

HB0229S02 compared with HB0229

~~{deleted text}~~ shows text that was in HB0229 but was deleted in HB0229S02.

inserted text shows text that was not in HB0229 but was inserted into HB0229S02.

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Representative Brady Brammer proposes the following substitute bill:

PROPERTY AND FINANCIAL OFFENSE AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brady Brammer

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns penalties and evidence relating to property and financial offenses.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ ~~{creates penalties and a presumption of imprisonment for certain property, financial, and related}~~requires the Sentencing Commission to create and publish for public comment guidelines relating to certain financial and property offenses;
- ▶ increases the penalty for a violation of a written false statement on a financial declaration completed by a defendant;
- ▶ provides that a prosecuting attorney may subpoena certain information regarding property that may be necessary to satisfy a future restitution order, and that a court

HB0229S02 compared with HB0229

may consider this information when establishing a defendant's payment schedule on a criminal accounts receivable; and

- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

~~{ 61-1-21, as last amended by Laws of Utah 2016, Chapter 401~~

‡ 63G-12-402, as last amended by Laws of Utah 2021, Chapter 402

~~{76-6-102}~~ 63M-7-404, as last amended by Laws of Utah ~~{2013}~~ 2021, Chapter ~~{272}~~

~~76-6-202, as last amended by Laws of Utah 2012, Chapter 303~~

~~76-6-412, as last amended by Laws of Utah 2021, Chapter 57~~

~~76-6-501, as last amended by Laws of Utah 2016, Chapter 117~~

~~76-6-513, as last amended by Laws of Utah 2019, Chapter 211~~

~~76-6-521, as last amended by Laws of Utah 2019, Chapter 193~~

~~76-6-703, as last amended by Laws of Utah 2017, Chapters 462 and 467~~

~~76-6-1204, as last amended by Laws of Utah 2010, Chapter 193~~

‡ 173

76-8-504, as enacted by Laws of Utah 1973, Chapter 196

~~{ 76-10-1603.5, as last amended by Laws of Utah 2013, Chapter 394~~

~~76-10-1801, as last amended by Laws of Utah 2010, Chapter 193~~

~~76-10-1904, as last amended by Laws of Utah 1996, Chapter 17~~

‡ 77-32b-103, as enacted by Laws of Utah 2021, Chapter 260

77-38b-204, as renumbered and amended by Laws of Utah 2021, Chapter 260

77-38b-402, as renumbered and amended by Laws of Utah 2021, Chapter 260

~~{ENACTS:~~

~~76-3-210, Utah Code Annotated 1953~~

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

HB0229S02 compared with HB0229

Section 1. Section ~~{61-1-21}~~ 63G-12-402 is amended to read:

~~{~~ ~~61-1-21. Penalties for violations:~~

~~_____ (1) A person is guilty of a third degree felony who willfully violates:~~

~~_____ (a) a provision of this chapter except Sections 61-1-1 and 61-1-16;~~

~~_____ (b) an order issued under this chapter; or~~

~~_____ (c) Section 61-1-16 knowing the statement made is false or misleading in a material respect:~~

~~_____ (2) Subject to the other provisions of this section, a person who willfully violates Section 61-1-1:~~

~~_____ (a) is guilty of a third degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; or~~

~~_____ (b) is guilty of a second degree felony if, at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth \$10,000 or more:~~

~~_____ (3) A person who willfully violates Section 61-1-1 is guilty of a second degree felony if:~~

~~_____ (a) at the time the crime was committed, the property, money, or thing unlawfully obtained or sought to be obtained was worth less than \$10,000; and~~

~~_____ (b) in connection with that violation, the violator knowingly accepted any money representing:~~

~~_____ (i) equity in a person's primary residence;~~

~~_____ (ii) a withdrawal from an individual retirement account;~~

~~_____ (iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue Code;~~

~~_____ (iv) an investment by a person over whom the violator exercises undue influence; or~~

~~_____ (v) an investment by a person that the violator knows is a vulnerable adult.~~

~~_____ (4) A person who willfully violates Section 61-1-1 is guilty of a second degree felony punishable by imprisonment for an indeterminate term of not less than three years or more than 15 years if:~~

~~_____ (a) at the time the crime was committed, the property, money, or thing unlawfully~~

HB0229S02 compared with HB0229

~~obtained or sought to be obtained was worth \$10,000 or more; and~~

~~—— (b) in connection with that violation, the violator knowingly accepted any money representing:~~

~~—— (i) equity in a person's primary residence;~~

~~—— (ii) a withdrawal from an individual retirement account;~~

~~—— (iii) a withdrawal from a qualified retirement plan as defined in the Internal Revenue Code;~~

~~—— (iv) an investment by a person over whom the violator exercises undue influence; or~~

~~—— (v) an investment by a person that the violator knows is a vulnerable adult.~~

~~—— (5) The penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210 apply to a violation of Section 61-1-1, 61-1-3, or 61-1-7.~~

~~—— [(5)] (6) When amounts of property, money, or other things are unlawfully obtained or sought to be obtained under a series of acts or continuing course of business, whether from the same or several sources, the amounts may be aggregated in determining the level of offense.~~

~~—— [(6)] (7) It is an affirmative defense under this section against a claim that the person violated an order issued under this chapter for the person to prove that the person had no knowledge of the order.~~

~~—— [(7)] (8) In addition to any other penalty for a criminal violation of this chapter, the sentencing judge may impose a penalty or remedy provided for in Subsection 61-1-20(2)(b).~~

~~—— Section 2. Section ~~63G-12-402~~ is amended to read:~~

~~‡~~ **63G-12-402. Receipt of state, local, or federal public benefits -- Verification -- Exceptions -- Fraudulently obtaining benefits -- Criminal penalties -- Annual report.**

(1) (a) Except as provided in Subsection (3) or when exempted by federal law, an agency or political subdivision of the state shall verify the lawful presence in the United States of an individual at least 18 years ~~[of age]~~ old who applies for:

(i) a state or local public benefit as defined in 8 U.S.C. Sec. 1621; or

(ii) a federal public benefit as defined in 8 U.S.C. Sec. 1611, that is administered by an agency or political subdivision of this state.

(b) For purpose of a license issued under Title 58, Chapter 55, Utah Construction Trades Licensing Act, to an applicant that is an unincorporated entity, the Department of

HB0229S02 compared with HB0229

Commerce shall verify in accordance with this Subsection (1) the lawful presence in the United States of each individual who:

- (i) owns an interest in the contractor that is an unincorporated entity; and
- (ii) engages, or will engage, in a construction trade in Utah as an owner of the

contractor described in Subsection (1)(b)(i).

(2) This section shall be enforced without regard to race, religion, gender, ethnicity, or national origin.

(3) Verification of lawful presence under this section is not required for:

(a) any purpose for which lawful presence in the United States is not restricted by law, ordinance, or regulation;

(b) assistance for health care items and services that:

(i) are necessary for the treatment of an emergency medical condition, as defined in 42 U.S.C. Sec. 1396b(v)(3), of the individual involved; and

(ii) are not related to an organ transplant procedure;

(c) short-term, noncash, in-kind emergency disaster relief;

(d) public health assistance for immunizations with respect to immunizable diseases and for testing and treatment of symptoms of communicable diseases whether or not the symptoms are caused by the communicable disease;

(e) programs, services, or assistance such as soup kitchens, crisis counseling and intervention, and short-term shelter, specified by the United States Attorney General, in the sole and unreviewable discretion of the United States Attorney General after consultation with appropriate federal agencies and departments, that:

(i) deliver in-kind services at the community level, including through public or private nonprofit agencies;

(ii) do not condition the provision of assistance, the amount of assistance provided, or the cost of assistance provided on the income or resources of the individual recipient; and

(iii) are necessary for the protection of life or safety;

(f) the exemption for paying the nonresident portion of total tuition as set forth in Section 53B-8-106;

(g) an applicant for a license under Section 61-1-4, if the applicant:

(i) is registered with the Financial Industry Regulatory Authority; and

HB0229S02 compared with HB0229

(ii) files an application with the state Division of Securities through the Central Registration Depository;

(h) a state public benefit to be given to an individual under Title 49, Utah State Retirement and Insurance Benefit Act;

(i) a home loan that will be insured, guaranteed, or purchased by:

(i) the Federal Housing Administration, the Veterans Administration, or any other federal agency; or

(ii) an enterprise as defined in 12 U.S.C. Sec. 4502;

(j) a subordinate loan or a grant that will be made to an applicant in connection with a home loan that does not require verification under Subsection (3)(i);

(k) an applicant for a license issued by the Department of Commerce or individual described in Subsection (1)(b), if the applicant or individual provides the Department of Commerce:

(i) certification, under penalty of perjury, that the applicant or individual is:

(A) a United States citizen;

(B) a qualified alien as defined in 8 U.S.C. Sec. 1641; or

(C) lawfully present in the United States; and

(ii) (A) the number assigned to a driver license or identification card issued under Title 53, Chapter 3, Uniform Driver License Act; or

(B) the number assigned to a driver license or identification card issued by a state other than Utah if, as part of issuing the driver license or identification card, the state verifies an individual's lawful presence in the United States; and

(l) an applicant for:

(i) an Opportunity scholarship described in Title 53B, Chapter 8, Part 2, Regents' Scholarship Program;

(ii) a New Century scholarship described in Section 53B-8-105;

(iii) a promise scholarship described in Section 53B-8-303; or

(iv) a scholarship:

(A) for an individual who is a graduate of a high school located within Utah; and

(B) administered by an institution of higher education as defined in Section 53B-2-101.

(4) (a) An agency or political subdivision required to verify the lawful presence in the

HB0229S02 compared with HB0229

United States of an applicant under this section shall require the applicant to certify under penalty of perjury that:

(i) the applicant is a United States citizen; or

(ii) the applicant is:

(A) a qualified alien as defined in 8 U.S.C. Sec. 1641; and

(B) lawfully present in the United States.

(b) The certificate required under this Subsection (4) shall include a statement advising the signer that providing false information subjects the signer to penalties for perjury.

(5) An agency or political subdivision shall verify a certification required under Subsection (4)(a)(ii) through the federal SAVE program.

(6) (a) An individual who knowingly and willfully makes a false, fictitious, or fraudulent statement or representation in a certification under Subsection (3)(k) or (4) is subject to the criminal penalties applicable in this state for:

(i) making a written false statement under [~~Subsection 76-8-504(2)~~] Section 76-8-504; and

(ii) fraudulently obtaining:

(A) public assistance program benefits under Sections 76-8-1205 and 76-8-1206; or

(B) unemployment compensation under Section 76-8-1301.

(b) If the certification constitutes a false claim of United States citizenship under 18 U.S.C. Sec. 911, the agency or political subdivision shall file a complaint with the United States Attorney General for the applicable district based upon the venue in which the application was made.

(c) If an agency or political subdivision receives verification that a person making an application for a benefit, service, or license is not a qualified alien, the agency or political subdivision shall provide the information to the Office of the Attorney General unless prohibited by federal mandate.

(7) An agency or political subdivision may adopt variations to the requirements of this section that:

(a) clearly improve the efficiency of or reduce delay in the verification process; or

(b) provide for adjudication of unique individual circumstances where the verification procedures in this section would impose an unusual hardship on a legal resident of Utah.

HB0229S02 compared with HB0229

(8) It is unlawful for an agency or a political subdivision of this state to provide a state, local, or federal benefit, as defined in 8 U.S.C. Sec. 1611 and 1621, in violation of this section.

(9) A state agency or department that administers a program of state or local public benefits shall:

(a) provide an annual report to the governor, the president of the Senate, and the speaker of the House regarding its compliance with this section; and

(b) (i) monitor the federal SAVE program for application verification errors and significant delays;

(ii) provide an annual report on the errors and delays to ensure that the application of the federal SAVE program is not erroneously denying a state or local benefit to a legal resident of the state; and

(iii) report delays and errors in the federal SAVE program to the United States Department of Homeland Security.

Section 2. Section 63M-7-404 is amended to read:

63M-7-404. Purpose -- Duties.

(1) The purpose of the commission is to develop guidelines and propose recommendations to the Legislature, the governor, and the Judicial Council regarding:

(a) the sentencing and release of juvenile and adult offenders in order to:

(i) respond to public comment;

(ii) relate sentencing practices and correctional resources;

(iii) increase equity in criminal sentencing;

(iv) better define responsibility in criminal sentencing; and

(v) enhance the discretion of sentencing judges while preserving the role of the Board of Pardons and Parole and the Youth Parole Authority;

(b) the length of supervision of adult offenders on probation or parole in order to:

(i) increase equity in criminal supervision lengths;

(ii) respond to public comment;

(iii) relate the length of supervision to an offender's progress;

(iv) take into account an offender's risk of offending again;

(v) relate the length of supervision to the amount of time an offender has remained under supervision in the community; and

HB0229S02 compared with HB0229

(vi) enhance the discretion of the sentencing judges while preserving the role of the Board of Pardons and Parole;

(c) appropriate, evidence-based probation and parole supervision policies and services that assist individuals in successfully completing supervision and reduce incarceration rates from community supervision programs while ensuring public safety, including:

(i) treatment and intervention completion determinations based on individualized case action plans;

(ii) measured and consistent processes for addressing violations of conditions of supervision;

(iii) processes that include using positive reinforcement to recognize an individual's progress in supervision;

(iv) engaging with social services agencies and other stakeholders who provide services that meet offender needs; and

(v) identifying community violations that may not warrant revocation of probation or parole.

(2) (a) The commission shall modify the sentencing guidelines and supervision length guidelines for adult offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications under Subsection (2)(a) shall be for the purposes of protecting the public and ensuring efficient use of state funds.

(3) (a) The commission shall modify the criminal history score in the sentencing guidelines for adult offenders to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications to the criminal history score under Subsection (3)(a) shall include factors in an offender's criminal history that are relevant to the accurate determination of an individual's risk of offending again.

(4) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on probation and:

(i) who have violated one or more conditions of probation; and

(ii) whose probation has been revoked by the court.

(b) The guidelines shall consider the seriousness of the violation of the conditions of

HB0229S02 compared with HB0229

probation, the probationer's conduct while on probation, and the probationer's criminal history.

(5) (a) The commission shall establish sentencing guidelines for periods of incarceration for individuals who are on parole and:

- (i) who have violated a condition of parole; and
- (ii) whose parole has been revoked by the Board of Pardons and Parole.

(b) The guidelines shall consider the seriousness of the violation of the conditions of parole, the individual's conduct while on parole, and the individual's criminal history.

(6) The commission shall establish graduated and evidence-based processes to facilitate the prompt and effective response to an individual's progress in or violation of the terms of probation or parole by the adult probation and parole section of the Department of Corrections, or other supervision services provider, in order to implement the recommendations of the Commission on Criminal and Juvenile Justice for reducing recidivism and incarceration, including:

- (a) responses to be used when an individual violates a condition of probation or parole;
- (b) responses to recognize positive behavior and progress related to an individual's case

action plan;

(c) when a violation of a condition of probation or parole should be reported to the court or the Board of Pardons and Parole; and

(d) a range of sanctions that may not exceed a period of incarceration of more than:

- (i) three consecutive days; and
- (ii) a total of five days in a period of 30 days.

(7) The commission shall establish graduated incentives to facilitate a prompt and effective response by the adult probation and parole section of the Department of Corrections to an offender's:

- (a) compliance with the terms of probation or parole; and
- (b) positive conduct that exceeds those terms.

(8) (a) The commission shall establish guidelines, including sanctions and incentives, to appropriately respond to negative and positive behavior of juveniles who are:

- (i) nonjudicially adjusted;
- (ii) placed on diversion;
- (iii) placed on probation;

HB0229S02 compared with HB0229

- (iv) placed on community supervision;
 - (v) placed in an out-of-home placement; or
 - (vi) placed in a secure care facility.
- (b) In establishing guidelines under this Subsection (8), the commission shall consider:
- (i) the seriousness of the negative and positive behavior;
 - (ii) the juvenile's conduct post-adjudication; and
 - (iii) the delinquency history of the juvenile.
- (c) The guidelines shall include:
- (i) responses that are swift and certain;
 - (ii) a continuum of community-based options for juveniles living at home;
 - (iii) responses that target the individual's criminogenic risk and needs; and
 - (iv) incentives for compliance, including earned discharge credits.
- (9) The commission shall establish supervision length guidelines in accordance with

this section before October 1, 2018.

~~{Section 3. Section 76-3-210 is enacted to read:~~

~~———— **76-3-210. Penalty and presumption of prison for a high-value property or financial offense.**~~

~~———— (1) As used in this section, "high-value property or financial offense" means any of the following offenses that is punishable as a felony:~~

~~———— {a}(10) (a) The commission shall create sentencing guidelines and supervision length guidelines for the following financial and property offenses for which a pecuniary loss to a victim may exceed \$5,000:~~

~~(i) securities fraud, Sections 61-1-1 and 61-1-21;~~

~~{b}ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment ~~advisor~~ adviser representative, Sections 61-1-3 and 61-1-21;~~

~~{c}iii) offer or sale of unregistered security, Sections 61-1-7 and 61-1-21;~~

~~{iv) abuse or exploitation of a vulnerable adult under Title 76, Chapter 5, Part 1,~~

~~Assault and Related Offenses:~~

~~{d}v) arson, Section 76-6-102;~~

~~{e}vi) burglary, Section 76-6-202;~~

~~{f}vii) theft, Section 76-6-412;~~

HB0229S02 compared with HB0229

~~(fg)viii~~ forgery, Section 76-6-501;

~~(fh)ix~~ unlawful dealing of property by a fiduciary, Section 76-6-513;

~~(fi)x~~ fraudulent insurance act, Section 76-6-521;

~~(fj)xi~~ computer crimes, Section 76-6-703;

~~(fk)xii~~ mortgage fraud, Sections 76-6-1203 and 76-6-1204;

~~(fl)xiii~~ pattern of unlawful activity, Sections 76-10-1603 and 76-10-1603.5;

~~(fm)xiv~~ communications fraud, Section 76-10-1801; ~~or~~

~~(fn)xv~~ money laundering, Section 76-10-1904~~;~~ and

~~(2) Except as provided~~ xvi) other offenses in the discretion of the commission.

(b) The guidelines described in Subsection (4), in a case involving a high-value property or financial offense:

~~— (a) if the trier of fact finds beyond a reasonable doubt that the economic loss due to the offense is between \$50,000 and \$200,000, the offense is a second degree felony with an indeterminate prison term of two to 15 years, with a presumption that the defendant should be committed to prison;~~

~~— (b) if the trier of fact finds beyond a reasonable doubt that the economic loss due to the offense is between \$200,000 and \$1,000,000, the offense is a second degree felony with an indeterminate prison term of three to 15 years, with a presumption that the defendant should be committed to prison; or~~

~~— (c) if the trier of fact finds beyond a reasonable doubt that the economic loss due to the offense is over \$1,000,000, the offense is a second degree felony with an indeterminate prison term of four to 15 years, with a presumption that the defendant should be committed to prison.~~

~~— (3) If the sentencing court departs from a presumption of imprisonment in this section, the sentencing court shall make the following findings, including supporting facts, on the record:~~

~~— (a) a sentence without imprisonment adequately punishes the defendant;~~

~~— (b) a sentence without imprisonment protects the public from future crime;~~

~~— (c) a sentence without imprisonment does not demean the seriousness of the offense;~~

and

~~— (d) a sentence without imprisonment does not demean the impact on the victim.~~

~~— (4) A penalty described in this section does not apply if the application of the penalty~~

HB0229S02 compared with HB0229

~~would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the individual is being sentenced.~~

~~—— (5) For a defendant who is an employee as defined in Section 49-11-1401, the forfeiture of retirement benefits described under Section 49-11-1401 may also apply in addition to a penalty or presumption under this section.~~

~~—— Section 4. Section 76-6-102 is amended to read:~~

~~—— 76-6-102. Arson:~~

~~—— (1) A person is guilty of arson if, under circumstances not amounting to aggravated arson, the person by means of fire or explosives unlawfully and intentionally damages:~~

~~—— (a) any property with intention of defrauding an insurer; or~~

~~—— (b) the property of another.~~

~~—— (2) A violation of Subsection (1)(a) is a second degree felony.~~

~~—— (3) A violation of Subsection (1)(b) is a second degree felony if:~~

~~—— (a) the damage caused is or exceeds \$5,000 in value;~~

~~—— (b) as a proximate result of the fire or explosion, any person not a participant in the offense suffers serious bodily injury as defined in Section 76-1-601;~~

~~—— (c) (i) the damage caused is or exceeds \$1,500 but is less than \$5,000 in value; and~~

~~—— (ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to;~~

~~10)(a) shall include a sentencing matrix with proportionate escalating sanctions based on the amount of a victim's loss.~~

~~(c) On or before August 1, 2022, the commission {of the violation of Subsection (1)(b):~~

~~—— (4) A violation of Subsection (1)(b) is a third degree felony if:~~

~~—— (a) the damage caused is or exceeds \$1,500 but is less than \$5,000 in value;~~

~~—— (b) as a proximate result of the fire or explosion, any person not a participant in the offense suffers substantial bodily injury as defined in Section 76-1-601;~~

~~—— (c) the fire or explosion endangers human life; or~~

~~—— (d) (i) the damage caused is or exceeds \$500 but is less than \$1,500 in value; and~~

~~—— (ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the~~

HB0229S02 compared with HB0229

~~commission of the violation of Subsection (1)(b):~~

~~— (5) A violation of Subsection (1)(b) is a class A misdemeanor if the damage caused:~~

~~— (a) is or exceeds \$500 but is less than \$1,500 in value; or~~

~~— (b) (i) is less than \$500; and~~

~~— (ii) at the time of the offense the actor has been previously convicted of a violation of this section or Section 76-6-103 regarding aggravated arson within 10 years prior to the commission of the violation of Subsection (1)(b):~~

~~— (6) A violation of Subsection (1)(b) is a class B misdemeanor if the damage caused is less than \$500:~~

~~— (7) The penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210 apply to a violation of this section:~~

~~— Section 5. Section 76-6-202 is amended to read:~~

~~— **76-6-202. Burglary.**~~

~~— (1) An actor is guilty of burglary who enters or remains unlawfully in a building or any portion of a building with intent to commit:~~

~~— (a) a felony;~~

~~— (b) theft;~~

~~— (c) an assault on any person;~~

~~— (d) lewdness, a violation of Section 76-9-702;~~

~~— (e) sexual battery, a violation of Section 76-9-702.1;~~

~~— (f) lewdness involving a child, in violation of Section 76-9-702.5; or~~

~~— (g) voyeurism under Section 76-9-702.7.~~

~~— (2) (a) [Burglary] A burglary is a third degree felony unless [it] the burglary was committed in a dwelling, in which event [it] the burglary is a second degree felony.~~

~~— (b) The penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210 apply to a violation of this section:~~

~~— (3) A violation of this section is a separate offense from any of the offenses listed in Subsections (1)(a) through (g), and which may be committed by the actor while in the building:~~

~~— Section 6. Section 76-6-412 is amended to read:~~

~~— **76-6-412. Theft -- Classification of offenses -- Action for treble damages.**~~

~~— (1) [Theft] Except as provided in Subsection (2), theft of property and services as~~

HB0229S02 compared with HB0229

provided in this chapter is punishable:

- ~~—— (a) as a second degree felony if the:~~
 - ~~—— (i) value of the property or services is or exceeds \$5,000;~~
 - ~~—— (ii) property stolen is a firearm or an operable motor vehicle; or~~
 - ~~—— (iii) property is stolen from the person of another;~~
- ~~—— (b) as a third degree felony if:~~
 - ~~—— (i) the value of the property or services is or exceeds \$1,500 but is less than \$5,000;~~
 - ~~—— (ii) the value of the property or services is or exceeds \$500 and the actor has been twice before convicted of any of the following offenses, if each prior offense was committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based and at least one of those convictions is for a class A misdemeanor:~~
 - ~~—— (A) any theft, any robbery, or any burglary with intent to commit theft;~~
 - ~~—— (B) any offense under Title 76, Chapter 6, Part 5, Fraud; or~~
 - ~~—— (C) any attempt to commit any offense under Subsection (1)(b)(ii)(A) or (B);~~
 - ~~—— (iii) (A) the value of property or services is or exceeds \$500 but is less than \$1,500;~~
 - ~~—— (B) the theft occurs on a property where the offender has committed any theft within the past five years; and~~
 - ~~—— (C) the offender has received written notice from the merchant prohibiting the offender from entering the property [pursuant to] under Subsection 78B-3-108(4); or~~
 - ~~—— (iv) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if the prior offense was committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based;~~
- ~~—— (c) as a class A misdemeanor if:~~
 - ~~—— (i) the value of the property stolen is or exceeds \$500 but is less than \$1,500;~~
 - ~~—— (ii) (A) the value of property or services is less than \$500;~~
 - ~~—— (B) the theft occurs on a property where the offender has committed any theft within the past five years; and~~
 - ~~—— (C) the offender has received written notice from the merchant prohibiting the offender from entering the property [pursuant to] under Subsection 78B-3-108(4); or~~
 - ~~—— (iii) the actor has been twice before convicted of any of the offenses listed in~~

HB0229S02 compared with HB0229

~~Subsections (1)(b)(ii)(A) through (1)(b)(ii)(C), if each prior offense was committed within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based; or~~

~~—— (d) as a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (1)(c);~~

~~—— (2) The penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210 apply to a violation of this chapter and Subsection 76-6-513(2);~~

~~—— [(2)] (3) Any individual who violates Subsection 76-6-408(2) or 76-6-413(1), or commits theft of a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, or a fur-bearing animal raised for commercial purposes, or a livestock guardian dog, is civilly liable for three times the amount of actual damages, if any sustained by the plaintiff, and for costs of suit and reasonable attorney fees;~~

~~—— Section 7. Section 76-6-501 is amended to read:~~

~~—— **76-6-501. Forgery and producing false identification -- Elements of offense --**~~
Definitions:

~~—— (1) As used in this part:~~

~~—— (a) "Authentication feature" means any hologram, watermark, certification, symbol, code, image, sequence of numbers or letters, or other feature that either individually or in combination with another feature is used by the issuing authority on an identification document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified;~~

~~—— (b) "Document-making implement" means any implement, impression, template, computer file, computer disc, electronic device, computer hardware or software, or scanning, printing, or laminating equipment that is specifically configured or primarily used for making an identification document, a false identification document, or another document-making implement;~~

~~—— (c) "False authentication feature" means an authentication feature that:~~

~~—— (i) is genuine in origin but that, without the authorization of the issuing authority, has been tampered with or altered for purposes of deceit;~~

~~—— (ii) is genuine, but has been distributed, or is intended for distribution, without the~~

HB0229S02 compared with HB0229

~~authorization of the issuing authority and not in connection with a lawfully made identification document, document-making implement, or means of identification to which the authentication feature is intended to be affixed or embedded by the issuing authority; or~~

~~—— (iii) appears to be genuine, but is not.~~

~~—— (d) "False identification document" means a document of a type intended or commonly accepted for the purposes of identification of individuals, and that:~~

~~—— (i) is not issued by or under the authority of a governmental entity or was issued under the authority of a governmental entity but was subsequently altered for purposes of deceit; and~~

~~—— (ii) appears to be issued by or under the authority of a governmental entity.~~

~~—— (e) "Governmental entity" means the United States government, a state, a political subdivision of a state, a foreign government, a political subdivision of a foreign government, an international governmental organization, or a quasi-governmental organization.~~

~~—— (f) "Identification document" means a document made or issued by or under the authority of a governmental entity, which, when completed with information concerning a particular individual, is of a type intended or commonly accepted for the purpose of identification of individuals.~~

~~—— (g) "Issuing authority" means:~~

~~—— (i) any governmental entity that is authorized to issue identification documents, means of identification, or authentication features; or~~

~~—— (ii) a business organization or financial institution or [its] the organization's or institution's agent that issues a financial transaction card as defined in Section 76-6-506.~~

~~—— (h) "Means of identification" means any name or number that may be used, alone or in conjunction with any other information, to identify a specific individual, including:~~

~~—— (i) name, social security number, date of birth, government issued driver license or identification number, alien registration number, government passport number, or employer or taxpayer identification number;~~

~~—— (ii) unique biometric data, such as fingerprint, voice print, retina or iris image, or other unique physical representation; or~~

~~—— (iii) unique electronic identification number, address, or routing code.~~

~~—— (i) "Personal identification card" means an identification document issued by a governmental entity solely for the purpose of identification of an individual.~~

HB0229S02 compared with HB0229

~~(j) "Produce" includes altering, authenticating, or assembling;~~

~~(k) "State" includes any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any other commonwealth, possession, or territory of the United States;~~

~~(l) "Traffic" means to:~~

~~(i) transport, transfer, or otherwise dispose of an item to another, as consideration for anything of value; or~~

~~(ii) make or obtain control of with intent to transport, transfer, or otherwise dispose of an item to another;~~

~~(m) "Writing" includes printing, electronic storage or transmission, or any other method of recording valuable information including forms such as:~~

~~(i) checks, tokens, stamps, seals, credit cards, badges, trademarks, money, and any other symbols of value, right, privilege, or identification;~~

~~(ii) a security, revenue stamp, or any other instrument or writing issued by a government or any agency; or~~

~~(iii) a check, an issue of stocks, bonds, or any other instrument or writing representing an interest in or claim against property, or a pecuniary interest in or claim against any person or enterprise;~~

~~(2) A person is guilty of forgery if, with purpose to defraud anyone, or with knowledge that the person is facilitating a fraud to be perpetrated by anyone, the person:~~

~~(a) alters any writing of another without his authority or utters the altered writing; or~~

~~(b) makes, completes, executes, authenticates, issues, transfers, publishes, or utters any writing so that the writing or the making, completion, execution, authentication, issuance, transference, publication, or utterance:~~

~~(i) purports to be the act of another, whether the person is existent or nonexistent;~~

~~(ii) purports to be an act on behalf of another party with the authority of that other party; or~~

~~(iii) purports to have been executed at a time or place or in a numbered sequence other than was in fact the case, or to be a copy of an original when an original did not exist.~~

~~(3) It is not a defense to a charge of forgery under Subsection (2)(b)(ii) if an actor signs his own name to the writing if the actor does not have authority to make, complete, execute,~~

HB0229S02 compared with HB0229

~~authenticate, issue, transfer, publish, or utter the writing on behalf of the party for whom the actor purports to act.~~

~~—— (4) A person is guilty of producing or transferring any false identification document who:~~

~~—— (a) knowingly and without lawful authority produces, attempts, or conspires to produce an identification document, authentication feature, or a false identification document that is or appears to be issued by or under the authority of an issuing authority;~~

~~—— (b) transfers, or possesses with intent to transfer, an identification document, authentication feature, or a false identification document knowing that the document or feature was stolen or produced without lawful authority;~~

~~—— (c) produces, transfers, or possesses a document-making implement or authentication feature with the intent that the document-making implement or the authentication feature be used in the production of a false identification document or another document-making implement or authentication feature; or~~

~~—— (d) traffics in false or actual authentication features for use in false identification documents, document-making implements, or means of identification.~~

~~—— (5) (a) A person who violates:~~

~~—— [(a)] (i) Subsection (2) is guilty of a third degree felony; and~~

~~—— [(b)] (ii) Subsection (4) is guilty of a second degree felony.~~

~~—— (b) The penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210 apply to a violation of this section.~~

~~—— (6) This part may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.~~

~~—— (7) The forfeiture of property under this part, including any seizure and disposition of the property and any related judicial or administrative proceeding, shall be conducted in accordance with Title 24, Forfeiture and Disposition of Property Act.~~

~~—— (8) The court shall order, in addition to the penalty prescribed for any person convicted of a violation of this section, the forfeiture and destruction or other disposition of all illicit authentication features, identification documents, false transaction cards, document-making implements, or means of identification.~~

~~—— Section 8. Section 76-6-513 is amended to read:~~

HB0229S02 compared with HB0229

~~76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.~~

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

~~(a) "Fiduciary" means the same as that term is defined in Section 22-1-1.~~

~~(b) "Financial institution" means "depository institution" and "trust company" as defined in Section 7-1-103.~~

~~(c) "Governmental entity" is as defined in Section 63G-7-102.~~

~~(d) "Person" does not include a financial institution whose fiduciary functions are supervised by the Department of Financial Institutions or a federal regulatory agency.~~

~~(e) "Property" means the same as that term is defined in Section 76-6-401.~~

~~(2) (a) A person is guilty of unlawfully dealing with property by a fiduciary if the person deals with property that has been entrusted to [him] the person as a fiduciary, or property of a governmental entity, public money, or of a financial institution, in a manner which the person knows is a violation of the person's duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted.~~

~~(b) A violation of [this] Subsection (2)(a) is:~~

~~(i) punishable under Section 76-6-412[.]; and~~

~~(ii) subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210.~~

~~(3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if, without permission of the owner of the property or some other person with authority to give permission, the person pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.~~

~~(b) [An] Except as provided in Subsection (3)(c), an offense under Subsection (3)(a) is punishable as:~~

~~(i) a felony of the second degree if the value of the property wrongfully pledged is or exceeds \$5,000;~~

~~(ii) a felony of the third degree if the value of the property wrongfully pledged is or exceeds \$1,500 but is less than \$5,000;~~

~~(iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less than \$1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent~~

HB0229S02 compared with HB0229

~~to commit theft, or unlawful dealing with property by a fiduciary; or~~

~~—— (iv) a class B misdemeanor if the value of the property is less than \$500;~~

~~—— (c) The penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210 apply to a violation of Subsection (3)(a):~~

~~—— Section 9. Section 76-6-521 is amended to read:~~

~~—— **76-6-521. Fraudulent insurance act.**~~

~~—— (1) A person commits a fraudulent insurance act if that person with intent to defraud:~~

~~—— (a) presents or causes to be presented any oral or written statement or representation knowing that the statement or representation contains false or fraudulent information concerning any fact material to an application for the issuance or renewal of an insurance policy, certificate, or contract, as part of or in support of:~~

~~—— (i) obtaining an insurance policy the insurer would otherwise not issue on the basis of underwriting criteria applicable to the person;~~

~~—— (ii) a scheme or artifice to avoid paying the premium that an insurer charges on the basis of underwriting criteria applicable to the person; or~~

~~—— (iii) a scheme or artifice to file an insurance claim for a loss that has already occurred;~~

~~—— (b) presents, or causes to be presented, any oral or written statement or representation:~~

~~—— (i) (A) as part of or in support of a claim for payment or other benefit [pursuant to] under an insurance policy, certificate, or contract; or~~

~~—— (B) in connection with any civil claim asserted for recovery of damages for personal or bodily injuries or property damage; and~~

~~—— (ii) knowing that the statement or representation contains false, incomplete, or fraudulent information concerning any fact or thing material to the claim;~~

~~—— (c) knowingly accepts a benefit from proceeds derived from a fraudulent insurance act;~~

~~—— (d) intentionally, knowingly, or recklessly devises a scheme or artifice to obtain fees for professional services, or anything of value by means of false or fraudulent pretenses, representations, promises, or material omissions;~~

~~—— (e) knowingly employs, uses, or acts as a runner, as defined in Section 31A-31-102, for the purpose of committing a fraudulent insurance act;~~

~~—— (f) knowingly assists, abets, solicits, or conspires with another to commit a fraudulent insurance act;~~

HB0229S02 compared with HB0229

~~— (g) knowingly supplies false or fraudulent material information in any document or statement required by the Department of Insurance; or~~

~~— (h) knowingly fails to forward a premium to an insurer in violation of Section 31A-23a-411.1.~~

~~— (2) (a) A violation of Subsection (1)(a)(i) is a class A misdemeanor:~~

~~— (b) A violation of Subsections (1)(a)(ii) or (1)(b) through (1)(h) is:~~

~~— (i) punishable [as] in the manner prescribed by Section 76-10-1801 for communication fraud for property of like value[.]; and~~

~~— (ii) subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210:~~

~~— (c) A violation of Subsection (1)(a)(iii):~~

~~— (i) is a class A misdemeanor if the value of the loss is less than \$1,500 or unable to be determined; or~~

~~— (ii) if the value of the loss is \$1,500 or more, is:~~

~~— (A) punishable [as] in the manner prescribed by Section 76-10-1801 for communication fraud for property of like value[.]; and~~

~~— (B) subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210:~~

~~— (3) A corporation or association is guilty of the offense of insurance fraud under the same conditions as those set forth in Section 76-2-204.~~

~~— (4) The determination of the degree of any offense under Subsections (1)(a)(ii) and (1)(b) through (1)(h) shall be measured by the total value of all property, money, or other things obtained or sought to be obtained by the fraudulent insurance act or acts} **shall publish for public comment the guidelines** described in {Subsections (1)(a)(ii) and (1)(b) through (1)(h):~~

~~— Section 10. Section **76-6-703** is amended to read:~~

~~— **76-6-703. Computer crimes and penalties -- Interfering with critical infrastructure:**~~

~~— (1) It is unlawful for a person to:~~

~~— (a) without authorization, or in excess of the person's authorization, access or attempt to access computer technology if the access or attempt to access results in:~~

~~— (i) the alteration, damage, destruction, copying, transmission, discovery, or disclosure~~

HB0229S02 compared with HB0229

of computer technology:

- ~~—— (ii) interference with or interruption of:~~
- ~~—— (A) the lawful use of computer technology; or~~
- ~~—— (B) the transmission of data;~~
- ~~—— (iii) physical damage to or loss of real, personal, or commercial property;~~
- ~~—— (iv) audio, video, or other surveillance of another person; or~~
- ~~—— (v) economic loss to any person or entity;~~
- ~~—— (b) after accessing computer technology that the person is authorized to access,~~

knowingly take or attempt to take unauthorized or unlawful action that results in:

~~—— (i) the alteration, damage, destruction, copying, transmission, discovery, or disclosure of computer technology;~~

- ~~—— (ii) interference with or interruption of:~~
- ~~—— (A) the lawful use of computer technology; or~~
- ~~—— (B) the transmission of data;~~
- ~~—— (iii) physical damage to or loss of real, personal, or commercial property;~~
- ~~—— (iv) audio, video, or other surveillance of another person; or~~
- ~~—— (v) economic loss to any person or entity; or~~
- ~~—— (c) knowingly engage in a denial of service attack.~~

~~—— (2) (a) A person who violates Subsection (1) is guilty of:~~

~~—— [(a)] (i) a class B misdemeanor when:~~

~~—— [(i)] (A) the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or sought to be obtained is less than \$500; or~~

~~—— [(ii)] (B) the information obtained is not confidential;~~

~~—— [(b)] (ii) a class A misdemeanor when the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$500 but is less than \$1,500;~~

~~—— [(c)] (iii) a third degree felony when the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000;~~

~~—— [(d)] (iv) subject to Subsection (2)(b), a second degree felony when the economic loss or other loss or damage caused or the value of the money, property, or benefit obtained or~~

HB0229S02 compared with HB0229

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

~~—— [(c)] (v) a third degree felony when:~~

~~—— [(i)] (A) the property or benefit obtained or sought to be obtained is a license or entitlement;~~

~~—— [(ii)] (B) the damage is to the license or entitlement of another person;~~

~~—— [(iii)] (C) the information obtained is confidential or identifying information; or~~

~~—— [(iv)] (D) in gaining access the person breaches or breaks through a security system.~~

~~—— (b) A person who is guilty under Subsection (2)(a)(iv) is subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210:~~

~~—— (3) (a) A person who intentionally or knowingly and without authorization gains or attempts to gain access to a computer, computer network, computer property, or computer system under circumstances not otherwise constituting an offense under this section is guilty of a class B misdemeanor:~~

~~—— (b) Notwithstanding Subsection (3)(a), a retailer that uses an electronic product identification or tracking system, or other technology, to identify, track, or price goods is not guilty of a violation of Subsection (3)(a) if the equipment designed to read the electronic product identification or tracking system data and used by the retailer to identify, track, or price goods is located within the retailer's location:~~

~~—— (4) (a) A person who, with intent that electronic communication harassment occur, discloses or disseminates another person's identifying information with the expectation that others will further disseminate or use the person's identifying information is subject to the penalties outlined in Subsection (4)(b):~~

~~—— (b) If the disclosure or dissemination of another person's identifying information results in electronic communication harassment, as described in Section 76-9-201, of the person whose identifying information is disseminated, the person disseminating the information is guilty of:~~

~~—— (i) a class B misdemeanor if the person whose identifying information is disseminated is an adult; or~~

~~—— (ii) a class A misdemeanor if the person whose identifying information is disseminated is a minor.~~

HB0229S02 compared with HB0229

- ~~—— (c) A second offense under Subsection (4)(b)(i) is a class A misdemeanor.~~
- ~~—— (d) A second offense under Subsection (4)(b)(ii), and a third or subsequent offense under [this] Subsection (4)(b), is a third degree felony.~~
- ~~—— (5) A person who uses or knowingly allows another person to use any computer, computer network, computer property, or computer system, program, or software to devise or execute any artifice or scheme to defraud or to obtain money, property, services, or other things of value by false pretenses, promises, or representations, is:~~
- ~~—— (a) guilty of an offense based on the value of the money, property, services, or things of value, in the degree set forth in Subsection 76-10-1801(1)[.]; and~~
- ~~—— (b) subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210.~~
- ~~—— (6) A person is guilty of a third degree felony if the person intentionally or knowingly, and without lawful authorization, interferes with or interrupts critical infrastructure.~~
- ~~—— (7) It is an affirmative defense to Subsection (1), (2), or (3) that a person obtained access or attempted to obtain access:~~
- ~~—— (a) in response to, and for the purpose of protecting against or investigating, a prior attempted or successful breach of security of computer technology whose security the person is authorized or entitled to protect, and the access attempted or obtained was no greater than reasonably necessary for that purpose; or~~
- ~~—— (b) [pursuant to] under a search warrant or a lawful exception to the requirement to obtain a search warrant.~~
- ~~—— (8) (a) An interactive computer service is not guilty of violating this section if a person violates this section using the interactive computer service and the interactive computer service did not knowingly assist the person to commit the violation.~~
- ~~—— (b) A service provider is not guilty of violating this section for:~~
- ~~—— (i) action taken in relation to a customer of the service provider, for a legitimate business purpose, to install software on, monitor, or interact with the customer's Internet or other network connection, service, or computer for network or computer security purposes, authentication, diagnostics, technical support, maintenance, repair, network management, updates of computer software or system firmware, or remote system management; or~~
- ~~—— (ii) action taken, including scanning and removing computer software, to detect or~~

HB0229S02 compared with HB0229

prevent the following:

~~—— (A) unauthorized or fraudulent use of a network, service, or computer software;~~

~~—— (B) illegal activity; or~~

~~—— (C) infringement of intellectual property rights.~~

~~—— (9) Subsections (4)(a) and (b) do not apply to a person who provides information in conjunction with a report under Title 34A, Chapter 6, Utah Occupational Safety and Health Act, or Title 67, Chapter 21, Utah Protection of Public Employees Act.~~

~~—— (10) In accordance with 47 U.S.C.A. Sec. 230, this section may not apply to, and nothing in this section may be construed to impose liability or culpability on, an interactive computer service for content provided by another person.~~

~~—— (11) This section does not affect, limit, or apply to any activity or conduct that is protected by the constitution or laws of this state or by the constitution or laws of the United States.~~

~~—— Section 11. Section **76-6-1204** is amended to read:~~

~~—— **76-6-1204. Classification of offense.**~~

~~—— (1) (a) Notwithstanding any other administrative, civil, or criminal penalties, a person who violates Section 76-6-1203 is guilty of [a]:~~

~~—— [(a)] (i) a class A misdemeanor when the value is or exceeds \$500 but is less than \$1,500;~~

~~—— [(b)] (ii) a third degree felony when the value is or exceeds \$1,500 but is less than \$5,000;~~

~~—— [(c)] (iii) subject to Subsection (1)(b), a second degree felony when the value is or exceeds \$5,000; and~~

~~—— [(d)] (iv) a second degree felony when the object or purpose of the commission of an act of mortgage fraud is the obtaining of sensitive personal identifying information, regardless of the value.~~

~~—— (b) A person who is guilty under Subsection (1)(a)(iii) is subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210.~~

~~—— (2) The determination of the degree of any offense under Subsection (1) is measured by the total value of all property, money, or things obtained or sought to be obtained by a violation~~

HB0229S02 compared with HB0229

~~of Section 76-6-1203, except as provided in Subsection (1)(d)(a)(iv):~~

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

~~Section 12}Subsection (10)(a).~~

Section 3. Section 76-8-504 is amended to read:

76-8-504. Written false statement.

[A person is guilty of a class B misdemeanor if:]

(1) [He makes a] An actor commits the offense of written false statement [which he] if:

(a) the actor makes a statement that the actor does not believe to be true on or [pursuant to] under a form bearing a notification authorized by law to the effect that false statements made therein are punishable; or

~~(2) (b) [With] with~~ intent to deceive a public servant in the performance of [his] the public servant's official function, [he] the actor:

~~(a) (i) [Makes any] makes~~ a written false statement [which he] that the actor does not believe to be true; [or]

~~(b) (ii) [Knowingly] knowingly~~ creates a false impression in a written application for [any] a pecuniary or other benefit by omitting information necessary to prevent [statements therein] a statement in the application from being misleading; [or]

~~(c) (iii) [Submits] submits~~ or invites reliance on [any writing which he] a writing that the actor knows to be lacking in authenticity; or

~~(d) (iv) [Submits] submits~~ or invites reliance on [any] a sample, specimen, map, boundary mark, or other object [which he] that the actor knows to be false.

(2) (a) Except as provided in Subsection (2)(b), a violation of Subsection (1) is a class B misdemeanor.

(b) A violation of Subsection (1) is a third degree felony if the false statement is on a financial declaration described in Section 77-38b-204.

~~(3) (3) [No person shall be guilty under this section if he] It is not an offense under this section if the actor~~ retracts the falsification before it becomes manifest that the falsification was or would be exposed.

Section ~~{13}~~4. Section ~~{76-10-1603.5}~~77-32b-103 is amended to read:

~~{~~ 76-10-1603.5. Violation a felony -- Costs -- Fines -- Divestiture -- Restrictions ==

HB0229S02 compared with HB0229

~~Dissolution or reorganization -- Prior restraint:~~

~~———— (1) As used in this section, "net proceeds" means property acquired as a result of a violation of an offense minus the direct costs of acquiring the property.~~

~~———— [(1)] (2) (a) A person who violates any provision of Section 76-10-1603 is:~~

~~———— (i) guilty of a second degree felony[.]; and~~

~~———— (ii) subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210.~~

~~———— (b) In addition to penalties prescribed by law, the court may order the person found guilty of the felony to pay to the state, if the attorney general brought the action, or to the county, if the county attorney or district attorney brought the action, the costs of investigating and prosecuting the offense and the costs of securing the forfeitures provided for in this section.~~

~~———— [(2)] (3) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603, a defendant who derives net proceeds from a conduct prohibited by Section 76-10-1603 may be fined not more than twice the amount of the net proceeds.~~

~~———— [(3)] (4) Upon conviction for violating any provision of Section 76-10-1603, and in addition to any penalty prescribed by law, the court may do any or all of the following:~~

~~———— (a) order restitution to any victim or rightful owner of property obtained, directly or indirectly, from:~~

~~———— (i) the conduct constituting the pattern of unlawful activity; or~~

~~———— (ii) any act or conduct constituting the pattern of unlawful activity that is proven as part of the violation of any provision of Section 76-10-1603;~~

~~———— (b) order the person to divest himself of any interest in or any control, direct or indirect, of any enterprise;~~

~~———— (c) impose reasonable restrictions on the future activities or investments of any person, including prohibiting the person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or~~

~~———— (d) order the dissolution or reorganization of any enterprise.~~

~~———— [(4)] (5) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or~~

HB0229S02 compared with HB0229

~~76-10-1222, the court may not enter any order that would amount to a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution Article I, Section 15.~~

~~——— [(5) For purposes of this section, the "net proceeds" of an offense means property acquired as a result of the violation minus the direct costs of acquiring the property.]~~

~~——— Section 14. Section ~~76-10-1801~~ is amended to read:~~

~~——— **76-10-1801. Communications fraud -- Elements -- Penalties.**~~

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

~~——— [(a)] (i) a class B misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is less than \$500;~~

~~——— [(b)] (ii) a class A misdemeanor when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$500 but is less than \$1,500;~~

~~——— [(c)] (iii) a third degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000;~~

~~——— [(d)] (iv) subject to Subsection (1)(b), a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$5,000; and~~

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

~~——— (b) A person who is guilty under Subsection (1)(a)(iv) is subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210.~~

~~——— (2) The determination of the degree of any offense under Subsection (1)(a) shall be measured by the total value of all property, money, or things obtained or sought to be obtained by the scheme or artifice described in Subsection (1)(a) except as provided in Subsection [(1)(c)] (1)(a)(v).~~

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

HB0229S02 compared with HB0229

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

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

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

~~———— (i) bestow, convey, make known, recount, or impart;~~

~~———— (ii) give by way of information;~~

~~———— (iii) talk over; or~~

~~———— (iv) transmit information.~~

~~———— (b) Means of communication include use of the mail, telephone, telegraph, radio, television, newspaper, computer, and spoken and written communication.~~

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

~~———— (8) As used in this section, "sensitive personal identifying information" means information regarding an individual's:~~

~~———— (a) [Social Security] social security number;~~

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

~~———— (c) financial account number or credit or debit card number;~~

~~———— (d) password or personal identification number or other identification required to gain access to a financial account or a secure website;~~

~~———— (e) automated or electronic signature;~~

~~———— (f) unique biometric data; or~~

~~———— (g) any other information that can be used to gain access to an individual's financial accounts or to obtain goods or services.~~

~~———— Section 15. Section ~~76-10-1904~~ is amended to read:~~

~~———— **76-10-1904. Money laundering -- Penalty.**~~

~~———— (1) A person who violates Subsection ~~76-10-1903~~(1)(a), (b), or (c) is:~~

~~———— (a) guilty of a second degree felony[.]; and~~

HB0229S02 compared with HB0229

~~_____ (b) subject to the penalties and presumptions for imprisonment for a high-value property or financial offense described in Section 76-3-210:~~

~~_____ (2) A person who violates Subsection 76-10-1903(1)(d) is guilty of a third-degree felony.~~

~~_____ Section 16. Section 77-32b-103 is amended to read:~~

‡ **77-32b-103. Establishment of a criminal accounts receivable -- Responsibility -- Payment schedule -- Delinquency or default.**

(1) (a) Except as provided in Subsection (1)(b) and (c), at the time of sentencing or acceptance of a plea in abeyance, the court shall enter an order to establish a criminal accounts receivable for the defendant.

(b) The court is not required to create a criminal accounts receivable for the defendant under Subsection (1)(a) if the court finds that the defendant does not owe restitution and there are no other fines or fees to be assessed against the defendant.

(c) Subject to Subsection 77-38b-205(5), if the court does not create a criminal accounts receivable for a defendant under Subsection (1)(a), the court shall enter an order to establish a criminal accounts receivable for the defendant at the time the court enters an order for restitution under Section 77-38b-205.

(2) After establishing a criminal accounts receivable for a defendant, the court shall:

(a) if a prison sentence is imposed and not suspended for the defendant:

(i) accept any payment for the criminal accounts receivable that is tendered on the date of sentencing; and

(ii) transfer the responsibility of receiving, distributing, and processing payments for the criminal accounts receivable to the Office of State Debt Collection; and

(b) for all other cases:

(i) retain the responsibility for receiving, processing, and distributing payments for the criminal accounts receivable until the court enters a civil accounts receivable or civil judgment of restitution on the civil judgment docket under Subsection 77-18-114(1) or (2); and

(ii) record each payment by the defendant on the case docket.

(c) For a criminal accounts receivable that a court retains responsibility for receiving, processing, and distributing payments under Subsection (2)(b)(i), the Judicial Council may establish rules to require a defendant to pay the cost, or a portion of the cost, that is charged by

HB0229S02 compared with HB0229

a financial institution for the use of a credit or debit card by the defendant to make payments towards the criminal accounts receivable.

(3) (a) Upon entering an order for a criminal accounts receivable, the court shall establish a payment schedule for the defendant to make payments towards the criminal accounts receivable.

(b) In establishing the payment schedule for the defendant, the court shall consider:

(i) the needs of the victim if the criminal accounts receivable includes an order for restitution under Section 77-38b-205;

(ii) the financial resources of the defendant, as disclosed in the financial declaration under Section 77-38b-204 or in evidence obtained by subpoena under Subsection 77-38b-402(1)(b);

(iii) the burden that the payment schedule will impose on the defendant regarding the other reasonable obligations of the defendant;

(iv) the ability of the defendant to pay restitution on an installment basis or on other conditions fixed by the court;

(v) the rehabilitative effect on the defendant of the payment of restitution and method of payment; and

(vi) any other circumstance that the court determines is relevant.

(4) A payment schedule for a criminal accounts receivable does not limit the ability of a judgment creditor to pursue collection by any means allowable by law.

(5) If the court orders restitution under Section 77-38b-205, or makes another financial decision, after sentencing that increases the total amount owed in a defendant's case, the defendant's criminal accounts receivable balance shall be adjusted to include any new amount ordered by the court.

(6) (a) If a defendant is incarcerated in a county jail or a secure correctional facility, as defined in Section 64-13-1, or the defendant is involuntarily committed under Section 62A-15-631:

(i) all payments for a payment schedule shall be suspended for the period of time that the defendant is incarcerated or involuntarily committed, unless the court, or the board if the defendant is under the jurisdiction of the board, expressly orders the defendant to make payments according to the payment schedule; and

HB0229S02 compared with HB0229

(ii) the defendant shall provide the court with notice of the incarceration or involuntary commitment.

(b) A suspension under Subsection (6)(a) shall remain in place for 60 days after the day in which the defendant is released from incarceration or commitment.

Section ~~17~~5. Section **77-38b-204** is amended to read:

77-38b-204. Financial declaration by defendant.

(1) (a) The Judicial Council shall design and publish a financial declaration form to be completed by a defendant before the sentencing court establishes a payment schedule under Section 77-38b-205.

(b) The financial declaration form shall:

(i) require a defendant to disclose all assets, income, and financial liabilities of the defendant, including:

(A) real property;

(B) vehicles;

(C) precious metals or gems;

(D) jewelry with a value of \$1,000 or more;

(E) other personal property with a value of \$1,000 or more;

(F) the balance of any bank account and the name of the financial institution for the bank account;

(G) cash;

(H) salary, wages, commission, tips, and business income, including the name of any employer or entity from which the defendant receives a salary, wage, commission, tip, or business income;

(I) pensions and annuities;

(J) intellectual property;

(K) accounts receivable;

(L) accounts payable;

(M) mortgages, loans, and other debts; and

(N) restitution that has been ordered, and not fully paid, in other cases; and

(ii) state that a false statement made in the financial declaration form is punishable as [~~a class B misdemeanor~~] third degree felony under Section 76-8-504.

HB0229S02 compared with HB0229

(2) After a plea disposition or conviction has been entered but before sentencing, a defendant shall complete the financial declaration form described in Subsection (1).

(3) When a civil judgment of restitution or a civil accounts receivable is entered for a defendant on the civil judgment docket under Section 77-18-114, the court shall provide the Office of State Debt Collection with the defendant's financial declaration form.

Section ~~18~~6. Section **77-38b-402** is amended to read:

77-38b-402. Preservation of assets.

(1) (a) Before, or at the time, a criminal information, indictment charging a violation, or a petition alleging delinquency is filed, or at any time during the prosecution of the case, a prosecuting attorney may, if in the prosecuting attorney's best judgment there is a substantial likelihood that a conviction will be obtained and restitution will be ordered in the case, petition the court to:

~~(a)~~ (i) enter a temporary restraining order, an injunction, or both;

~~(b)~~ (ii) require the execution of a satisfactory performance bond; or

~~(c)~~ (iii) take any other action to preserve the availability of property that may be necessary to satisfy an anticipated order for restitution.

(b) A prosecuting attorney may subpoena a document, witness, or other evidence that, in the prosecuting attorney's best judgment, may provide evidence relevant to the property described in Subsection (1)(a)(iii).

(2) (a) Upon receiving a request from a prosecuting attorney under Subsection (1)(a), and after notice to a person appearing to have an interest in the property and affording the person an opportunity to be heard, the court may take action as requested by the prosecuting attorney if the court determines:

(i) there is probable cause to believe that an offense has been committed and that the defendant committed the offense, and that failure to enter the order will likely result in the property being sold, distributed, exhibited, destroyed, or removed from the jurisdiction of the court, or otherwise be made unavailable for restitution; and

(ii) the need to preserve the availability of the property or prevent the property's sale, distribution, exhibition, destruction, or removal through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(b) In a hearing conducted in accordance with this section, a court may consider

HB0229S02 compared with HB0229

reliable hearsay as defined in Utah Rules of Evidence, Rule 1102.

(c) An order for an injunction entered under this section is effective for the period of time given in the order.

(3) (a) Upon receiving a request for a temporary restraining order from a prosecuting attorney under this section, a court may enter a temporary restraining order against an owner with respect to specific property without notice or opportunity for a hearing if:

(i) the prosecuting attorney demonstrates that there is a substantial likelihood that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this chapter; and

(ii) provision of notice would jeopardize the availability of the property to satisfy any judgment or order for restitution.

(b) The temporary order in this Subsection (3) expires no later than 10 days after the day on which the temporary order is entered unless extended for good cause shown or the party against whom the temporary order is entered consents to an extension.

(4) A hearing concerning an order entered under this section shall be held as soon as possible, and before the expiration of the temporary order.