

**Representative Patrice M. Arent** proposes the following substitute bill:

**IDENTITY THEFT PARAPHERNALIA PROVISIONS**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Patrice M. Arent**

Senate Sponsor: Todd Weiler

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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

**Utah Code Sections Affected:**

AMENDS:



- 26 [76-6-502](#), as last amended by Laws of Utah 2001, Chapter 56
- 27 [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

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

32 Section 1. Section [76-6-502](#) is amended to read:

33 **[76-6-502. Possession of forged writing or device for writing -- Penalty.](#)**

34 (1) As used in this section, "device" means any equipment, mechanism, material or  
35 program.

36 (2) [~~Any person~~] An individual who, with intent to defraud, knowingly possesses [~~any~~  
37 writing that is a forgery] a writing, as defined in Section [76-6-501](#), that is a forgery under  
38 Section [76-6-501](#), or who with intent to defraud knowingly possesses [~~any~~] a device for making  
39 [~~any writing that is a forgery~~] a writing, as defined in Section [76-6-501](#), that is a forgery under  
40 Section [76-6-501](#), is guilty of a third degree felony.

41 Section 2. Section [76-6-506.3](#) is amended to read:

42 **[76-6-506.3. Financial transaction card offenses -- Unlawful acquisition,](#)**  
43 **[possession, or transfer of card.](#)**

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

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

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

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

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

56 [~~(b)~~] (i) (A) retains possession with intent to use [~~it~~] the financial transaction card

57 in violation of Section 76-6-506.2; or

58 ~~[(ii)]~~ (B) sells or transfers [a] the financial transaction card to ~~[another]~~ a person with  
59 ~~[the]~~ knowledge that ~~[(i)]~~ the financial transaction card will be used in violation of Section  
60 76-6-506.2; or

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

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

65 ~~[(ii)]~~ (B) with ~~[the]~~ knowledge that the information has been acquired without consent  
66 of the card holder or the issuer; and

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

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

72 (a) with intent to use the information in violation of Section 76-6-506.2; or

73 (b) with knowledge that the information will be used by another in violation of Section  
74 76-6-506.2.

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

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

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

78 (a) "Identifying document" means:

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

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

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

83 (b) "Identifying document" includes:

84 (i) a counterfeit identifying document; or

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

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

87 (2) (a) ~~[Notwithstanding the provisions of Subsection 76-6-1102(3), a person]~~ Under

88 circumstances that do not constitute a violation of Section 76-6-1102 or Section 76-6-502, an  
89 individual is guilty of a class A misdemeanor if [he] the individual:

90 (i) obtains or possesses an identifying document;

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

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

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

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

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

99 (b) ~~[A person]~~ Under circumstances that do not constitute a violation of Section  
100 76-6-1102, an individual is guilty of a third degree felony if [he] the individual:

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

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

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

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

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

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

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

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

116 (i) obtains or possesses identifying documents of 100 or more individuals;

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

119 (B) with intent to deceive or defraud; or  
120 (ii) assists another person in obtaining or possessing identifying documents of 100 or  
121 more individuals:

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

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

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

127 **78B-9-104. Grounds for relief -- Retroactivity of rule.**

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

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

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

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

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

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

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

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

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

149 (iv) viewed with all the other evidence, the newly discovered material evidence

150 demonstrates that no reasonable trier of fact could have found the petitioner guilty of the  
151 offense or subject to the sentence received; or

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

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

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

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

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

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

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

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

165 (v) Section 76-6-502, possession of forged writing or device for writing;

166 (vi) Sections 76-6-602 through 76-6-608, retail theft;

167 (vii) Subsection 76-6-1105(2)(a)(i)(A), unlawful possession of another's identification  
168 document;

169 (viii) Section 76-9-702, lewdness;

170 (ix) Section 76-10-1302, prostitution; or

171 (x) Section 76-10-1313, sexual solicitation.

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

176 (3) The court may not grant relief from a conviction based on a claim that the petitioner  
177 is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3,  
178 Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.  
179 Claims under Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination  
180 of Factual Innocence of this chapter may not be filed as part of a petition under this part, but

181 shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing  
182 of DNA or Part 4, Postconviction Determination of Factual Innocence.