of  
2740       merchandise;  
2741           (b) [sell, offer to sell, advertise, give, transport, or otherwise transfer] sells, offers to  
2742       sell, advertises, gives, transports, or otherwise transfers to another any container or device  
2743       intended for use for or represented as having the purpose of shielding merchandise from any  
2744       electronic or magnetic theft alarm sensor;  
2745           (c) [possess] possesses any tool or instrument designed to remove any theft  
2746       detection device from any merchandise, with the intent to use the tool or instrument to  
2747       remove any theft detection device from any merchandise without the permission of the  
2748       merchant or the person owning or in possession of the merchandise; or  
2749           (d) intentionally [remove] removes a theft detection device from merchandise prior to  
2750       purchase and without the permission of the merchant.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2751 [2] (3) (a) A violation of Subsection [1] (2) (a), (b), or (c) is a class A  
2752 misdemeanor.

2753 (b) A violation of Subsection [1] (2) (d) is a:

2754 (i) class B misdemeanor if the value of the merchandise from which the theft  
2755 detection device is removed is less than \$500; or

2756 (ii) class A misdemeanor if the value of the merchandise from which the theft  
2757 detection device is removed is or exceeds \$500.

2758 [3] (4) A violation of Subsection [1] (2) is a separate offense from any offense  
2759 listed in Title 76, Chapter 6, Part 4, Theft, or Part 6, Retail Theft.

2760 [4] (5) Criminal prosecutions under this section do not affect any person's right of  
2761 civil action for redress for damages suffered as a result of any violation of this section.

2762

2763 **76-6-703. [Computer crimes and penalties -- Interfering with critical infrastructure]**

2764 **Unlawful computer technology access or action or denial of service attack.**

2765 (1) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

2766 [—— (1) It is unlawful for a person to:] (2) An actor commits unlawful computer technology  
2767 access or action or denial of service attack if the actor:

2768 (a) without authorization, or in excess of the [person's] actor's authorization, [access]  
2769 accesses or [attempt] attempts to access computer technology if the access or attempt to  
2770 access results in:

2771 (i) the alteration, damage, destruction, copying, transmission, discovery, or disclosure  
2772 of computer technology;

2773 (ii) interference with or interruption of:

2774 (A) the lawful use of computer technology; or

2775 (B) the transmission of data;

2776 (iii) physical damage to or loss of real, personal, or commercial property;

2777 (iv) audio, video, or other surveillance of another person; or

2778 (v) economic loss to any person or entity;

2779 (b) after accessing computer technology that the [person] actor is authorized to  
2780 access, knowingly [take] takes or [attempt] attempts to take unauthorized or unlawful  
2781 action that results in:

2782 (i) the alteration, damage, destruction, copying, transmission, discovery, or disclosure

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2783 of computer technology;

2784 (ii) interference with or interruption of:

2785 (A) the lawful use of computer technology; or

2786 (B) the transmission of data;

2787 (iii) physical damage to or loss of real, personal, or commercial property;

2788 (iv) audio, video, or other surveillance of another person; or

2789 (v) economic loss to any person or entity; or

2790 (c) knowingly [engage] engages in a denial of service attack.

2791 [ (2) A person who violates Subsection (1) is guilty of:] (3) A violation of Subsection

2792 (2) is:

2793 (a) a class B misdemeanor [when] if:

2794 (i) the economic loss or other loss or damage caused or the value of the money,

2795 property, or benefit obtained or sought to be obtained is less than \$500; or

2796 (ii) the information obtained is not confidential;

2797 (b) a class A misdemeanor [when] if the economic loss or other loss or damage

2798 caused or the value of the money, property, or benefit obtained or sought to be obtained is or

2799 exceeds \$500 but is less than \$1,500;

2800 (c) a third degree felony [when] if:

2801 (i) the economic loss or other loss or damage caused or the value of the money, property, or

2802 benefit obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000;

2803 (ii) the property or benefit obtained or sought to be obtained is a license or entitlement;

2804 (iii) the damage is to the license or entitlement of another person;

2805 (iv) the information obtained is confidential or identifying information; or

2806 (v) in gaining access the actor breaches or breaks through a security system; or

2807 (d) a second degree felony [when] if the economic loss or other loss or damage

2808 caused or the value of the money, property, or benefit obtained or sought to be obtained is or

2809 exceeds \$5,000 [; or] .

2810 [ (e) a third degree felony when:

2811 (i) the property or benefit obtained or sought to be obtained is a license or

2812 entitlement;

2813 (ii) the damage is to the license or entitlement of another person;

2814 (iii) the information obtained is confidential or identifying information; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2815        (iv) in gaining access the person breaches or breaks through a security system.]

2816        [ (3) (a) A person who intentionally or knowingly and without authorization gains or

2817        attempts to gain access to a computer, computer network, computer property, or computer

2818        system under circumstances not otherwise constituting an offense under this section is guilty

2819        of a class B misdemeanor.

2820        (b) Notwithstanding Subsection (3)(a), a retailer that uses an electronic product

2821        identification or tracking system, or other technology, to identify, track, or price goods is not

2822        guilty of a violation of Subsection (3)(a) if the equipment designed to read the electronic

2823        product identification or tracking system data and used by the retailer to identify, track, or

2824        price goods is located within the retailer's location.]

2825        [(4) (a) A person who, with intent that electronic communication harassment occur,

2826        discloses or disseminates another person's identifying information with the expectation that

2827        others will further disseminate or use the person's identifying information is subject to the

2828        penalties outlined in Subsection (4)(b).]

2829        (b) If the disclosure or dissemination of another person's identifying information

2830        results in electronic communication harassment, as described in Section 76-9-201, of the

2831        person whose identifying information is disseminated, the person disseminating the

2832        information is guilty of:

2833        (i) a class B misdemeanor if the person whose identifying information is disseminated

2834        is an adult; or

2835        (ii) a class A misdemeanor if the person whose identifying information is disseminated

2836        is a minor.

2837        (c) A second offense under Subsection (4)(b)(i) is a class A misdemeanor.

2838        (d) A second offense under Subsection (4)(b)(ii), and a third or subsequent offense

2839        under this Subsection (4)(b), is a third degree felony.]

2840        [(5) A person who uses or knowingly allows another person to use any computer,

2841        computer network, computer property, or computer system, program, or software to devise or

2842        execute any artifice or scheme to defraud or to obtain money, property, services, or other

2843        things of value by false pretenses, promises, or representations, is guilty of an offense based

2844        on the value of the money, property, services, or things of value, in the degree set forth in

2845        Subsection 76-10-1801(1).]

2846        [(6) A person is guilty of a third degree felony if the person intentionally or knowingly,

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2847 ~~and without lawful authorization, interferes with or interrupts critical infrastructure.]~~

2848 ~~[—— (7) It is an affirmative defense to Subsection (1), (2), or (3) that a person]~~ (4) (a) It is

2849 an affirmative defense that the actor obtained access or attempted to obtain access:

2850       [~~(a)~~ (i) in response to, and for the purpose of protecting against or investigating, a

2851 prior attempted or successful breach of security of computer technology whose security the

2852 ~~[person]~~ actor is authorized or entitled to protect, and the access attempted or obtained was

2853 no greater than reasonably necessary for that purpose; or

2854       [~~(b)~~ (ii) pursuant to a search warrant or a lawful exception to the requirement to

2855 obtain a search warrant.

2856 (b) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and nothing in

2857 this section may be construed to impose liability or culpability on, an interactive computer

2858 service for content provided by another person.

2859 (c) This section does not affect, limit, or apply to any activity or conduct that is protected by

2860 the Constitution or laws of this state, or by the Constitution or laws of the United States.

2861 ~~[—— (8)]~~ (5) (a) An interactive computer service is not guilty of violating this section if a

2862 person violates this section using the interactive computer service and the interactive

2863 computer service did not knowingly assist the person to commit the violation.

2864       (b) A service provider is not guilty of violating this section for:

2865           (i) action taken in relation to a customer of the service provider, for a legitimate

2866 business purpose, to install software on, monitor, or interact with the customer's Internet or

2867 other network connection, service, or computer for network or computer security purposes,

2868 authentication, diagnostics, technical support, maintenance, repair, network management,

2869 updates of computer software or system firmware, or remote system management; or

2870           (ii) action taken, including scanning and removing computer software, to detect or

2871 prevent the following:

2872           (A) unauthorized or fraudulent use of a network, service, or computer software;

2873           (B) illegal activity; or

2874           (C) infringement of intellectual property rights.

2875       ~~[(9) Subsections (4)(a) and (b) do not apply to a person who provides information in~~

2876 ~~conjunction with a report under Title 34A, Chapter 6, Utah Occupational Safety and Health~~

2877 ~~Act, or Title 67, Chapter 21, Utah Protection of Public Employees Act.]~~

2878       ~~[(10) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and~~

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2879 ~~nothing in this section may be construed to impose liability or culpability on, an interactive~~  
2880 ~~computer service for content provided by another person.]~~

2881 ~~[(11) This section does not affect, limit, or apply to any activity or conduct that is~~  
2882 ~~protected by the constitution or laws of this state or by the constitution or laws of the United~~  
2883 ~~States.]~~

2884

## **76-6-703.1. Unlawful disclosure of personal information.**

2886 (1) (a) As used in this section, "electronic communication harassment" means an offense  
2887 under Section 76-9-201.

2888 (b) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

2889 (2) An actor commits unlawful disclosure of personal information if:

2890 (a) with intent that electronic communication harassment occur, the actor discloses or  
2891 disseminates another person's identifying information with the expectation that others will  
2892 further disseminate or use the person's identifying information; and

2893 (b) the disclosure or dissemination of the other person's identifying information results in  
2894 electronic communication harassment.

2895 (3) (a) If the person whose identifying information is disseminated is an adult, a violation of  
2896 Subsection (2) is:

2897 (i) a class B misdemeanor on the first offense;

2898 (ii) a class A misdemeanor on the second offense; or

2899 (iii) a third degree felony on a third or subsequent offense.

2900 (b) If the person whose identifying information is disseminated is a minor, a violation of  
2901 Subsection (2) is:

2902 (i) a class A misdemeanor on the first offense; or

2903 (ii) a third degree felony on the second or subsequent offense.

2904 (4) (a) This section does not apply to an actor who provides information in conjunction with a  
2905 report under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, or Title 67,  
2906 Chapter 21, Utah Protection of Public Employees Act.

2907 (b) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and nothing in  
2908 this section may be construed to impose liability or culpability on, an interactive computer  
2909 service for content provided by another person.

2910 (c) This section does not affect, limit, or apply to any activity or conduct that is protected by

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2911 the Constitution or laws of this state, or by the Constitution or laws of the United States.

2912 (5) (a) An interactive computer service is not guilty of violating this section if an actor violates

2913 this section using the interactive computer service and the interactive computer service did

2914 not knowingly assist the actor to commit the violation.

2915 (b) A service provider is not guilty of violating this section for:

2916 (i) action taken in relation to a customer of the service provider, for a legitimate business

2917 purpose, to install software on, monitor, or interact with the customer's Internet or other

2918 network connection, service, or computer for network or computer security purposes,

2919 authentication, diagnostics, technical support, maintenance, repair, network management,

2920 updates of computer software or system firmware, or remote system management; or

2921 (ii) action taken, including scanning and removing computer software, to detect or prevent

2922 the following:

2923 (A) unauthorized or fraudulent use of a network, service, or computer software;

2924 (B) illegal activity; or

2925 (C) infringement of intellectual property rights.

2926

## **76-6-703.3. Unlawful use of technology to defraud.**

2928 (1) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

2929 (2) An actor commits unlawful use of technology to defraud if the actor uses or knowingly

2930 allows another person to use a computer, computer network, computer property, or computer

2931 system, program, or software to devise or execute any artifice or scheme to defraud or to

2932 obtain money, property, a service, or other thing of value by a false pretense, promise, or

2933 representation.

2934 (3) A violation of Subsection (2) is:

2935 (a) a class B misdemeanor if the value of the money, property, service, or thing obtained or

2936 sought to be obtained is less than \$500;

2937 (b) a class A misdemeanor if the value of the money, property, service, or thing obtained or

2938 sought to be obtained is or exceeds \$500 but is less than \$1,500;

2939 (c) a third degree felony if the value of the money, property, service, or thing obtained or

2940 sought to be obtained is or exceeds \$1,500 but is less than \$5,000; or

2941 (d) a second degree felony if:

2942 (i) the value of the money, property, service, or thing obtained or sought to be obtained is or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2943 exceeds \$5,000; or

2944 (ii) the object or purpose of the artifice or scheme to defraud is the obtaining of sensitive

2945 personal identifying information, regardless of the value.

2946 (4) (a) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and nothing

2947 in this section may be construed to impose liability or culpability on, an interactive computer

2948 service for content provided by another person.

2949 (b) This section does not affect, limit, or apply to any activity or conduct that is protected by

2950 the Constitution or laws of this state, or by the Constitution or laws of the United States.

2951 (5) (a) An interactive computer service is not guilty of violating this section if a person

2952 violates this section using the interactive computer service and the interactive computer

2953 service did not knowingly assist the person to commit the violation.

2954 (b) A service provider is not guilty of violating this section for:

2955 (i) action taken in relation to a customer of the service provider, for a legitimate business

2956 purpose, to install software on, monitor, or interact with the customer's Internet or other

2957 network connection, service, or computer for network or computer security purposes,

2958 authentication, diagnostics, technical support, maintenance, repair, network management,

2959 updates of computer software or system firmware, or remote system management; or

2960 (ii) action taken, including scanning and removing computer software, to detect or prevent

2961 the following:

2962 (A) unauthorized or fraudulent use of a network, service, or computer software;

2963 (B) illegal activity; or

2964 (C) infringement of intellectual property rights.

2965

2966 **76-6-703.5. Interference or interruption of critical infrastructure.**

2967 (1) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

2968 (2) An actor commits interference or interruption of critical infrastructure if the actor

2969 intentionally or knowingly, and without lawful authorization, interferes with or interrupts critical

2970 infrastructure.

2971 (3) A violation of Subsection (2) is a third degree felony.

2972 (4) (a) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and nothing

2973 in this section may be construed to impose liability or culpability on, an interactive computer

2974 service for content provided by another person.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

2975 (b) This section does not affect, limit, or apply to any activity or conduct that is protected by  
2976 the Constitution or laws of this state, or by the Constitution or laws of the United States.  
2977 (5) (a) An interactive computer service is not guilty of violating this section if a person  
2978 violates this section using the interactive computer service and the interactive computer  
2979 service did not knowingly assist the person to commit the violation.  
2980 (b) A service provider is not guilty of violating this section for:  
2981 (i) action taken in relation to a customer of the service provider, for a legitimate business  
2982 purpose, to install software on, monitor, or interact with the customer's Internet or other  
2983 network connection, service, or computer for network or computer security purposes,  
2984 authentication, diagnostics, technical support, maintenance, repair, network management,  
2985 updates of computer software or system firmware, or remote system management; or  
2986 (ii) action taken, including scanning and removing computer software, to detect or prevent  
2987 the following:  
2988 (A) unauthorized or fraudulent use of a network, service, or computer software;  
2989 (B) illegal activity; or  
2990 (C) infringement of intellectual property rights.  
2991

## **76-6-703.7. Unlawful computer access.**

2993 (1) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.  
2994 (2) An actor commits unlawful computer access if:  
2995 (a) the actor intentionally or knowingly, and without authorization, gains or attempts to gain  
2996 access to a computer, computer network, computer property, or computer system; and  
2997 (b) the circumstances of the violation of Subsection (2)(a) do not constitute an offense under  
2998 Section 76-6-703, 76-6-703.1, 76-6-703.3, or 76-6-703.5.  
2999 (3) A violation of Subsection (2) is a class B misdemeanor.  
3000 (4) (a) Notwithstanding Subsection (2), a retailer that uses an electronic product  
3001 identification or tracking system, or other technology, to identify, track, or price goods is not  
3002 guilty of a violation of this section if the equipment designed to read the electronic product  
3003 identification or tracking system data and used by the retailer to identify, track, or price goods  
3004 is located within the retailer's location.  
3005 (b) It is an affirmative defense to a violation under this section that the actor obtained access  
3006 or attempted to obtain access:

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3007 (i) in response to, and for the purpose of protecting against or investigating, a prior  
3008 attempted or successful breach of security of computer technology whose security the actor  
3009 is authorized or entitled to protect, and the access attempted or obtained was no greater than  
3010 reasonably necessary for that purpose; or  
3011 (ii) pursuant to a search warrant or a lawful exception to the requirement to obtain a search  
3012 warrant.  
3013 (c) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and nothing in  
3014 this section may be construed to impose liability or culpability on, an interactive computer  
3015 service for content provided by another person.  
3016 (d) This section does not affect, limit, or apply to any activity or conduct that is protected by  
3017 the Constitution or laws of this state, or by the Constitution or laws of the United States.  
3018 (5) (a) An interactive computer service is not guilty of violating this section if an actor violates  
3019 this section using the interactive computer service and the interactive computer service did  
3020 not knowingly assist the actor to commit the violation.  
3021 (b) A service provider is not guilty of violating this section for:  
3022 (i) action taken in relation to a customer of the service provider, for a legitimate business  
3023 purpose, to install software on, monitor, or interact with the customer's Internet or other  
3024 network connection, service, or computer for network or computer security purposes,  
3025 authentication, diagnostics, technical support, maintenance, repair, network management,  
3026 updates of computer software or system firmware, or remote system management; or  
3027 (ii) action taken, including scanning and removing computer software, to detect or prevent  
3028 the following:  
3029 (A) unauthorized or fraudulent use of a network, service, or computer software;  
3030 (B) illegal activity; or  
3031 (C) infringement of intellectual property rights.

## 3032 76-6-705. Reporting violations.

3033 (1) Each person who has reason to believe that [the provisions] a provision of  
3034 Section 76-6-703 [are being or have] , 76-6-703.1, 76-6-703.3, 76-6-703.5, or 76-6-703.7 is  
3035 being or has been violated shall report the suspected violation to:  
3036 (a) the attorney general, or county attorney, or, if within a prosecution district, the  
3037 district attorney of the county or prosecution district in which part or all of the [violations]

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3039 violation occurred; or  
3040 (b) a state or local law enforcement agency.  
3041 (2) Subsection (1) does not apply to the extent that the person is prohibited from  
3042 reporting by a statutory or common law privilege.

3043

3044 **76-6-801. [Acts constituting library] Library theft.**

3045 (1)(a) As used in this section, "library materials" means a book, plate, picture,  
3046 photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside,  
3047 manuscript, document, letter, public record, microfilm, sound recording, audiovisual materials  
3048 in any format, electronic data processing records, artifacts, or other documentary, written or  
3049 printed materials regardless of physical form or characteristics, belonging to, on loan to, or  
3050 otherwise in the custody of the following:

3051 (i) a public library;  
3052 (ii) a library of an educational or historical society;  
3053 (iii) a museum; or  
3054 (iv) a repository of public records.

3055 (b) Terms defined in Section 76-1-101.5 apply to this section.

3056 [A person is guilty of the crime of library theft when he] (2) An actor commits library  
3057 theft if the actor:

3058 (a) willfully, for the purpose of converting to personal use, and depriving the owner,  
3059 conceals on [his] the actor's person or among [his] the actor's belongings library materials  
3060 while on the premises of the library ; or

3061 (b) willfully and without authority removes library materials from the library building  
3062 with the intention of converting them to [his] the actor's own use.

3063 (3) A violation of Subsection (2) is:

3064 (a) a second degree felony if the value of the library materials is or exceeds \$5,000;

3065 (b) a third degree felony if:

3066 (i) the value of the library materials is or exceeds \$1,500 but is less than \$5,000;

3067 (ii) the value of the library materials is or exceeds \$500 and the actor has been twice  
3068 before convicted of any of the following offenses, if each prior offense was committed within  
3069 10 years before the date of the current conviction or the date of the offense upon which the  
3070 current conviction is based and at least one of those convictions is for a class A

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3071 misdemeanor:

3072       (A) any theft, any robbery, or any burglary with intent to commit theft;

3073       (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

3074       (C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);

3075       (iii) (A) the value of the library materials is or exceeds \$500 but is less than \$1,500;

3076       (B) the theft occurs on a property where the offender has committed any theft within

3077 the past five years; and

3078       (C) the offender has received written notice from the library prohibiting the offender

3079 from entering the property if the library has complied with the provisions of Subsection 78B-3-

3080 108(4) governing notice by a merchant; or

3081       (iv) the actor has been previously convicted of a felony violation of any of the offenses

3082 listed in Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if the prior offense was committed

3083 within 10 years before the date of the current conviction or the date of the offense upon

3084 which the current conviction is based;

3085       (c) a class A misdemeanor if:

3086       (i) the value of the library materials stolen is or exceeds \$500 but is less than \$1,500;

3087       (ii) (A) the value of the library materials is less than \$500;

3088       (B) the theft occurs on a property where the offender has committed any theft within

3089 the past five years; and

3090       (C) the offender has received written notice from the library if the library has complied

3091 with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

3092       (iii) the actor has been twice before convicted of any of the offenses listed in

3093 Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if each prior offense was committed within 10

3094 years before the date of the current conviction or the date of the offense upon which the

3095 current conviction is based; or

3096       (d) a class B misdemeanor if the value of the library materials stolen is less than \$500

3097 and the theft is not an offense under Subsection (3)(c).

3098

## 3099       **76-6-802. Presumption of intent.**

3100       [A person] (1) An actor who willfully conceals library materials on [his] the actor's

3101 person or among [his] the actor's belongings while on the premises of the library or in [its]

3102 the library's immediate vicinity is *prima facie* presumed to have concealed library materials

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3103 with the intention of converting [them to his] the library materials to the actor's own use.

3104        (2) If library materials are found concealed upon [his] the actor's person or among  
3105 [his] the actor's belongings, or electronic security devices are activated by the [person's]  
3106 actor's presence, it is prima facie evidence of willful concealment.

3107

## 76-6-803. Mutilation or damaging of library material [as library theft].

3108        (1)(a) "Library materials" means the same as that term is defined in Section 76-6-801.

3109        (b) Terms defined in Section 76-1-101.5 apply to this section.

3110        [A person is guilty of the crime of library theft when he] (2) An actor is guilty of  
3111 mutilation or damage of library materials if the actor intentionally or recklessly writes upon,  
3112 injures, defaces, tears, cuts, mutilates, destroys, or otherwise damages library materials.

3113        (3) A violation of Subsection (2) is:

3114        (a) a second degree felony if the value of the library materials is or exceeds \$5,000;

3115        (b) a third degree felony if:

3116        (i) the value of the library materials is or exceeds \$1,500 but is less than \$5,000;

3117        (ii) the value of the library materials is or exceeds \$500 and the actor has been twice  
3118 before convicted of any of the following offenses, if each prior offense was committed within  
3119 10 years before the date of the current conviction or the date of the offense upon which the  
3120 current conviction is based and at least one of those convictions is for a class A  
3121 misdemeanor:

3122        (A) any theft, any robbery, or any burglary with intent to commit theft;

3123        (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

3124        (C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);

3125        (iii) (A) the value of the library materials is or exceeds \$500 but is less than \$1,500;

3126        (B) the theft occurs on a property where the offender has committed any theft within  
3127 the past five years; and

3128        (C) the offender has received written notice from the library if the library has complied

3129 with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

3130        (iv) the actor has been previously convicted of a felony violation of any of the offenses  
3131 listed in Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if the prior offense was committed  
3132 within 10 years before the date of the current conviction or the date of the offense upon  
3133 which the current conviction is based;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3135 (c) a class A misdemeanor if:

3136 (i) the value of the library materials stolen is or exceeds \$500 but is less than \$1,500;

3137 (ii) (A) the value of the library materials is less than \$500;

3138 (B) the theft occurs on a property where the offender has committed any theft within  
3139 the past five years; and

3140 (C) the offender has received written notice from the library if the library has complied  
3141 with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

3142 (iii) the actor has been twice before convicted of any of the offenses listed in

3143 Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if each prior offense was committed within 10  
3144 years before the date of the current conviction or the date of the offense upon which the  
3145 current conviction is based; or

3146 (d) a class B misdemeanor if the value of the library materials stolen is less than \$500  
3147 and the theft is not an offense under Subsection (3)(c).

## 76-6-803.30. Failure to return library material ~~[as library theft -- Notice -- Failure to pay replacement value]~~ -- Written notice.

3151 (1)(a) "Library materials" means the same as that term is defined in Section  
3152 76-6-801.

3153 (b) Terms defined in Section 76-1-101.5 apply to this section.

3154 ~~[(1) A person is guilty of library theft when]~~ (2)(a) An actor is guilty of failure to return  
3155 library materials if the actor, having possession or having been in possession of library  
3156 materials~~[, he]~~:

3157 [(a)] (i) fails to return the materials within 30 days after receiving written notice  
3158 demanding return of the materials; or

3159 [(b)] (ii) if the materials are lost or destroyed, fails to pay the replacement value of  
3160 the materials within 30 days after being notified.

3161 [(2)] (b) Written notice is considered received upon the sworn affidavit of the person  
3162 delivering the notice with a statement as to the date, place, and manner of delivery, or upon  
3163 proof that the notice was mailed postage prepaid, via the United States Postal Service, to the  
3164 current address listed for the person in the library records.

3165 (3) A violation of Subsection (2) is:

3166 (a) a second degree felony if the value of the library materials is or exceeds \$5,000;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3167 (b) a third degree felony if:

3168 (i) the value of the library materials is or exceeds \$1,500 but is less than \$5,000;

3169 (ii) the value of the library materials is or exceeds \$500 and the actor has been twice  
3170 before convicted of any of the following offenses, if each prior offense was committed within  
3171 10 years before the date of the current conviction or the date of the offense upon which the  
3172 current conviction is based and at least one of those convictions is for a class A  
3173 misdemeanor:

3174 (A) any theft, any robbery, or any burglary with intent to commit theft;

3175 (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or

3176 (C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

3177 (iii) (A) the value of the library materials is or exceeds \$500 but is less than \$1,500;

3178 (B) the theft occurs on a property where the offender has committed any theft within  
3179 the past five years; and

3180 (C) the offender has received written notice from the library if the library has complied

3181 with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

3182 (iv) the actor has been previously convicted of a felony violation of any of the offenses  
3183 listed in Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if the prior offense was committed  
3184 within 10 years before the date of the current conviction or the date of the offense upon  
3185 which the current conviction is based;

3186 (c) a class A misdemeanor if:

3187 (i) the value of the library materials stolen is or exceeds \$500 but is less than \$1,500;

3188 (ii) (A) the value of the library materials is less than \$500;

3189 (B) the theft occurs on a property where the offender has committed any theft within  
3190 the past five years; and

3191 (C) the offender has received written notice from the library if the library has complied

3192 with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

3193 (iii) the actor has been twice before convicted of any of the offenses listed in  
3194 Subsections (3)(b)(ii)(A) through (3)(b)(ii)(C), if each prior offense was committed within 10  
3195 years before the date of the current conviction or the date of the offense upon which the  
3196 current conviction is based; or

3197 (d) a class B misdemeanor if the value of the library material stolen is less than \$500  
3198 and the theft is not an offense under Subsection (3)(c).

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3199 **76-6-902. [Prohibitions:] Antiquities alteration, removal, injury, or destruction.**

3200 (1) Terms defined in Sections 76-1-101.5 and 76-6-901 apply to this section.

3201 ~~[ (1) It is unlawful for any person to intentionally alter, remove, injure, or destroy~~  
3202 ~~antiquities] (2) An actor commits antiquities alteration, removal, injury, or destruction if the~~  
3203 ~~actor:~~

3204 (a) intentionally alters, removes, injures, or destroys antiquities from state lands or private  
3205 lands without the landowner's consent~~[.] ; or~~

3206 (b) counsels, procures, solicits, or employs another person to violate Subsection (2)(a).

3207 ~~[ (2) It is unlawful to intentionally reproduce, rework, or forge any antiquities or make~~  
3208 ~~any object, whether copies or not, or falsely label, describe, identify, or offer for sale or~~  
3209 ~~exchange any object with the intent to represent the object as original and genuine, nor may~~  
3210 ~~any person offer any object for sale or exchange that was collected or excavated in violation~~  
3211 ~~of this chapter.]~~

3212 (3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B  
3213 misdemeanor.

3214 (b) A violation of Subsection (2) is a third degree felony if:

3215 (i) the violation is the actor's second or subsequent violation of this section, Section  
3216 76-6-902.1, or 76-6-902.2; or

3217 (ii) the amount at issue, as calculated under Subsection (3)(c), exceeds \$500.

3218 (c) The amount described in Subsection (3)(b)(ii) is calculated by adding together:

3219 (i) the commercial or archaeological value of the antiquities involved in the violation; and  
3220 (ii) the cost of the restoration and repair of the antiquities involved in the violation.

3221 (d) An actor shall surrender to the landowner all articles and material discovered, collected,  
3222 excavated, or offered for sale or exchange in violation of this section.

3223

3224 **76-6-902.1. Unlawful creation, labeling, or sale of reproduction of antiquities.**

3225 (1) Terms defined in Sections 76-1-101.5 and 76-6-901 apply to this section.

3226 (2) An actor commits unlawful reproduction, labeling, or sale of reproduction of antiquities if  
3227 the actor, with the intent to represent one or more objects as original and genuine antiquities,  
3228 intentionally:

3229 (a) (i) reproduces, reworks, or forges antiquities; or

3230 (ii) (A) makes an object, whether as a copy or not; or

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3231 (B) falsely labels, describes, identifies, or offers for sale or exchange an object; or  
3232 (b) counsels, procures, solicits, or employs another person to violate Subsection (2)(a).  
3233 (3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B  
3234 misdemeanor.  
3235 (b) A violation of Subsection (2) is a third degree felony if:  
3236 (i) the violation is the actor's second or subsequent violation of this section, Section  
3237 76-6-902, or 76-6-902.2; or  
3238 (ii) the amount at issue, as calculated under Subsection (3)(c), exceeds \$500.  
3239 (c) The amount described in Subsection (3)(b)(ii) is calculated by adding together:  
3240 (i) the commercial or archaeological value of the antiquities involved in the violation; and  
3241 (ii) the cost of the restoration and repair of the antiquities involved in the violation.  
3242 (d) An actor shall surrender to the landowner all articles and material discovered, collected,  
3243 excavated, or offered for sale or exchange in violation of this section.

3244

## **76-6-902.2. Unlawful sale or exchange of antiquities.**

3246 (1) Terms defined in Sections 76-1-101.5 and 76-6-901 apply to this section.  
3247 (2) An actor commits unlawful sale or exchange of antiquities if the actor:  
3248 (a) offers for sale or exchange an object that was collected or excavated in violation of  
3249 Section 76-6-902; or  
3250 (b) counsels, procures, solicits, or employs another person to violate Subsection (2)(a).  
3251 (3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B  
3252 misdemeanor.  
3253 (b) A violation of Subsection (2) is a third degree felony if:  
3254 (i) the violation is the actor's second or subsequent violation of this section, Section  
3255 76-6-902, or 76-6-902.1; or  
3256 (ii) the amount at issue, as calculated under Subsection (3)(c), exceeds \$500.  
3257 (c) The amount described in Subsection (3)(b)(ii) is calculated by adding together:  
3258 (i) the commercial or archaeological value of the antiquities involved in the violation; and  
3259 (ii) the cost of the restoration and repair of the antiquities involved in the violation.  
3260 (d) An actor shall surrender to the landowner all articles and material discovered, collected,  
3261 excavated, or offered for sale or exchange in violation of this section.

3262

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

## 76-6-1002. Damage to mail receptacle [~~Penalties~~ ~~Greater offenses~~].

(1) Terms defined in Sections 76-1-101.5 and 76-6-1001 apply to this section.

~~[(1) A person commits the crime of]~~ (2) An actor commits damage to a mail receptacle if the person actor knowingly damages the condition of a mail receptacle, including:

(a) taking, concealing, damaging, or destroying a key; or

(b) breaking open, tearing down, taking, damaging, or destroying a mail receptacle.

~~[(2) (a) In determining the degree of an offense committed under Subsection (1), the penalty levels in Subsection 76-6-106(3)(b) apply.]~~

(3)(a) A violation of Subsection (2) is a:

(i) second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$5,000 in value;

(ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$1,500 but is less than \$5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$500 but is less than \$1,500 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than \$500 in value.

(b) If the act committed amounts to an offense subject to a greater penalty, ~~[this subsection]~~ Subsection (3)(a) does not prohibit prosecution and sentencing for the more serious offense.

(4) The following presumptions shall be applicable to this section:

(a) Possession of property recently stolen, when no satisfactory explanation of such possession is made, is prima facie evidence that the person in possession stole the property.

(b) It is no defense under this part that the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe, provided an interest in property for purposes of this Subsection (4)(b) shall not include a security interest for the repayment of a debt or obligation.

(c) It is a defense under this section that the actor:

(i) acted under an honest claim of right to the property or service involved; or

(ii) acted in the honest belief that the actor had the right to obtain or exercise control

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3295 over the property or service as the actor did; or  
3296       (iii) obtained or exercised control over the property or service honestly believing that  
3297 the owner, if present, would have consented.

3298

3299 **76-6-1003. Mail theft [--Penalties].**

3300       (1) Terms defined in Sections 76-1-101.5 and 76-6-1001 apply to this section.

3301       [(1) A person commits the crime of] (2) An actor commits mail theft if the [person]  
3302 actor :

3303       (a) knowingly, and with the intent to deprive another:  
3304           (i) takes, destroys, hides, or embezzles mail; or  
3305           (ii) obtains any mail by fraud or deception; or  
3306       (b) buys, receives, conceals, or possesses mail and knows or reasonably should have  
3307 known that the mail was unlawfully taken or obtained.

3308       [(2) Mail theft] (3) A violation of Subsection (2) is:

3309       (a) a third degree felony;  
3310       (b) a class A misdemeanor, if the mail has no monetary value and does not include  
3311 the name of an individual; or  
3312       (c) a second degree felony, if the mail contains the personal identifying information of  
3313 10 or more individuals.

3314       (4)(a) The following presumption shall be applicable to this section:

3315       (i) Possession of property recently stolen, when no satisfactory explanation of such  
3316 possession is made, is prima facie evidence that the person in possession stole the  
3317 property.

3318       (ii) It is no defense under this part that the actor has an interest in the property or  
3319 service stolen if another person also has an interest that the actor is not entitled to infringe,  
3320 provided an interest in property for purposes of this Subsection (4)(b) shall not include a  
3321 security interest for the repayment of a debt or obligation.

3322       (iii) It is a defense under this section that the actor:

3323       (A) acted under an honest claim of right to the property or service involved; or  
3324       (B) acted in the honest belief that the actor had the right to obtain or exercise control  
3325 over the property or service as the actor did; or  
3326       (C) obtained or exercised control over the property or service honestly believing that

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3327 the owner, if present, would have consented.  
3328       (b) It is a defense to a charge of mail theft that:  
3329           (i) the actor was unaware that the mail belonged to another person;  
3330           (ii) the actor reasonably believed the actor was entitled to the mail or had a right to  
3331 acquire or dispose of the mail as the actor did; or  
3332           (iii) the mail belonged to the actor's spouse, unless the parties were either legally  
3333 separated or living in separate residences at the time of the alleged mail theft.

3334

## 3335 76-6-1101. Definitions.

3336       (1) As used in this part:  
3337           (a) "Personal identifying information" may include:  
3338              (i) name;  
3339              (ii) birth date;  
3340              (iii) address;  
3341              (iv) telephone number;  
3342              (v) drivers license number;  
3343              (vi) Social Security number;  
3344              (vii) place of employment;  
3345              (viii) employee identification numbers or other personal identification numbers;  
3346              (ix) mother's maiden name;  
3347              (x) electronic identification numbers;  
3348              (xi) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions  
3349       Act;  
3350              (xii) any other numbers or information that can be used to access a person's financial  
3351 resources or medical information, except for numbers or information that can be prosecuted  
3352 as financial transaction card offenses under Sections 76-6-506 through 76-6-506.6; or  
3353              (xiii) a photograph or any other realistic likeness.  
3354       (b) "Restitution" means the same as that term is defined in Section 77-38b-102.

3355

## 3356 **76-6-1102. Identity fraud [crime].**

3357       [(1) As used in this part:  
3358        (a) "Personal identifying information" may include:

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3359 ~~(i) name;~~  
3360 ~~(ii) birth date;~~  
3361 ~~(iii) address;~~  
3362 ~~(iv) telephone number;~~  
3363 ~~(v) drivers license number;~~  
3364 ~~(vi) Social Security number;~~  
3365 ~~(vii) place of employment;~~  
3366 ~~(viii) employee identification numbers or other personal identification numbers;~~  
3367 ~~(ix) mother's maiden name;~~  
3368 ~~(x) electronic identification numbers;~~  
3369 ~~(xi) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions~~  
3370 ~~Act;~~  
3371 ~~(xii) any other numbers or information that can be used to access a person's financial~~  
3372 ~~resources or medical information, except for numbers or information that can be prosecuted~~  
3373 ~~as financial transaction card offenses under Sections 76-6-506 through 76-6-506.6; or~~  
3374 ~~(xiii) a photograph or any other realistic likeness.~~  
3375 ~~(b) "Restitution" means the same as that term is defined in Section 77-38b-102.]~~  
3376 ~~(1) Terms defined in Sections 76-1-101.5 and 76-6-1101 apply to this section.~~  
3377 ~~(2) [(a) A person is guilty of identity fraud when that person] An actor commits identify~~  
3378 ~~fraud if the actor~~ knowingly or intentionally uses, or attempts to use, the personal identifying  
3379 information of another person, whether that person is alive or deceased, with fraudulent  
3380 intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any  
3381 other thing of value, or medical information.  
3382 ~~[(b) It is not a defense to a violation of Subsection (2)(a) that the person did not know~~  
3383 ~~that the personal information belonged to another person.]~~  
3384 ~~(3) [Identity fraud] A violation of Subsection (2) is:~~  
3385 ~~(a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the~~  
3386 credit, goods, services, employment, or any other thing of value is less than \$5,000; or  
3387 ~~(b) a second degree felony if:~~  
3388 ~~(i) the value of the credit, goods, services, employment, or any other thing of value is~~  
3389 or exceeds \$5,000; or  
3390 ~~(ii) the use described in Subsection (2)[(a)] of personal identifying information results,~~

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3391 directly or indirectly, in bodily injury to another person.

3392 (4) (a) It is not a defense to a violation of Subsection (2) that the actor did not know  
3393 that the personal information belonged to another person.

3394 (b) Multiple violations of Subsection (2) may be aggregated into a single offense,  
3395 and the degree of the offense is determined by the total value of all credit, goods, services,  
3396 or any other thing of value used, or attempted to be used, through the multiple violations.

3397 (5) [When] (a) If a defendant is convicted of a violation of this section, the court shall  
3398 order the defendant to pay restitution in accordance with Title 77, Chapter 38b, Crime  
3399 Victims Restitution Act.

3400 [(6)] (b) Restitution under Subsection (5) (a) may include:

3401 [(a)] (i) payment for any costs incurred, including attorney fees, lost wages, and  
3402 replacement of checks; and

3403 [(b)] (ii) the value of the victim's time incurred due to the offense:

3404 [(f)] (A) in clearing the victim's credit history or credit rating;

3405 [(f)] (B) in any civil or administrative proceedings necessary to satisfy or resolve any  
3406 debt, lien, or other obligation of the victim or imputed to the victim and arising from the  
3407 offense; and

3408 [(f)] (C) in attempting to remedy any other intended or actual harm to the victim  
3409 incurred as a result of the offense.

3410

## 76-6-1105. Unlawful possession of another's identification documents.

3412 (1) (a) As used in this section:

3413 [(a)] (i) (A) "Identifying document" means:

3414 [(A)] (I) a government issued document commonly used for identification;

3415 [(B)] (II) a vehicle registration certificate; or

3416 [(C)] (III) any other document, image, data file, or medium containing personal  
3417 identifying information as defined in Subsections 76-6-1102(1)(a)(ii) through (xiii).

3418 [(f)] (B) "Identifying document" includes:

3419 [(A)] (I) a counterfeit identifying document; or

3420 [(B)] (II) a document containing personal identifying information of a deceased  
3421 individual.

3422 [(b)] (ii) "Possess" means to have physical control or electronic access.

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3423                   (b) Terms defined in Section 76-1-101.5 76-6-1101 apply to this section.

3424                   (2) (a) Under circumstances that do not constitute a violation of Section 76-6-1102 or

3425                   Section 76-6-502, an [individual is guilty of a class A misdemeanor if the individual] actor  
3426                   commits unlawful possession of another's identification documents if the actor :

3427                   (i) obtains or possesses an identifying document:

3428                   (A) with knowledge that the [individual] actor is not entitled to obtain or possess the  
3429                   identifying document; or

3430                   (B) with intent to deceive or defraud; or

3431                   (ii) assists another person in obtaining or possessing an identifying document:

3432                   (A) with knowledge that the person is not entitled to obtain or possess the identifying  
3433                   document; or

3434                   (B) with knowledge that the person intends to use the identifying document to deceive  
3435                   or defraud.

3436                   (b) Under circumstances that do not constitute a violation of Section 76-6-1102 or

3437                   76-6-502, an [individual is guilty of a third degree felony if the individual] actor commits  
3438                   unlawful possession of another's identification documents if the actor :

3439                   (i) obtains or possesses identifying documents of more than two, but fewer than 100,  
3440                   individuals:

3441                   (A) with knowledge that the individual is not entitled to obtain or possess the  
3442                   identifying documents; or

3443                   (B) with intent to deceive or defraud; or

3444                   (ii) assists another person in obtaining or possessing identifying documents of more  
3445                   than two, but fewer than 100, individuals:

3446                   (A) with knowledge that the person is not entitled to obtain or possess the multiple  
3447                   identifying documents; or

3448                   (B) with knowledge that the person intends to use the identifying documents to  
3449                   deceive or defraud.

3450                   (c) Under circumstances that do not constitute a violation of Section 76-6-1102 or

3451                   76-6-502, an [individual is guilty of a second degree felony if the individual] actor commits  
3452                   unlawful possession of another's identification documents if the actor :

3453                   (i) obtains or possesses identifying documents of 100 or more individuals:

3454                   (A) with knowledge that the individual is not entitled to obtain or possess the

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3455 identifying documents; or  
3456 (B) with intent to deceive or defraud; or  
3457 (ii) assists another person in obtaining or possessing identifying documents of 100 or  
3458 more individuals:  
3459 (A) with knowledge that the person is not entitled to obtain or possess the identifying  
3460 documents; or  
3461 (B) with knowledge that the person intends to use the identifying documents to  
3462 deceive or defraud.

3463 (3) A violation of:  
3464 (a) Subsection (2)(a) is a class A misdemeanor;  
3465 (b) Subsection (2)(b) is a third degree felony; or  
3466 (c) Subsection (2)(c) is a second degree felony.

3467

3468 **76-6-1203. Mortgage fraud.**

3469 (1) Terms defined in Sections 76-1-101.5 and 76-6-1202 apply to this section.

3470 ~~[A person commits the offense of]~~ (2) An actor commits mortgage fraud if the  
3471 [person] actor does any of the following with the intent to defraud:

3472 [4] (a) knowingly makes any material misstatement, misrepresentation, or omission  
3473 during the mortgage lending process, intending that it be relied upon by a mortgage lender,  
3474 borrower, or any other party to the mortgage lending process;

3475 [2] (b) knowingly uses or facilitates the use of any material misstatement,  
3476 misrepresentation, or omission, during the mortgage lending process, intending that it be  
3477 relied upon by a mortgage lender, borrower, or any other party to the mortgage lending  
3478 process;

3479 [3] (c) files or causes to be filed with any county recorder in Utah any document  
3480 that the [person] actor knows contains a material misstatement, misrepresentation, or  
3481 omission; or

3482 [4] (d) receives any proceeds or any compensation in connection with a mortgage  
3483 loan that the [person] actor knows resulted from a violation of this section.

3484 (3)(a) Notwithstanding any other administrative, civil, or criminal penalties, a violation  
3485 of Subsection (2) is a:

3486 (i) class A misdemeanor if the value is or exceeds \$500 but is less than \$1,500;

# WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3487 (ii) third degree felony if the value is or exceeds \$1,500 but is less than \$5,000;

3488 (iii) second degree felony if the value is or exceeds \$5,000; and

3489 (iv) second degree felony if the object or purpose of the commission of an act of

3490 mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the

3491 value.

3492 (b) The determination of the degree of any offense under Subsection (3)(a) is

3493 measured by the total value of all property, money, or things obtained or sought to be

3494 obtained by a violation of Subsection (2), except as provided in Subsection (3)(a)(iv).

3495 (4) Each residential or commercial property transaction offense under this section

3496 constitutes a separate violation.

3497

## 3498 76-6-1303. Possession, sale, or use of automated sales suppression device unlawful

3499 [--Penalties].

3500 (1) Terms defined in Sections 76-1-101.5 and 76-6-1302 apply to this section.

3501 [(1) It is a third degree felony to] (2) An actor commits possession, sale, or use of an

3502 automated sales suppression device if the actor willfully or knowingly [sell, purchase, install,

3503 transfer, use, or possess] sells, purchases, installs, transfers, uses, or possesses in this

3504 state any automated sales suppression device or phantomware with the intent to defraud[;

3505 except that any second or subsequent violation of this Subsection (1) is a second degree

3506 felony].

3507 (3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third

3508 degree felony.

3509 (b) A second or subsequent violation of Subsection (2)(b) is a second degree felony.

3510 [(2)] (c) Notwithstanding Section 76-3-301, any person convicted of violating

3511 Subsection [(1)] (2) may be fined not more than twice the amount of the applicable taxes

3512 that would otherwise be due, but for the use of the automated sales suppression device or

3513 phantomware.

3514 [(3)] (d) Any person convicted of a violation of Subsection [(1)] (2):

3515 [(a)] (i) is liable for all applicable taxes, penalties under Section 59-1-401, and

3516 interest under Section 59-1-402 that would otherwise be due, but for the use of the

3517 automated sales suppression device or phantomware to evade the payment of taxes; and

3518 [(b)] (ii) shall disgorge all profits associated with the sale or use of an automated

## WORKING DRAFT -- FOR DISCUSSION PURPOSES ONLY

3519 sales suppression device or phantomware.

3520 (4) An automated sales suppression device and any device containing an automated  
3521 sales suppression device is contraband and subject to forfeiture under Title 24, Forfeiture  
3522 and Disposition of Property Act.

3523

3524