

IDENTITY THEFT AMENDMENTS

2004 GENERAL SESSION

STATE OF UTAH

Sponsor: Carlene M. Walker

LONG TITLE

General Description:

This bill amends provisions of the Utah Criminal Code dealing with the penalty for identity fraud crimes and the location of a prosecution of an identity fraud crime.

Highlighted Provisions:

This bill:

- ▶ establishes that the residence of the victim of identity theft in this state is sufficient to establish jurisdiction in this state;
- ▶ permits the prosecution of an identity theft in the county where the identity was stolen or used, or where the victim resides;
- ▶ allows prosecution in any county where the identity was stolen, used, or where the victim resides when the offense occurs in multiple jurisdictions; and
- ▶ establishes that the unauthorized possession of another person's identifying documents is a crime.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-1-201, as last amended by Chapter 54, Laws of Utah 1996

76-1-202, as last amended by Chapter 218, Laws of Utah 1994

76-6-1102, as last amended by Chapter 79, Laws of Utah 2003

76-6-1103, as last amended by Chapter 79, Laws of Utah 2003

ENACTS:

76-6-1105, Utah Code Annotated 1953

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

Section 1. Section **76-1-201** is amended to read:

76-1-201. Jurisdiction of offenses.

(1) A person is subject to prosecution in this state for an offense which he commits, while either within or outside the state, by his own conduct or that of another for which he is legally accountable, if:

(a) the offense is committed either wholly or partly within the state;

(b) the conduct outside the state constitutes an attempt to commit an offense within the state;

(c) the conduct outside the state constitutes a conspiracy to commit an offense within the state and an act in furtherance of the conspiracy occurs in the state; or

(d) the conduct within the state constitutes an attempt, solicitation, or conspiracy to commit in another jurisdiction an offense under the laws of both this state and such other jurisdiction.

(2) An offense is committed partly within this state if either the conduct which is any element of the offense, or the result which is such an element, occurs within this state.

(3) In homicide offenses, the "result" is either the physical contact which causes death or the death itself.

(a) If the body of a homicide victim is found within the state, the death shall be presumed to have occurred within the state.

(b) If jurisdiction is based on such a presumption, this state shall retain jurisdiction unless the defendant proves by clear and convincing evidence that:

(i) the result of the homicide did not occur in this state; and

(ii) the defendant did not engage in any conduct in this state which is any element of the offense.

(4) An offense which is based on an omission to perform a duty imposed by the law of this state is committed within the state regardless of the location of the offender at the time of the omission.

(5) (a) The Legislature finds that identity fraud under Chapter 6, Part 11, Identity Fraud Act, involves the use of personal identifying information which is uniquely personal to the consumer or business victim of that identity fraud and which information is considered to be in lawful possession of the consumer or business victim wherever the consumer or business victim currently resides or is found.

(b) For purposes of Subsection (1)(a), an offense which is based on a violation of Chapter 6, Part 11, Identity Fraud Act, is committed partly within this state, regardless of the location of the offender at the time of the offense, if the victim of the identity fraud resides or is found in this state.

~~[(5)]~~ (6) The judge shall determine jurisdiction.

Section 2. Section **76-1-202** is amended to read:

76-1-202. Venue of actions.

(1) Criminal actions shall be tried in the county, district, or precinct where the offense is alleged to have been committed. In determining the proper place of trial, the following provisions shall apply:

(a) If the commission of an offense commenced outside the state is consummated within this state, the offender shall be tried in the county where the offense is consummated.

(b) When conduct constituting elements of an offense or results that constitute elements, whether the conduct or result constituting elements is in itself unlawful, shall occur in two or more counties, trial of the offense may be held in any of the counties concerned.

(c) If a person committing an offense upon the person of another is located in one county and his victim is located in another county at the time of the commission of the offense, trial may be held in either county.

(d) If a cause of death is inflicted in one county and death ensues in another county, the offender may be tried in either county.

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(e) A person who commits an inchoate offense may be tried in any county in which any act that is an element of the offense, including the agreement in conspiracy, is committed.

(f) Where a person in one county solicits, aids, abets, agrees, or attempts to aid another in the planning or commission of an offense in another county, he may be tried for the offense in either county.

(g) When an offense is committed within this state and it cannot be readily determined in which county or district the offense occurred, the following provisions shall be applicable:

(i) When an offense is committed upon any railroad car, vehicle, watercraft, or aircraft passing within this state, the offender may be tried in any county through which such railroad car, vehicle, watercraft, or aircraft has passed.

(ii) When an offense is committed on any body of water bordering on or within this state, the offender may be tried in any county adjacent to such body of water. The words "body of water" shall include but not be limited to any stream, river, lake, or reservoir, whether natural or man-made.

(iii) A person who commits theft may be tried in any county in which he exerts control over the property affected.

(iv) If an offense is committed on or near the boundary of two or more counties, trial of the offense may be held in any of such counties.

(v) For any other offense, trial may be held in the county in which the defendant resides, or, if he has no fixed residence, in the county in which he is apprehended or to which he is extradited.

(h) A person who commits an offense based on Chapter 6, Part 11, Identity Fraud Act, may be tried in the county:

(i) where the victim's personal identifying information was obtained;

(ii) where the defendant used or attempted to use the personally identifying information;

(iii) where the victim of the identity fraud resides or is found; or

(iv) if multiple offenses of identity fraud occur in multiple jurisdictions, in any county where the victim's identity was used or obtained, or where the victim resides or is found.

(2) All objections of improper place of trial are waived by a defendant unless made before trial.

Section 3. Section **76-6-1102** is amended to read:

76-6-1102. Identity fraud crime.

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

- (a) name;
- (b) address;
- (c) telephone number;
- (d) driver's license number;
- (e) Social Security number;
- (f) place of employment;
- (g) employee identification numbers or other personal identification numbers;
- (h) mother's maiden name;
- (i) electronic identification numbers;
- (j) digital signatures or a private key; or
- (k) any other numbers or information that can be used to access a person's financial

resources or medical information in the name of another person without the consent of that person except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.4.

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

- (a) obtains personal identifying information of another person; and
- (b) uses, or attempts to use, that information with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, any other thing of value, or medical information in the name of another person.

(3) Identity fraud is:

~~[(a) a class A misdemeanor if the value of the credit, goods, services, or any other thing of value is less than \$1,000;]~~

~~[(b)]~~ (a) a third degree felony if the value of the credit, goods, services, or any other thing

of value is [~~or exceeds \$1,000 but is~~] less than \$5,000; or

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

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

Section 4. Section **76-6-1103** is amended to read:

76-6-1103. Investigation of violation.

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

~~[(2)]~~ In addition to investigations conducted by law enforcement agencies, the Office of the Attorney General also has responsibility for investigating violations of this part where identity fraud is the primary violation that is alleged to have been committed.

Section 5. Section **76-6-1105** is enacted to read:

76-6-1105. Unlawful possession of another's identification documents.

(1) For purposes of this section "identifying document" means:

(a) a government issued identifying document;

(b) a vehicle registration certificate; or

(c) any other document containing personal identifying information as defined in

Subsections 76-6-1102(1)(d) through (k).

(2) (a) Notwithstanding the provisions of Subsection 76-6-1102(3), a person is guilty of a class A misdemeanor if he:

(i) obtains or possesses an identifying document with knowledge that he is not entitled to obtain or possess the identifying document; or

(ii) assists another person in obtaining or possessing an identifying document with knowledge that the person is not entitled to obtain or possess the identifying document.

(b) A person is guilty of a third degree felony if he:

(i) obtains or possesses multiple identifying documents with knowledge that he is not entitled to obtain or possess the multiple identifying documents; or

(ii) assists another person in obtaining or possessing multiple identifying documents with knowledge that the person is not entitled to obtain or possess the multiple identifying documents.

(c) For purposes of Subsection (2)(b), "multiple identifying documents" means identifying documents of two or more people.