

HB0269S01 compared with HB0269

~~{deleted text}~~ shows text that was in HB0269 but was deleted in HB0269S01.

Inserted text shows text that was not in HB0269 but was inserted into HB0269S01.

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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

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;~~†~~

~~→ establishes an offense for unlawful possession of equipment used to create~~

HB0269S01 compared with HB0269

~~identifying documents;~~ and

- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-6-502, as last amended by Laws of Utah 2001, Chapter 56

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

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

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

~~{ENACTS:~~

~~———— 76-6-1106, Utah Code Annotated 1953~~

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

Section 1. Section 76-6-502 is amended to read:

76-6-502. Possession of forged writing or device for writing -- Penalty.

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

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

Section ~~{†}~~2. Section **76-6-506.3** is amended to read:

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

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

~~{†}~~ (a) acquires a financial transaction card from another without the consent of the

HB0269S01 compared with HB0269

card holder or the issuer;

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

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

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

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

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

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

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

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

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

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

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

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

Section ~~{2}~~3. Section **76-6-1105** is amended to read:

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

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

HB0269S01 compared with HB0269

(a) "Identifying document" means:

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

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

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

(b) "Identifying document" includes:

(i) a counterfeit identifying document; or

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

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

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

(i) obtains or possesses an identifying document;

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

(B) with intent to deceive or defraud; or

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

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

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

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

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

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

(B) with intent to deceive or defraud; or

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

(A) with knowledge that the person is not entitled to obtain or possess the multiple

HB0269S01 compared with HB0269

identifying documents[-]; or

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

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

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

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

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

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

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

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

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

~~{ Section 3. Section 76-6-1106 is enacted to read:~~

~~76-6-1106. Possession of identity fraud equipment.~~

~~(1) As used in this section:~~

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

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

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

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

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

~~(a) statements by an owner or by anyone in control of the object concerning the object's~~

HB0269S01 compared with HB0269

~~use;~~

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

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

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

~~— (e) descriptive materials accompanying the object that explain or depict the object's~~

~~use;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

HB0269S01 compared with HB0269

exercise of reasonable diligence;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(3) The court may not grant relief from a conviction based on a claim that the petitioner

HB0269S01 compared with HB0269

is innocent of the crime for which convicted except as provided in Title 78B, Chapter 9, Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence. Claims under Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination of Factual Innocence of this chapter may not be filed as part of a petition under this part, but shall be filed separately and in conformity with the provisions of Part 3, Postconviction Testing of DNA or Part 4, Postconviction Determination of Factual Innocence.

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Legislative Review Note

~~Office of Legislative Research and General Counsel~~