

IDENTITY FRAUD

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Gene Davis

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

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

AMENDS:

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

§ [~~13-11-4, as last amended by Chapter 21, Laws of Utah 1999~~] §

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

ENACTS:

§ **13-11-4.5, Utah Code Annotated 1953** §

76-6-1101, Utah Code Annotated 1953

76-6-1102, Utah Code Annotated 1953

76-6-1103, Utah Code Annotated 1953

76-6-1104, Utah Code Annotated 1953

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

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

13-11-3. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

58 (6) "Supplier" means a seller, lessor, assignor, offeror, broker, or other person who

59 regularly solicits, engages in, or enforces consumer transactions, whether or not he deals directly
60 with the consumer.

61 § [Section 2. ~~Section 13-11-4 is amended to read:~~

62 ~~13-11-4. Deceptive act or practice by supplier.~~

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

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

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

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

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

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

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

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

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

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

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

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

86 ~~(k) indicates that the consumer will receive a rebate, discount, or other benefit as an~~
87 ~~inducement for entering into a consumer transaction in return for giving the supplier the names of~~
88 ~~prospective consumers or otherwise helping the supplier to enter into other consumer transactions;~~
89 ~~if receipt of the benefit is contingent on an event occurring after the consumer enters into the] §~~

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90 transaction;

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

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

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

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

115 ~~—— (p) for any unlawful or deceptive purpose obtains or records personal identifying~~
 116 ~~information which would assist in accessing the financial resources or medical information in the~~
 117 ~~name of another person or accesses or attempts to access the financial resources or medical~~
 118 ~~information in the name of another person through the use of personal identifying information as~~
 119 ~~defined in Title 76, Chapter 6, Part 11, Identity Fraud Act; or~~

120 ~~—— [(p)] (q) if a consumer indicates his intention of making a claim for a motor vehicle repair] §~~

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121 ~~against his motor vehicle insurance policy:~~

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

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

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

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

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

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

138a **Section 2. Section 13-11-4.5 is enacted to read:**

138b **13-11-4.5. Deceptive act or practice by person other than a supplier.**

138c **(1) A deceptive act or practice by a person other than a supplier in connection with a**
 138d **consumer transaction violates this chapter when it occurs before, during, or after the transaction.**

138e **(2) Without limiting the scope of Subsection (1), a person other than a supplier commits a**
 138f **deceptive act or practice if the person knowingly or intentionally, with fraudulent intent, obtains or**
 138g **records personal identifying information which would assist in accessing the financial resources or**
 138h **medical information in the name of another person or accesses or attempts to access the financial**
 138i **resources or medical information in the name of another person through the use of personal**
 138j **identifying information as defined in Title, 76, Chapter 6, Part 11, Identity Fraud Act. §**

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

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

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

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

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

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

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

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

156 (3) The court § [records] § shall § [reflect] **MAKE APPROPRIATE FINDINGS IN ANY**
 156a **PROSECUTION UNDER THIS SECTION** § that the card holder did not commit the crime if:

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

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

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

161 **Part 11. Identity Fraud Act**

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

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

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

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

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

167 (a) name;

168 (b) address;

169 (c) telephone number;

170 (d) driver's license number;

171 (e) Social Security number;

172 (f) place of employment;

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

174 (h) mother's maiden name;

175 (i) electronic identification numbers;

176 (j) digital signatures § **OR A PRIVATE KEY** § ; or

177 (k) any other numbers or information that can be used to access a person's financial
 178 resources or medical information in the name of another person without the consent of that person
 179 except for numbers or information that can be prosecuted as financial transaction card offenses
 180 under Sections 76-6-506 through 76-6-506.4.

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

182 (a) obtains personal identifying information of another person without the authorization

183 of that person; and

184 (b) uses, or attempts to use, that information § ~~[for any unlawful purpose]~~ WITH
 184a **FRAUDULENT INTENT** § , including to obtain,

185 or attempt to obtain, credit, goods, services, any other thing of value, or medical information in the
 186 name of another person without the consent of that person.

187 (3) Identity fraud is:

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

190 (b) a class A misdemeanor if:

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

193 or

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

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

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

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

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

204 **76-6-1103. Investigation, jurisdiction, and prima facie evidence of violation.**

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

208 (2) The Division of Consumer Protection has § **[primary]** § responsibility for investigating
 209 violations of this part.

210 (3) A criminal conviction under this part is prima facie evidence of a violation of Section
 211 13-11-4, of the Utah Consumer Sales Practices Act.

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

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

215 **76-6-1104. Court records.**

216 In any case in which a person commits identify fraud and uses the personal identifying
217 information obtained to commit a crime in addition to the identity fraud, the court § [records] § shall
218 § [reflect] APPROPRIATE FINDINGS IN ANY PROSECUTION OF SUCH A CRIME § that the person
218a whose identity was falsely used to commit the crime did not commit the
219 crime.

Legislative Review Note
as of 11-17-99 12:46 PM

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

Office of Legislative Research and General Counsel

Committee Note

The Public Utilities and Technology Interim Committee recommended this bill.