

1 **COMMUNICATIONS AND MORTGAGE FRAUD**

2 **PENALTY AMENDMENTS**

3 2009 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: David P. Hinkins**

6 House Sponsor: Jennifer M. Seelig

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies the Criminal Code regarding communications fraud.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ modifies the penalties for communications fraud and mortgage fraud by removing
14 the provision regarding obtaining or attempting to obtain something that does not
15 have monetary value.

16 **Monies Appropriated in this Bill:**

17 None

18 **Other Special Clauses:**

19 None

20 **Utah Code Sections Affected:**

21 AMENDS:

22 **76-6-1204**, as enacted by Laws of Utah 2008, Chapter 370

23 **76-10-1801**, as last amended by Laws of Utah 2006, Chapter 120

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

26 Section 1. Section **76-6-1204** is amended to read:

27 **76-6-1204. Classification of offense.**

28 (1) Notwithstanding any other administrative, civil, or criminal penalties, a person
29 who violates Section 76-6-1203 is guilty of a:

30 (a) class A misdemeanor when the value is or exceeds \$300 but is less than \$1,000;

31 (b) third degree felony when the value is or exceeds \$1,000 but is less than \$5,000;

32 (c) second degree felony when the value is or exceeds \$5,000; and

33 [~~(d) second degree felony when the object or purpose of the commission of an act of~~
34 ~~mortgage fraud is other than the obtaining of something of monetary value; and]~~

35 [(~~e~~)] (d) second degree felony when the object or purpose of the commission of an act
36 of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of
37 the value.

38 (2) The determination of the degree of any offense under Subsection (1) is measured
39 by the total value of all property, money, or things obtained or sought to be obtained by a
40 violation of Section 76-6-1203, except as provided in [~~Subsections~~] Subsection (1)(d) [~~and~~
41 (~~e~~)].

42 (3) Each residential or commercial property transaction offense under this part
43 constitutes a separate violation.

44 Section 2. Section **76-10-1801** is amended to read:

45 **76-10-1801. Communications fraud -- Elements -- Penalties.**

46 (1) Any person who has devised any scheme or artifice to defraud another or to obtain
47 from another money, property, or anything of value by means of false or fraudulent pretenses,
48 representations, promises, or material omissions, and who communicates directly or indirectly
49 with any person by any means for the purpose of executing or concealing the scheme or
50 artifice is guilty of:

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

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

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

57 (d) a second degree felony when the value of the property, money, or thing obtained or

58 sought to be obtained is or exceeds \$5,000; and

59 ~~[(e) a second degree felony when the object of the scheme or artifice to defraud is~~
60 ~~other than the obtaining of something of monetary value; and]~~

61 ~~[(f)]~~ (e) a second degree felony when the object or purpose of the scheme or artifice to
62 defraud is the obtaining of sensitive personal identifying information, regardless of the value.

63 (2) The determination of the degree of any offense under Subsection (1) shall be
64 measured by the total value of all property, money, or things obtained or sought to be obtained
65 by the scheme or artifice described in Subsection (1) except as provided in Subsection (1)(e).

66 (3) Reliance on the part of any person is not a necessary element of the offense
67 described in Subsection (1).

68 (4) An intent on the part of the perpetrator of any offense described in Subsection (1)
69 to permanently deprive any person of property, money, or thing of value is not a necessary
70 element of the offense.

71 (5) Each separate communication made for the purpose of executing or concealing a
72 scheme or artifice described in Subsection (1) is a separate act and offense of communication
73 fraud.

74 (6) (a) To communicate as described in Subsection (1) means to:

75 (i) bestow, convey, make known, recount, or impart; ~~[to]~~

76 (ii) give by way of information; ~~[to]~~

77 (iii) talk over; or ~~[to]~~

78 (iv) transmit information.

79 (b) Means of communication include ~~[but are not limited to]~~ use of the mail,
80 telephone, telegraph, radio, television, newspaper, computer, and spoken and written
81 communication.

82 (7) A person may not be convicted under this section unless the pretenses,
83 representations, promises, or material omissions made or omitted were made or omitted
84 intentionally, knowingly, or with a reckless disregard for the truth.

85 (8) As used in this section, "sensitive personal identifying information" means ~~[any of~~

86 ~~the following]~~ information regarding an individual's:

- 87 (a) Social Security number;
- 88 (b) driver's license number or other government issued identification number;
- 89 (c) financial account number or credit or debit card number;
- 90 (d) password or personal identification number or other identification required to gain
- 91 access to a financial account or a secure website;
- 92 (e) automated or electronic signature;
- 93 (f) unique biometric data; or
- 94 (g) any other information that can be used to gain access to an individual's financial
- 95 accounts or to obtain goods or services.