

IDENTITY THEFT PARAPHERNALIA PROVISIONS

2018 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Patrice M. Arent

Senate Sponsor: Todd Weiler

LONG TITLE

General Description:

This bill amends provisions of the Utah Criminal Code relating to 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;
- ▶ establishes an offense for unlawful possession of equipment used to create

identifying documents; and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-6-506.3, as last amended by Laws of Utah 2009, Chapter 166



28 **76-6-1105**, as enacted by Laws of Utah 2004, Chapter 227

29 **78B-9-104**, as last amended by Laws of Utah 2017, Chapter 447

30 ENACTS:

31 **76-6-1106**, Utah Code Annotated 1953



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

34 Section 1. Section **76-6-506.3** is amended to read:

35 **76-6-506.3. Financial transaction card offenses -- Unlawful acquisition,**
36 **possession, or transfer of card.**

37 ~~[Any person]~~ (1) Under circumstances that do not constitute a violation of Subsection
38 (2), an individual is guilty of a third degree felony who:

39 ~~[(1)]~~ (a) acquires a financial transaction card from another without the consent of the
40 card holder or the issuer;

41 ~~[(2)]~~ (b) receives a financial transaction card with intent to use ~~[it]~~ the financial
42 transaction card in violation of Section **76-6-506.2**;

43 ~~[(3)]~~ (c) sells or transfers a financial transaction card to ~~[another]~~ a person with ~~[the]~~
44 knowledge that ~~[it]~~ the financial transaction card will be used in violation of Section
45 **76-6-506.2**;

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

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

51 ~~[(i)]~~ (B) sells or transfers ~~[a]~~ the financial transaction card to ~~[another]~~ a person with
52 ~~[the]~~ knowledge that ~~[it]~~ the financial transaction card will be used in violation of Section
53 **76-6-506.2**; or

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

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

58 ~~[(i)]~~ (B) with ~~[the]~~ knowledge that the information has been acquired without consent

59 of the card holder or the issuer; and

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

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

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

66 (b) with knowledge that the information will be used by another in violation of Section
 67 [76-6-506.2](#).

68 Section 2. Section **76-6-1105** is amended to read:

69 **76-6-1105. Unlawful possession of another's identification documents.**

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

71 (a) "Identifying document" means:

72 ~~[(a)]~~ (i) a government issued ~~[identifying]~~ document commonly used for identification;

73 ~~[(b)]~~ (ii) a vehicle registration certificate; or

74 ~~[(c)]~~ (iii) any other document, image, data file, or medium containing personal
 75 identifying information as defined in Subsections [76-6-1102\(1\)](#)~~[(d)]~~(b) through ~~[(k)]~~ (m).

76 (b) "Identifying document" includes:

77 (i) a counterfeit identifying document; or

78 (ii) a document containing personal identifying information of a deceased individual.

79 (c) "Possess" means to have physical control or electronic access.

80 (2) (a) ~~[Notwithstanding the provisions of Subsection [76-6-1102\(3\)](#), a person]~~ Under
 81 circumstances that do not constitute a violation of Section [76-6-1102](#), an individual is guilty of
 82 a class A misdemeanor if ~~[he]~~ the individual:

83 (i) obtains or possesses an identifying document:

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

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

87 (ii) assists another person in obtaining or possessing an identifying document;

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

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

92 (b) ~~[A person]~~ Under circumstances that do not constitute a violation of Section
93 76-6-1102, an individual is guilty of a third degree felony if ~~[he]~~ the individual:

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

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

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

99 (ii) assists another person in obtaining or possessing ~~[multiple]~~ identifying documents
100 of more than two, but fewer than 100, individuals:

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

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

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

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

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

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

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

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

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

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

119 Section 3. Section **76-6-1106** is enacted to read:

120 **76-6-1106. Possession of identity fraud equipment.**

121 (1) As used in this section:

122 (a) "Financial transaction card" means the same as that term is defined in Subsection
123 76-6-506(5).

124 (b) "Identifying document" means the same as that term is defined in Subsection
125 76-6-1105(1).

126 (c) "Identity equipment" means any equipment, mechanism, material, or program used,
127 or intended for use, to make an identifying document or financial transaction card.

128 (2) An individual is guilty of a class A misdemeanor who, with intent to deceive or
129 defraud, possesses at least three different objects that are identity equipment.

130 (3) In determining whether an object is identity equipment, the trier of fact, in addition
131 to all other logically relevant factors, should consider:

132 (a) statements by an owner or by anyone in control of the object concerning the object's
133 use;

134 (b) prior convictions, if any, of an owner, or of anyone in control of the object, under
135 any state or federal law relating to identity theft;

136 (c) the proximity of the object, in time and space, to a violation of this chapter;

137 (d) the proximity of the object to an identifying document;

138 (e) descriptive materials accompanying the object that explain or depict the object's
139 use;

140 (f) national and local advertising concerning the object's use;

141 (g) the manner in which the object is displayed for sale;

142 (h) the existence and scope of legitimate uses of the object in the community; and

143 (i) expert testimony concerning the object's use.

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

145 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

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

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

152 (b) the conviction was obtained or the sentence was imposed under a statute that is in
153 violation of the United States Constitution or Utah Constitution, or the conduct for which the
154 petitioner was prosecuted is constitutionally protected;

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

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

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

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

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

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

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

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

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

175 (ii) the rule decriminalizes the conduct that comprises the elements of the crime for
176 which the petitioner was convicted.

177 (g) the petitioner committed any of the following offenses while subject to force, fraud,
178 or coercion, as defined in Section 76-5-308:

179 (i) Section 58-37-8, possession of a controlled substance;

180 (ii) Section 76-10-1304, aiding prostitution;

181 (iii) Section 76-6-206, criminal trespass;

182 (iv) Section 76-6-413, theft;

- 183 (v) Section 76-6-502, possession of forged writing or device for writing;
- 184 (vi) Sections 76-6-602 through 76-6-608, retail theft;
- 185 (vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification
- 186 document;
- 187 (viii) Section 76-9-702, lewdness;
- 188 (ix) Section 76-10-1302, prostitution; or
- 189 (x) Section 76-10-1313, sexual solicitation.

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

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

Legislative Review Note
Office of Legislative Research and General Counsel