

**Senator David P. Hinkins** proposes the following substitute bill:

**COMMUNICATIONS AND MORTGAGE FRAUD**

**PENALTY AMENDMENTS**

2009 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: David P. Hinkins**

House Sponsor: Jennifer M. Seelig

---

---

**LONG TITLE**

**General Description:**

This bill modifies the Criminal Code regarding communications fraud.

**Highlighted Provisions:**

This bill:

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

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

**AMENDS:**

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

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

---

---

*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 who  
29 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 by  
39 the total value of all property, money, or things obtained or sought to be obtained by a violation  
40 of Section 76-6-1203, except as provided in Subsections (1)(d) ~~[and (e)]~~.

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

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

44 **76-10-1801. Communications fraud -- Elements -- Penalties.**

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

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

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

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

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

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

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

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

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

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

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

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

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

74 (i) bestow, convey, make known, recount, or impart; [tø]

75 (ii) give by way of information; [tø]

76 (iii) talk over; or [tø]

77 (iv) transmit information.

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

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

83 (8) As used in this section, "sensitive personal identifying information" means ~~[any of~~  
84 ~~the following]~~ information regarding an individual's:

85 (a) Social Security number;

86 (b) driver's license number or other government issued identification number;

87 (c) financial account number or credit or debit card number;

- 88           (d) password or personal identification number or other identification required to gain  
89 access to a financial account or a secure website;
- 90           (e) automated or electronic signature;
- 91           (f) unique biometric data; or
- 92           (g) any other information that can be used to gain access to an individual's financial  
93 accounts or to obtain goods or services.

---

---

**Fiscal Note**

**S.B. 107 1st Sub. (Green) - Communications and Mortgage Fraud Penalty  
Amendments**

2009 General Session

State of Utah

---

---

**State Impact**

Enactment of this bill will not require additional appropriations.

---

**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

---