

IDENTITY THEFT PARAPHERNALIA PROVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: Todd Weiler

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9	Sandra Hollins	Paul Ray	
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LONG TITLE

General Description:

This bill amends provisions of the Utah Criminal Code relating to forgery and identity fraud.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ modifies the elements of a financial transaction card offense;
- ▶ increases the penalty for unlawful possession of the financial transaction card information of a certain number of individuals;
- ▶ increases the penalty for unlawful possession of the identifying documents of a certain number of individuals; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **76-6-502**, as last amended by Laws of Utah 2001, Chapter 5632 **76-6-506.3**, as last amended by Laws of Utah 2009, Chapter 16633 **76-6-1105**, as enacted by Laws of Utah 2004, Chapter 22734 **78B-9-104**, as last amended by Laws of Utah 2017, Chapter 44735

36 *Be it enacted by the Legislature of the state of Utah:*37 Section 1. Section **76-6-502** is amended to read:38 **76-6-502. Possession of forged writing or device for writing -- Penalty.**39 (1) As used in this section, "device" means any equipment, mechanism, material, or
40 program.41 (2) [Any person] An individual who, with intent to defraud, knowingly possesses [any
42 writing that is a forgery] a writing, as defined in Section **76-6-501**, that is a forgery under
43 Section **76-6-501**, or who with intent to defraud knowingly possesses [~~any~~] a device for making
44 [any writing that is a forgery] a writing, as defined in Section **76-6-501**, that is a forgery under
45 Section **76-6-501**, is guilty of a third degree felony.46 Section 2. Section **76-6-506.3** is amended to read:47 **76-6-506.3. Financial transaction card offenses -- Unlawful acquisition,**
48 **possession, or transfer of card.**49 ~~[Any person]~~ (1) Under circumstances that do not constitute a violation of Subsection
50 (2), an individual is guilty of a third degree felony who:51 ~~[(1)]~~ (a) acquires a financial transaction card from another without the consent of the
52 card holder or the issuer;53 ~~[(2)]~~ (b) receives a financial transaction [card with intent to use [it] the financial
54 transaction card in violation of Section **76-6-506.2**;55 ~~[(3)]~~ (c) sells or transfers a financial transaction card to [~~another~~] a person with [the]
56 knowledge that [it] the financial transaction card will be used in violation of Section

57 [76-6-506.2](#);

58 ~~[(4)-(a)]~~ (d) (i) acquires a financial transaction card that the ~~[person]~~ individual knows
59 was lost, mislaid, stolen, or delivered under a mistake as to the identity or address of the card
60 holder; and

61 ~~[(b)-(i)]~~ (ii) (A) retains possession with intent to use ~~[it]~~ the financial transaction card
62 in violation of Section [76-6-506.2](#); or

63 ~~[(i)]~~ (B) sells or transfers ~~[a]~~ the financial transaction card to ~~[another]~~ a person with
64 ~~[the]~~ knowledge that ~~[it]~~ the financial transaction card will be used in violation of Section
65 [76-6-506.2](#); or

66 ~~[(5)]~~ (e) possesses, sells, or transfers any information necessary for the use of a
67 financial transaction card, including the credit number of the card, the expiration date of the
68 card, or the personal identification code related to the card:

69 ~~[(a)-(i)]~~ (i) (A) without the consent of the card holder or the issuer; or

70 ~~[(i)]~~ (B) with ~~[the]~~ knowledge that the information has been acquired without consent
71 of the card holder or the issuer; and

72 ~~[(b)]~~ (ii) with intent to use the information in violation of Section [76-6-506.2](#).

73 (2) An individual is guilty of a second degree felony who possesses, sells, or transfers
74 any information necessary for the use of 100 or more financial transaction cards, including the
75 credit number of a card, the expiration date of a card, or the personal identification code related
76 to a card:

77 (a) with intent to use the information in violation of Section [76-6-506.2](#); or

78 (b) with knowledge that the information will be used by another in violation of Section
79 [76-6-506.2](#).

80 Section 3. Section **76-6-1105** is amended to read:

81 **76-6-1105. Unlawful possession of another's identification documents.**

82 (1) ~~[For purposes of]~~ As used in this section ~~["identifying"]~~:

83 (a) (i) "Identifying document" means:

84 ~~[(a)]~~ (A) a government issued ~~[identifying]~~ document commonly used for

85 identification;

86 ~~[(b)]~~ (B) a vehicle registration certificate; or

87 ~~[(c)]~~ (C) any other document, image, data file, or medium containing personal

88 identifying information as defined in Subsections 76-6-1102(1)~~[(d)]~~(b) through ~~[(k)]~~ (m).

89 (ii) "Identifying document" includes:

90 (A) a counterfeit identifying document; or

91 (B) a document containing personal identifying information of a deceased individual.

92 (b) "Possess" means to have physical control or electronic access.

93 (2) (a) ~~[Notwithstanding the provisions of Subsection 76-6-1102(3), a person]~~ Under
94 circumstances that do not constitute a violation of Section 76-6-1102 or Section 76-6-502, an
95 individual is guilty of a class A misdemeanor if [he] the individual:

96 (i) obtains or possesses an identifying document:

97 (A) with knowledge that [he] the individual is not entitled to obtain or possess the
98 identifying document; or

99 (B) with intent to deceive or defraud; or

100 (ii) assists another person in obtaining or possessing an identifying document:

101 (A) with knowledge that the person is not entitled to obtain or possess the identifying
102 document[-]; or

103 (B) with knowledge that the person intends to use the identifying document to deceive
104 or defraud.

105 (b) ~~[A person]~~ Under circumstances that do not constitute a violation of Section
106 76-6-1102, an individual is guilty of a third degree felony if [he] the individual:

107 (i) obtains or possesses ~~[multiple]~~ identifying documents of more than two, but fewer
108 than 100, individuals:

109 (A) with knowledge that [he] the individual is not entitled to obtain or possess the
110 [multiple] identifying documents; or

111 (B) with intent to deceive or defraud; or

112 (ii) assists another person in obtaining or possessing ~~[multiple]~~ identifying documents

113 of more than two, but fewer than 100, individuals:

114 (A) with knowledge that the person is not entitled to obtain or possess the multiple
115 identifying documents[-]; or

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

118 (B) with knowledge that the person intends to use the identifying documents to deceive
119 or defraud.

120 (c) Under circumstances that do not constitute a violation of Section [76-6-1102](#), an
121 individual is guilty of a second degree felony if the individual:

122 (i) obtains or possesses identifying documents of 100 or more individuals:

123 (A) with knowledge that the individual is not entitled to obtain or possess the
124 identifying documents; or

125 (B) with intent to deceive or defraud; or

126 (ii) assists another person in obtaining or possessing identifying documents of 100 or
127 more individuals:

128 (A) with knowledge that the person is not entitled to obtain or possess the identifying
129 documents; or

130 (B) with knowledge that the person intends to use the identifying documents to deceive
131 or defraud.

132 Section 4. Section **78B-9-104** is amended to read:

133 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

134 (1) Unless precluded by Section [78B-9-106](#) or [78B-9-107](#), a person who has been
135 convicted and sentenced for a criminal offense may file an action in the district court of
136 original jurisdiction for post-conviction relief to vacate or modify the conviction or sentence
137 upon the following grounds:

138 (a) the conviction was obtained or the sentence was imposed in violation of the United
139 States Constitution or Utah Constitution;

140 (b) the conviction was obtained or the sentence was imposed under a statute that is in

141 violation of the United States Constitution or Utah Constitution, or the conduct for which the
142 petitioner was prosecuted is constitutionally protected;

143 (c) the sentence was imposed or probation was revoked in violation of the controlling
144 statutory provisions;

145 (d) the petitioner had ineffective assistance of counsel in violation of the United States
146 Constitution or Utah Constitution;

147 (e) newly discovered material evidence exists that requires the court to vacate the
148 conviction or sentence, because:

149 (i) neither the petitioner nor petitioner's counsel knew of the evidence at the time of
150 trial or sentencing or in time to include the evidence in any previously filed post-trial motion or
151 post-conviction proceeding, and the evidence could not have been discovered through the
152 exercise of reasonable diligence;

153 (ii) the material evidence is not merely cumulative of evidence that was known;

154 (iii) the material evidence is not merely impeachment evidence; and

155 (iv) viewed with all the other evidence, the newly discovered material evidence
156 demonstrates that no reasonable trier of fact could have found the petitioner guilty of the
157 offense or subject to the sentence received; or

158 (f) the petitioner can prove entitlement to relief under a rule announced by the United
159 States Supreme Court, the Utah Supreme Court, or the Utah Court of Appeals after conviction
160 and sentence became final on direct appeal, and that:

161 (i) the rule was dictated by precedent existing at the time the petitioner's conviction or
162 sentence became final; or

163 (ii) the rule decriminalizes the conduct that comprises the elements of the crime for
164 which the petitioner was convicted[-]; or

165 (g) the petitioner committed any of the following offenses while subject to force, fraud,
166 or coercion, as defined in Section [76-5-308](#):

167 (i) Section [58-37-8](#), possession of a controlled substance;

168 (ii) Section [76-10-1304](#), aiding prostitution;

- 169 (iii) Section 76-6-206, criminal trespass;
- 170 (iv) Section 76-6-413, theft;
- 171 (v) Section 76-6-502, possession of forged writing or device for writing;
- 172 (vi) Sections 76-6-602 through 76-6-608, retail theft;
- 173 (vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification
- 174 document;
- 175 (viii) Section 76-9-702, lewdness;
- 176 (ix) Section 76-10-1302, prostitution; or
- 177 (x) Section 76-10-1313, sexual solicitation.

178 (2) The court may not grant relief from a conviction or sentence unless the petitioner
179 establishes that there would be a reasonable likelihood of a more favorable outcome in light of
180 the facts proved in the post-conviction proceeding, viewed with the evidence and facts
181 introduced at trial or during sentencing.

182 (3) The court may not grant relief from a conviction based on a claim that the petitioner
183 is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3,
184 Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.
185 Claims under Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination
186 of Factual Innocence of this chapter may not be filed as part of a petition under this part, but
187 shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing
188 of DNA or Part 4, Postconviction Determination of Factual Innocence.