

# HB0046S01 compared with HB0046

~~{deleted text}~~ shows text that was in HB0046 but was deleted in HB0046S01.

inserted text shows text that was not in HB0046 but was inserted into HB0046S01.

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Senator Todd D. Weiler proposes the following substitute bill:

## CRIMINAL CODE RECODIFICATION AND CROSS

### REFERENCES

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Matthew H. Gwynn**

Senate Sponsor: ~~{\_\_\_\_\_}~~ Todd D. Weiler

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### LONG TITLE

#### ~~{Committee Note:~~

~~\_\_\_\_\_The Law Enforcement and Criminal Justice Interim Committee recommended this bill.~~

~~\_\_\_\_\_Legislative Vote: 13 voting for 0 voting against \_\_\_\_\_ 4 absent~~

#### ~~{General Description:~~

This bill modifies provisions in Title 76, ~~{Chapters 6, Offenses Against Property, and 6a, Pyramid Scheme Act}~~ Utah Criminal Code, by redrafting offense statutes into a new structure and clarifies existing law.

#### **Highlighted Provisions:**

This bill:

- ▶ reorders language into a standardized format and clarifies existing law, including

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the offenses in Title 76, Chapter 6, Offenses Against Property, and Chapter 6a, Pyramid Scheme Act;

- ▶ moves penalty enhancement statutes to part concerning penalty enhancements;
- ▶ for clarity, revises penalty provisions in several offenses in Title 76, Chapter 5, Offenses Against the Individual;
- ▶ for clarity, codifies names of offenses;
- ▶ reorganizes the offenses of criminal mischief and property damage or destruction by enacting property damage or destruction as a stand-alone statute;
- ▶ reorganizes the offense concerning defacement by graffiti;
- ▶ reorganizes the offenses of criminal trespass on agricultural land or range land and cutting, destroying, or rendering ineffective fencing of agricultural or range land by enacting cutting, destroying, or rendering ineffective fencing of agricultural or range land as a stand-alone statute;
- ▶ repeals stand-alone penalty statute for theft and incorporates penalty information into applicable statutes;
- ▶ renames the offense of wrongful appropriation to unauthorized possession of property;
- ▶ renames the offense of receiving stolen property to theft by receiving stolen property;
- ▶ reorganizes the offenses of forgery and producing or transferring false identification by enacting producing or transferring false identification as a stand-alone statute;
- ▶ clarifies application of law enforcement defense and forfeiture provisions as applied to fraud offenses;
- ▶ reorganizes the offenses of wrongful liens and fraudulent handling of recordable writings by enacting fraudulent handling of recordable writings as a stand-alone offense;
- ▶ reorganizes financial transaction card offenses by enacting separate stand-alone offenses;
- ▶ reorganizes computer crimes offenses by enacting separate stand-alone offenses;
- ▶ for clarity, revises names of offenses concerning library theft;
- ▶ reorganizes offenses concerning cultural sites protection by enacting separate

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stand-alone offenses and incorporating existing penalties into each offense;

- ▶ repeals the stand-alone penalty statute for violations by metal dealers and incorporates the penalty information into new offense sections enacted adjacent to the relevant statutory requirements;
- ▶ for clarity, reorganizes offenses concerning pyramid schemes; and
- ▶ makes technical and conforming changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

13-19-3, as last amended by Laws of Utah 2018, Chapter 433

24-1-102, as last amended by Laws of Utah 2022, Chapter 179

26-7-14, as last amended by Laws of Utah 2022, Chapter 430

26-20-9, as last amended by Laws of Utah 2007, Chapter 48

31A-23a-409, as last amended by Laws of Utah 2021, Chapter 252

31A-36-118, as last amended by Laws of Utah 2009, Chapter 355

35A-4-312.5, as last amended by Laws of Utah 2011, Chapter 57

41-1a-1314, as last amended by Laws of Utah 2005, Chapter 71

58-9-607, as last amended by Laws of Utah 2020, Chapter 251

58-9-613, as enacted by Laws of Utah 2018, Chapter 326

58-55-503, as last amended by Laws of Utah 2022, Chapter 415

~~{ 63I-1-226, as last amended by Laws of Utah 2022, Chapters 194, 206, 224, 253, 255, 347, and 451~~

† 63M-7-404, as last amended by Laws of Utah 2022, Chapters 115, 185 and 328

73-2-27, as last amended by Laws of Utah 2015, Chapters 245, 249

76-3-203.1, as last amended by Laws of Utah 2022, Chapter 185

76-3-203.3, as last amended by Laws of Utah 2020, Chapter 394

76-3-203.5, as last amended by Laws of Utah 2022, Chapters 181, 185~~(,)~~ and 418

76-5-102.1, as enacted by Laws of Utah 2022, Chapter 116

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76-5-207.5, as last amended by Laws of Utah 2022, Chapters 181, 426

76-5-208, as last amended by Laws of Utah 2022, Chapter 181

76-6-101, as last amended by Laws of Utah 2011, Chapter 340

76-6-102, as last amended by Laws of Utah 2022, Chapter 181

76-6-103, as last amended by Laws of Utah 1986, Chapter 59

76-6-104, as last amended by Laws of Utah 2010, Chapter 193

76-6-104.5, as last amended by Laws of Utah 2009, Chapter 320

76-6-105, as last amended by Laws of Utah 2002, Chapter 166

76-6-106, as last amended by Laws of Utah 2012, Chapter 135

76-6-107, as last amended by Laws of Utah 2019, Chapters 292 ~~and~~, 494

76-6-107.5, as enacted by Laws of Utah 2019, Chapter 292

76-6-108, as last amended by Laws of Utah 2000, Chapter 54

76-6-111, as last amended by Laws of Utah 2021, Chapters 57 ~~and~~, 260

76-6-112, as enacted by Laws of Utah 2012, Chapter 213

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

76-6-203, as last amended by Laws of Utah 2022, Chapter 181

76-6-204, as enacted by Laws of Utah 1973, Chapter 196

76-6-204.5, as enacted by Laws of Utah 2008, Chapter 366

76-6-205, as enacted by Laws of Utah 1973, Chapter 196

76-6-206, as last amended by Laws of Utah 2022, Chapter 87

76-6-206.1, as enacted by Laws of Utah 1997, Chapter 223

76-6-206.2, as last amended by Laws of Utah 2021, Chapters 260 ~~and~~, 280

76-6-206.3, as last amended by Laws of Utah 2022, Chapter 87

76-6-206.4, as enacted by Laws of Utah 2017, Chapter 287

76-6-301, as last amended by Laws of Utah 2004, Chapter 112

76-6-302, as last amended by Laws of Utah 2022, Chapter 181

76-6-403, as last amended by Laws of Utah 1974, Chapter 32

76-6-404, as enacted by Laws of Utah 1973, Chapter 196

76-6-404.5, as last amended by Laws of Utah 2001, Chapter 48

76-6-404.7, as enacted by Laws of Utah 2009, Chapter 328

76-6-405, as last amended by Laws of Utah 2012, Chapter 156

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**76-6-406**, as last amended by Laws of Utah 2022, Chapter 164  
**76-6-407**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-408**, as last amended by Laws of Utah 2022, Chapter 201  
**76-6-409**, as last amended by Laws of Utah 1994, Chapter 215  
**76-6-409.1**, as last amended by Laws of Utah 1987, Chapter 38  
**76-6-409.3**, as last amended by Laws of Utah 2010, Chapter 193  
**76-6-409.5**, as last amended by Laws of Utah 1997, Chapter 78  
**76-6-409.6**, as last amended by Laws of Utah 1997, Chapter 78  
**76-6-409.7**, as last amended by Laws of Utah 1997, Chapter 78  
**76-6-409.8**, as last amended by Laws of Utah 1997, Chapter 78  
**76-6-409.9**, as last amended by Laws of Utah 1997, Chapter 78  
**76-6-409.10**, as last amended by Laws of Utah 1996, Chapter 79  
**76-6-410**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-410.5**, as enacted by Laws of Utah 2001, Chapter 112  
**76-6-413**, as enacted by Laws of Utah 1997, Chapter 119  
**76-6-501**, as last amended by Laws of Utah 2016, Chapter 117  
**76-6-502**, as last amended by Laws of Utah 2018, Chapter 221  
**76-6-503.5**, as last amended by Laws of Utah 2014, Chapter 114  
**76-6-503.7**, as enacted by Laws of Utah 2015, Chapter 228  
**76-6-504**, as last amended by Laws of Utah 2005, Chapter 93  
**76-6-505**, as last amended by Laws of Utah 2010, Chapter 193  
**76-6-506**, as last amended by Laws of Utah 2010, Chapter 254  
**76-6-506.2**, as last amended by Laws of Utah 2009, Chapter 166  
**76-6-506.3**, as last amended by Laws of Utah 2018, Chapter 221  
**76-6-506.6**, as enacted by Laws of Utah 1991, Chapter 60  
**76-6-506.7**, as last amended by Laws of Utah 2015, Chapter 258  
**76-6-507**, as last amended by Laws of Utah 1985, Chapter 157  
**76-6-508**, as last amended by Laws of Utah 1991, Chapter 241  
**76-6-509**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-510**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-511**, as last amended by Laws of Utah 1991, Chapter 241

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**76-6-512**, as last amended by Laws of Utah 1997, Chapter 10  
**76-6-513**, as last amended by Laws of Utah 2019, Chapter 211  
**76-6-514**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-515**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-516**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-517**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-518**, as last amended by Laws of Utah 2010, Chapter 193  
**76-6-520**, as enacted by Laws of Utah 1973, Chapter 196  
**76-6-521**, as last amended by Laws of Utah 2022, Chapter 198  
**76-6-522**, as last amended by Laws of Utah 1992, Chapter 1  
**76-6-523**, as enacted by Laws of Utah 2009, Chapter 306  
**76-6-524**, as last amended by Laws of Utah 2012, Chapter 278  
**76-6-601**, as last amended by Laws of Utah 1998, Chapter 282  
**76-6-602**, as enacted by Laws of Utah 1979, Chapter 78  
**76-6-608**, as last amended by Laws of Utah 2010, Chapter 193  
**76-6-703**, as last amended by Laws of Utah 2017, Chapters 462 ~~and~~ 467  
**76-6-705**, as last amended by Laws of Utah 2017, Chapter 462  
**76-6-801**, as last amended by Laws of Utah 1987, Chapter 245  
**76-6-803**, as last amended by Laws of Utah 1987, Chapter 245  
**76-6-803.30**, as enacted by Laws of Utah 1987, Chapter 245  
**76-6-803.60**, as enacted by Laws of Utah 1987, Chapter 245  
**76-6-803.90**, as enacted by Laws of Utah 1987, Chapter 245  
**76-6-902**, as last amended by Laws of Utah 2006, Chapter 111  
**76-6-1001**, as last amended by Laws of Utah 2021, Chapter 329  
**76-6-1002**, as last amended by Laws of Utah 2002, Chapter 166  
**76-6-1003**, as last amended by Laws of Utah 2020, Chapter 223  
**76-6-1102**, as last amended by Laws of Utah 2021, Chapter 260  
**76-6-1105**, as last amended by Laws of Utah 2021, Chapter 260  
**76-6-1203**, as enacted by Laws of Utah 2008, Chapter 370  
**76-6-1303**, as last amended by Laws of Utah 2015, Chapter 258  
**76-6-1403**, as last amended by Laws of Utah 2014, Chapter 261

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**76-6-1404**, as renumbered and amended by Laws of Utah 2013, Chapter 187  
**76-6-1405**, as renumbered and amended by Laws of Utah 2013, Chapter 187  
**76-6-1406**, as last amended by Laws of Utah 2022, Chapter 201  
**76-6-1408**, as last amended by Laws of Utah 2016, Chapter 316  
**76-6-1409**, as renumbered and amended by Laws of Utah 2013, Chapter 187  
**76-9-201**, as last amended by Laws of Utah 2021, Chapter 152  
**76-10-204**, as last amended by Laws of Utah 2002, Chapter 166  
**76-10-1302**, as last amended by Laws of Utah 2022, Chapters 124, 181~~(s)~~ and 185  
**76-10-1602**, as last amended by Laws of Utah 2022, Chapters 181~~(and)~~ 185  
**77-18-105**, as last amended by Laws of Utah 2022, Chapters 115, 359  
**77-23a-8**, as last amended by Laws of Utah 2022, Chapter 430  
**77-36-1.1**, as last amended by Laws of Utah 2021, Chapter 213  
**77-42-105**, as last amended by Laws of Utah 2016, Chapter 319  
**78B-3-108**, as last amended by Laws of Utah 2022, Chapter 201  
**78B-9-104**, as last amended by Laws of Utah 2022, Chapter 120  
**80-6-610**, as renumbered and amended by Laws of Utah 2021, Chapter 261  
**80-6-709**, as last amended by Laws of Utah 2022, Chapter 155

### ENACTS:

**76-6-106.1**, Utah Code Annotated 1953  
**76-6-206.5**, Utah Code Annotated 1953  
**76-6-412.1**, Utah Code Annotated 1953  
**76-6-501.5**, Utah Code Annotated 1953  
**76-6-503.6**, Utah Code Annotated 1953  
**76-6-506.8**, Utah Code Annotated 1953  
**76-6-506.9**, Utah Code Annotated 1953  
**76-6-703.1**, Utah Code Annotated 1953  
**76-6-703.3**, Utah Code Annotated 1953  
**76-6-703.5**, Utah Code Annotated 1953  
**76-6-703.7**, Utah Code Annotated 1953  
**76-6-902.1**, Utah Code Annotated 1953  
**76-6-902.2**, Utah Code Annotated 1953

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**76-6-1403.1**, Utah Code Annotated 1953

**76-6-1404.1**, Utah Code Annotated 1953

**76-6-1405.1**, Utah Code Annotated 1953

**76-6-1406.1**, Utah Code Annotated 1953

**76-6-1409.1**, Utah Code Annotated 1953

**76-6a-102**, Utah Code Annotated 1953

**76-6a-103**, Utah Code Annotated 1953

### REPEALS AND REENACTS:

**76-6-1101**, as enacted by Laws of Utah 2000, Chapter 57

### RENUMBERS AND AMENDS:

**76-3-203.15**, (Renumbered from 76-6-109, as last amended by Laws of Utah 2000, Chapter 214)

**76-3-203.16**, (Renumbered from 76-6-110, as last amended by Laws of Utah 2021, Chapter 57)

**76-3-410**, (Renumbered from 76-6-107.1, as last amended by Laws of Utah 2021, Chapter 260)

**76-6a-101**, (Renumbered from 76-6a-2, as last amended by Laws of Utah 2006, Chapter 247)

**76-6a-104**, (Renumbered from 76-6a-6, as enacted by Laws of Utah 1983, Chapter 89)

### REPEALS:

**76-6-412**, as last amended by Laws of Utah 2022, Chapter 201

**76-6-506.5**, as last amended by Laws of Utah 2010, Chapter 193

**76-6-606**, as last amended by Laws of Utah 2000, Chapter 236

**76-6-701**, as last amended by Laws of Utah 1986, Chapter 123

**76-6-802**, as last amended by Laws of Utah 1987, Chapter 245

**76-6-804**, as enacted by Laws of Utah 1981, Chapter 168

**76-6-805**, as enacted by Laws of Utah 1981, Chapter 168

**76-6-903**, as last amended by Laws of Utah 2013, Chapter 394

**76-6-1004**, as enacted by Laws of Utah 1998, Chapter 87

**76-6-1201**, as enacted by Laws of Utah 2008, Chapter 370

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

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76-6-1301, as enacted by Laws of Utah 2012, Chapter 32

76-6-1401, as renumbered and amended by Laws of Utah 2013, Chapter 187

76-6-1407, as last amended by Laws of Utah 2016, Chapter 316

76-6a-1, as enacted by Laws of Utah 1983, Chapter 89

76-6a-3, as last amended by Laws of Utah 2006, Chapter 247

76-6a-4, as last amended by Laws of Utah 2006, Chapter 247

76-6a-5, as enacted by Laws of Utah 1983, Chapter 89

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

Section 1. Section **13-19-3** is amended to read:

**13-19-3. Violation an infraction.**

Notwithstanding the penalty provisions of [~~Section 76-6-606~~] Title 76, Chapter 6, Part 6, Retail Theft, a violation of this chapter is an infraction.

Section 2. Section **24-1-102** is amended to read:

**24-1-102. Definitions.**

As used in this title:

(1) "Account" means the Criminal Forfeiture Restricted Account created in Section 24-4-116.

(2) (a) "Acquitted" means a finding by a jury or a judge at trial that a claimant is not guilty.

(b) "Acquitted" does not include:

(i) a verdict of guilty on a lesser or reduced charge;

(ii) a plea of guilty to a lesser or reduced charge; or

(iii) dismissal of a charge as a result of a negotiated plea agreement.

(3) (a) "Agency" means an agency of this state or a political subdivision of this state.

(b) "Agency" includes a law enforcement agency or a multijurisdictional task force.

(4) "Claimant" means:

(a) an owner of property as defined in this section;

(b) an interest holder as defined in this section; or

(c) an individual or entity who asserts a claim to any property seized for forfeiture under this title.

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(5) "Commission" means the State Commission on Criminal and Juvenile Justice created in Section 63M-7-201.

(6) "Complaint" means a civil or criminal complaint seeking the forfeiture of any real or personal property under this title.

(7) (a) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device that performs logical, arithmetic, and storage functions.

(b) "Computer" includes any device that is used for the storage of digital or electronic files, flash memory, software, or other electronic information.

(c) "Computer" does not mean a computer server of an Internet or electronic service provider, or the service provider's employee, if used to comply with the requirements under 18 U.S.C. Sec. 2258A.

(8) "Constructive seizure" means a seizure of property where the property is left in the control of the owner and an agency posts the property with a notice of intent to seek forfeiture.

(9) (a) "Contraband" means any property, item, or substance that is unlawful to produce or to possess under state or federal law.

(b) "Contraband" includes:

(i) a controlled substance that is possessed, transferred, distributed, or offered for distribution in violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

(ii) a computer that:

(A) contains or houses child pornography, or is used to create, download, transfer, upload to a storage account, or store any electronic or digital files containing child pornography; or

(B) contains the personal identifying information of another individual, as defined in [~~Subsection (1) (1) 76-6-1102(1)~~] Section 76-6-1101, whether that individual is alive or deceased, and the personal identifying information has been used to create false or fraudulent identification documents or financial transaction cards in violation of Title 76, Chapter 6, Part 5, Fraud.

(10) "Forfeit" means to divest a claimant of an ownership interest in property seized under this title.

(11) "Innocent owner" means a claimant who:

(a) held an ownership interest in property at the time of the commission of an offense

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subjecting the property to forfeiture under this title, and:

(i) did not have actual knowledge of the offense subjecting the property to forfeiture; or

(ii) upon learning of the commission of the offense, took reasonable steps to prohibit the use of the property in the commission of the offense; or

(b) acquired an ownership interest in the property and had no knowledge that the commission of the offense subjecting the property to forfeiture under this title had occurred or that the property had been seized for forfeiture, and:

(i) acquired the property in a bona fide transaction for value;

(ii) was an individual, including a minor child, who acquired an interest in the property through probate or inheritance; or

(iii) was a spouse who acquired an interest in property through dissolution of marriage or by operation of law.

(12) (a) "Interest holder" means a secured party as defined in Section 70A-9a-102, a party with a right-of-offset, a mortgagee, lien creditor, or the beneficiary of a security interest or encumbrance pertaining to an interest in property, whose interest would be perfected against a good faith purchaser for value.

(b) "Interest holder" does not mean a person:

(i) who holds property for the benefit of or as an agent or nominee for another person;

or

(ii) who is not in substantial compliance with any statute requiring an interest in property to be:

(A) recorded or reflected in public records in order to perfect the interest against a good faith purchaser for value; or

(B) held in control by a secured party, as defined in Section 70A-9a-102, in accordance with Section 70A-9a-314 in order to perfect the interest against a good faith purchaser for value.

(13) "Known address" means any address provided by a claimant to the peace officer or agency at the time the property is seized, or the claimant's most recent address on record with a governmental entity if no address was provided at the time of the seizure.

(14) "Legal costs" means the costs and expenses incurred by a party in a forfeiture action.

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(15) "Legislative body" means:

(a) (i) the Legislature, county commission, county council, city commission, city council, or town council that has fiscal oversight and budgetary approval authority over an agency; or

(ii) the agency's governing political subdivision; or

(b) the lead governmental entity of a multijurisdictional task force, as designated in a memorandum of understanding executed by the agencies participating in the task force.

(16) "Multijurisdictional task force" means a law enforcement task force or other agency comprised of individuals who are employed by or acting under the authority of different governmental entities, including federal, state, county, or municipal governments, or any combination of federal, state, county, or municipal agencies.

(17) "Owner" means an individual or entity, other than an interest holder, that possesses a bona fide legal or equitable interest in real or personal property.

(18) "Peace officer" means an employee:

(a) of an agency;

(b) whose duties consist primarily of the prevention and detection of violations of laws of this state or a political subdivision of this state; and

(c) who is authorized by the agency to seize property under this title.

(19) (a) "Proceeds" means:

(i) property of any kind that is obtained directly or indirectly as a result of the commission of an offense; or

(ii) any property acquired directly or indirectly from, produced through, realized through, or caused by an act or omission regarding property under Subsection (19)(a)(i).

(b) "Proceeds" includes any property of any kind without reduction for expenses incurred in the acquisition, maintenance, or production of that property, or any other purpose regarding property under Subsection (19)(a)(i).

(c) "Proceeds" is not limited to the net gain or profit realized from the offense that subjects the property to forfeiture.

(20) "Program" means the State Asset Forfeiture Grant Program created in Section 24-4-117.

(21) (a) "Property" means all property, whether real or personal, tangible or intangible.

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(b) "Property" does not include contraband.

(22) "Prosecuting attorney" means:

(a) the attorney general and an assistant attorney general;

(b) a district attorney or deputy district attorney;

(c) a county attorney or assistant county attorney; and

(d) an attorney authorized to commence an action on behalf of the state under this title.

(23) "Public interest use" means a:

(a) use by a government agency as determined by the legislative body of the agency's jurisdiction; or

(b) donation of the property to a nonprofit charity registered with the state.

(24) "Real property" means land, including any building, fixture, improvement, appurtenance, structure, or other development that is affixed permanently to land.

Section 3. Section **26-7-14** is amended to read:

**26-7-14. Study on violent incidents and fatalities involving substance abuse --**

### **Report.**

(1) As used in this section:

(a) "Drug overdose event" means an acute condition, including a decreased level of consciousness or respiratory depression resulting from the consumption or use of a controlled substance, or another substance with which a controlled substance or alcohol was combined, that results in an individual requiring medical assistance.

(b) "Substance abuse" means the misuse or excessive use of alcohol or other drugs or substances.

(c) "Violent incident" means:

(i) aggravated assault as described in Section 76-5-103;

(ii) child abuse as described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114;

(iii) an offense described in Title 76, Chapter 5, Part 2, Criminal Homicide;

(iv) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

(v) a burglary offense described in Sections 76-6-202 [~~through~~], 76-6-203, 76-6-204, and 76-6-204.5;

(vi) an offense described in Title 76, Chapter 6, Part 3, Robbery;

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(vii) a domestic violence offense, as defined in Section 77-36-1; and

(viii) any other violent offense, as determined by the department.

(2) In 2021 and continuing every other year, the department shall provide a report before October 1 to the Health and Human Services Interim Committee regarding the number of:

(a) violent incidents and fatalities that occurred in the state during the preceding calendar year that, at the time of occurrence, involved substance abuse;

(b) drug overdose events in the state during the preceding calendar year; and

(c) recommendations for legislation, if any, to prevent the occurrence of the events described in Subsections (2)(a) and (b).

(3) Before October 1, 2020, the department shall:

(a) determine what information is necessary to complete the report described in Subsection (2) and from which local, state, and federal agencies the information may be obtained;

(b) determine the cost of any research or data collection that is necessary to complete the report described in Subsection (2);

(c) make recommendations for legislation, if any, that is necessary to facilitate the research or data collection described in Subsection (3)(b), including recommendations for legislation to assist with information sharing between local, state, federal, and private entities and the department; and

(d) report the findings described in Subsections (3)(a) through (c) to the Health and Human Services Interim Committee.

(4) The department may contract with another state agency, private entity, or research institution to assist the department with the report described in Subsection (2).

Section 4. Section **26-20-9** is amended to read:

### **26-20-9. Criminal penalties.**

(1) (a) Except as provided in Subsection (1)(b) the culpable mental state required for a criminal violation of this chapter is knowingly, intentionally, or recklessly as defined in Section 76-2-103.

(b) The culpable mental state required for a criminal violation of this chapter for kickbacks and bribes under Section 26-20-4 is knowingly and intentionally as defined in

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Section 76-2-103.

(2) The punishment for a criminal violation of any provision of this chapter, except as provided under Section 26-20-5, is determined by the cumulative value of the funds or other benefits received or claimed in the commission of all violations of a similar nature, and not by each separate violation.

(3) Punishment for criminal violation of this chapter, except as provided under Section 26-20-5, is [~~a felony of the second degree, felony of the third degree, class A misdemeanor, or class B misdemeanor based on the dollar amounts as prescribed by Subsection 76-6-412(1) for theft of property and services~~]:

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

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

(c) a class A misdemeanor if the value of the property or service is or exceeds \$500 but is less than \$1,500; or

(d) a class B misdemeanor if the value of the property or service is less than \$500.

Section 5. Section **31A-23a-409** is amended to read:

### **31A-23a-409. Trust obligation for money collected.**

(1) (a) Subject to Subsection (7), a licensee is a trustee for money that is paid to, received by, or collected by a licensee for forwarding to insurers or to insureds.

(b) (i) Except as provided in Subsection (1)(b)(ii), a licensee may not commingle trust funds with:

(A) the licensee's own money; or

(B) money held in any other capacity.

(ii) This Subsection (1)(b) does not apply to:

(A) amounts necessary to pay bank charges; and

(B) money paid by insureds and belonging in part to the licensee as a fee or commission.

(c) Except as provided under Subsection (4), a licensee owes to insureds and insurers the fiduciary duties of a trustee with respect to money to be forwarded to insurers or insureds through the licensee.

(d) (i) Unless money is sent to the appropriate payee by the close of the next business

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day after their receipt, the licensee shall deposit them in an account authorized under Subsection (2).

(ii) Money deposited under this Subsection (1)(d) shall remain in an account authorized under Subsection (2) until sent to the appropriate payee.

(2) Money required to be deposited under Subsection (1) shall be deposited:

(a) ~~[in]~~ into a federally insured trust account in a depository institution, as defined in Section 7-1-103, which:

(i) has an office in this state, if the licensee depositing the money is a resident licensee;

(ii) has federal deposit insurance; and

(iii) is authorized by its primary regulator to engage in the trust business, as defined by Section 7-5-1, in this state; or

(b) ~~[in]~~ into some other account, that:

(i) the commissioner approves by rule or order; and

(ii) provides safety comparable to an account described in Subsection (2)(a).

(3) It is not a violation of Subsection (2)(a) if the amounts in the accounts exceed the amount of the federal insurance on the accounts.

(4) A trust account into which money is deposited may be interest bearing. The interest accrued on the account may be paid to the licensee, so long as the licensee otherwise complies with this section and with the contract with the insurer.

(5) A depository institution or other organization holding trust funds under this section may not offset or impound trust account funds against debts and obligations incurred by the licensee.

(6) A licensee who, not being lawfully entitled to do so, diverts or appropriates any portion of the money held under Subsection (1) to the licensee's own use, is guilty of theft under Title 76, Chapter 6, Part 4, Theft. [~~Section 76-6-412 applies in determining the classification of the offense.~~] Sanctions under Section 31A-2-308 also apply.

(7) A nonresident licensee:

(a) shall comply with Subsection (1)(a) by complying with the trust account requirements of the nonresident licensee's home state; and

(b) is not required to comply with the other provisions of this section.

Section 6. Section **31A-36-118** is amended to read:

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### 31A-36-118. Criminal penalties and restitution.

(1) A person subject to this chapter is subject to:

(a) Section 31A-2-308 for an administrative violation of this title;

(b) prosecution under [~~Section 76-6-412~~] Title 76, Chapter 6, Part 4, Theft, for [~~a(1)~~] criminal activity involving a life settlement; or

(c) prosecution under Section 31A-31-103 for insurance fraud involving a life settlement.

(2) A person found to be in violation of this chapter may:

(a) be ordered to pay restitution to persons aggrieved by the violation;

(b) be ordered to pay a forfeiture;

(c) be imprisoned if found guilty of a criminal law by a court of competent jurisdiction;

and

(d) be subject to a combination of the penalties described in this Subsection (2).

(3) Except for a fraudulent act committed by an owner, this section does not apply to the owner.

Section 7. Section **35A-4-312.5** is amended to read:

### **35A-4-312.5. Suspected misuse of personal identifying information.**

(1) As used in this section:

(a) "Child identity protection plan" is a program operated by the attorney general that uses IRIS and allows the attorney general to enter into an agreement with a third party to transmit verified personal information of a person younger than 18 years of age through secured means to enable the protection of the person's Social Security number from misuse.

(b) "IRIS" means the Identity Theft Reporting Information System operated by the attorney general.

(c) "Personal identifying information" has the same meaning as defined in Section [~~76-6-1102~~] 76-6-1101.

(d) "Suspected misuse of personal identifying information" includes:

(i) a [~~Social Security~~] social security number under which wages are being reported by two or more individuals; or

(ii) a [~~Social Security~~] social security number of an individual under the age of 18 with reported wages exceeding \$1,000 for a single reporting quarter.

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(2) Notwithstanding Section 35A-4-312, if the department records disclose a suspected misuse of personal identifying information by an individual other than the purported owner of the information, or if a parent, guardian, or individual under the age of 18 is enrolling or has enrolled in the child identity protection plan, the department may:

(a) inform the purported owner of the information or, if the purported owner is a minor, the minor's parent or guardian, of the suspected misuse; and

(b) provide information of the suspected misuse to an appropriate law enforcement agency responsible for investigating an identity fraud violation.

Section 8. Section **41-1a-1314** is amended to read:

### **41-1a-1314. Unauthorized control for extended time.**

(1) Except as provided in Subsection (3), it is a class A misdemeanor for a person to exercise unauthorized control over a motor vehicle that is not his own, without the consent of the owner or lawful custodian, and with the intent to temporarily deprive the owner or lawful custodian of possession of the motor vehicle.

(2) The consent of the owner or legal custodian of a motor vehicle to its control by the actor is not in any case presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the motor vehicle by the same or a different person.

(3) Violation of this section is a third degree felony if:

(a) the person does not return the motor vehicle to the owner or lawful custodian within 24 hours after the exercise of unlawful control; or

(b) regardless of the mental state or conduct of the person committing the offense:

(i) the motor vehicle is damaged in an amount of \$500 or more;

(ii) the motor vehicle is used to commit a felony; or

(iii) the motor vehicle is damaged in any amount to facilitate entry into it or its operation.

(4) It is not a defense to Subsection (3)(a) that someone other than the person, or an agent of the person, returned the motor vehicle within 24 hours.

(5) A violation of this section is a lesser included offense of theft under Section 76-6-404, when the theft is of an operable motor vehicle under Subsection [~~76-6-412(1)(a)(ii)~~] 76-6-404(3)(a)(ii).

Section 9. Section **58-9-607** is amended to read:

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### **58-9-607. Authorization to cremate -- Penalties for removal of items from human remains.**

(1) Except as otherwise provided in this section and Section 58-9-619, a funeral service establishment may not cremate human remains until it has received:

(a) a cremation authorization form signed by an authorizing agent;

(b) a completed and executed burial transit permit or similar document, as provided by state law, indicating that human remains are to be cremated; and

(c) any other documentation required by the state, county, or municipality.

(2) (a) The cremation authorization form shall contain, at a minimum, the following information:

(i) the identity of the human remains and the time and date of death, including a signed declaration of visual identification of the deceased or refusal to visually identify the deceased;

(ii) the name of the funeral director and funeral service establishment that obtained the cremation authorization;

(iii) notification as to whether the death occurred from a disease declared by the department of health to be infectious, contagious, communicable, or dangerous to the public health;

(iv) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;

(v) a representation that the authorizing agent has the right to authorize the cremation of the decedent and that the authorizing agent is not aware of any living person with a superior or equal priority right to that of the authorizing agent, except that if there is another living person with a superior or equal priority right, the form shall contain a representation that the authorizing agent has:

(A) made reasonable efforts to contact that person;

(B) been unable to do so; and

(C) no reason to believe that the person would object to the cremation of the decedent;

(vi) authorization for the funeral service establishment to cremate the human remains;

(vii) a representation that the human remains do not contain a pacemaker or other material or implant that may be potentially hazardous or cause damage to the cremation chamber or the person performing the cremation;

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(viii) the name of the person authorized to receive the cremated remains from the funeral service establishment;

(ix) the manner in which the final disposition of the cremated remains is to take place, if known;

(x) a listing of each item of value to be delivered to the funeral service establishment along with the human remains, and instructions as to how each item should be handled;

(xi) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the authorization form;

(xii) if the cremation authorization form is being executed on a preneed basis, the form shall contain the disclosure required for preneed programs under this chapter; and

(xiii) except for a preneed cremation authorization, the signature of the funeral director of the funeral service establishment that obtained the cremation authorization.

(b) (i) The individual described in Subsection (2)(a)(xiii) shall execute the funeral authorization form as a witness and is not responsible for any of the representations made by the authorizing agent.

(ii) The funeral director or the funeral service establishment shall warrant to the crematory that the human remains delivered to the funeral service establishment have been positively identified as the decedent listed on the cremation authorization form by the authorizing agent or a designated representative of the authorizing agent.

(iii) The authorizing agent or the agent's designee may make the identification referred to in Subsection (2)(b)(ii) in person or by photograph.

(3) (a) Except as provided in Section 58-9-619, a funeral service establishment may not accept unidentified human remains for cremation.

(b) If a funeral service establishment takes custody of a cremation container subsequent to the human remains being placed within the container, it can rely on the identification made before the remains were placed in the container.

(c) The funeral service establishment shall place appropriate identification on the exterior of the cremation container based on the prior identification.

(4) (a) A person who removes or possesses dental gold or silver, jewelry, or mementos from human remains:

(i) with purpose to deprive another over control of the property is guilty of an offense

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and subject to the punishments provided in Section [~~76-6-412~~] 76-6-404;

(ii) with purpose to exercise unauthorized control and with intent to temporarily deprive another of control over the property is guilty of an offense and subject to the punishments provided in Section 76-6-404.5; and

(iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without specific written permission of the individual who has the right to control those remains is guilty of a class B misdemeanor.

(b) The fact that residue or any unavoidable dental gold or dental silver or other precious metals remain in a cremation chamber or other equipment or a container used in a prior cremation is not a violation of Subsection (4)(a).

Section 10. Section **58-9-613** is amended to read:

**58-9-613. Authorization for alkaline hydrolysis -- Penalties for removal of items from human remains.**

(1) Except as otherwise provided in this section, a funeral service establishment may not perform alkaline hydrolysis on human remains until the funeral service establishment has received:

- (a) an alkaline hydrolysis authorization form signed by an authorizing agent;
- (b) a completed and executed burial transit permit or similar document, as provided by state law, indicating that disposition of the human remains is to be by alkaline hydrolysis; and
- (c) any other documentation required by the state, county, or municipality.

(2) (a) The alkaline hydrolysis authorization form shall contain, at a minimum, the following information:

(i) the identity of the human remains and the time and date of death, including a signed declaration of visual identification of the deceased or refusal to visually identify the deceased;

(ii) the name of the funeral director and funeral service establishment that obtained the alkaline hydrolysis authorization;

(iii) notification as to whether the death occurred from a disease declared by the Department of Health to be infectious, contagious, communicable, or dangerous to the public health;

(iv) the name of the authorizing agent and the relationship between the authorizing agent and the decedent;

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(v) a representation that the authorizing agent has the right to authorize the disposition of the decedent by alkaline hydrolysis and that the authorizing agent is not aware of any living person with a superior or equal priority right to that of the authorizing agent, except that if there is another living person with a superior or equal priority right, the alkaline hydrolysis authorization form shall contain a representation that the authorizing agent has:

(A) made reasonable efforts to contact that person;

(B) been unable to do so; and

(C) no reason to believe that the person would object to the disposition of the decedent by alkaline hydrolysis;

(vi) authorization for the funeral service establishment to use alkaline hydrolysis for the disposition of the human remains;

(vii) the name of the person authorized to receive the human remains from the funeral service establishment;

(viii) the manner in which the final disposition of the human remains is to take place, if known;

(ix) a listing of each item of value to be delivered to the funeral service establishment along with the human remains, and instructions as to how each item should be handled;

(x) the signature of the authorizing agent, attesting to the accuracy of all representations contained on the alkaline hydrolysis authorization form;

(xi) if the alkaline hydrolysis authorization form is being executed on a preneed basis, the disclosure required for preneed programs under this chapter; and

(xii) except for a preneed alkaline hydrolysis authorization, the signature of the funeral director of the funeral service establishment that obtained the alkaline hydrolysis authorization.

(b) (i) The person referred to in Subsection (2)(a)(xii) shall execute the alkaline hydrolysis authorization form as a witness and is not responsible for any of the representations made by the authorizing agent.

(ii) The funeral director or the funeral service establishment shall warrant that the human remains delivered to the funeral service establishment have been positively identified by the authorizing agent or a designated representative of the authorizing agent as the decedent listed on the alkaline hydrolysis authorization form.

(iii) The authorizing agent or the agent's designee may make the identification referred

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to in Subsection (2)(b)(ii) in person or by photograph.

(3) (a) A funeral service establishment may not accept unidentified human remains for alkaline hydrolysis.

(b) If a funeral service establishment takes custody of an alkaline hydrolysis container subsequent to the human remains being placed within the container, the funeral service establishment can rely on the identification made before the remains were placed in the container.

(c) The funeral service establishment shall place appropriate identification on the exterior of the alkaline hydrolysis container based on the prior identification.

(4) (a) A person who removes or possesses dental gold or silver, jewelry, or mementos from human remains:

(i) with purpose to deprive another over control of the property is guilty of an offense and subject to the punishments provided in Section [~~76-6-412~~] 76-6-404;

(ii) with purpose to exercise unauthorized control and with intent to temporarily deprive another of control over the property is guilty of an offense and subject to the punishments provided in Section 76-6-404.5; and

(iii) under circumstances not amounting to Subsection (4)(a)(i) or (ii) and without specific written permission of the individual who has the right to control those remains is guilty of a class B misdemeanor.

(b) The fact that residue or any unavoidable dental gold or dental silver or other precious metals remain in alkaline hydrolysis equipment or a container used in a prior alkaline hydrolysis process is not a violation of Subsection (4)(a).

Section 11. Section ~~58-55-503~~ is amended to read:

### **~~58-55-503. Penalty for unlawful conduct -- Citations.~~**

(1) (a) (i) A person who violates Subsection ~~58-55-308(2)~~, Subsection ~~58-55-501(1)~~, (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), (15), (16)(e), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection ~~58-55-504(2)~~, or who fails to comply with a citation issued under this section after it is final, is guilty of a class A misdemeanor.

(ii) As used in this section in reference to Subsection ~~58-55-504(2)~~, "person" means an individual and does not include a sole proprietorship, joint venture, corporation, limited liability company, association, or organization of any type.

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(b) A person who violates the provisions of Subsection 58-55-501(8) may not be awarded and may not accept a contract for the performance of the work.

(2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an infraction unless the violator did so with the intent to deprive the person to whom money is to be paid of the money received, in which case the violator is guilty of theft ~~[, as classified in Section 76-6-412]~~ under Section 76-6-404.

(3) Grounds for immediate suspension of a licensee's license by the division and the commission include:

(a) the issuance of a citation for violation of Subsection 58-55-308(2), Section 58-55-501, or Subsection 58-55-504(2); and

(b) the failure by a licensee to make application to, report to, or notify the division with respect to any matter for which application, notification, or reporting is required under this chapter or rules adopted under this chapter, including:

(i) applying to the division for a new license to engage in a new specialty classification or to do business under a new form of organization or business structure;

(ii) filing a current financial statement with the division; and

(iii) notifying the division concerning loss of insurance coverage or change in qualifier.

(4) (a) (i) If upon inspection or investigation, the division concludes that a person has violated the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), (28), Subsection 58-55-502(4)(a) or (11), Subsection 58-55-504(2), or any rule or order issued with respect to these subsections, and that disciplinary action is appropriate, the director or the director's designee from within the division shall promptly issue a citation to the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear before an adjudicative proceeding conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(ii) A person who is in violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (20), (21), (22), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in lieu of, be ordered

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to cease and desist from violating Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (16)(e), (18), (20), (21), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2).

(iii) Except for a cease and desist order, the licensure sanctions cited in Section 58-55-401 may not be assessed through a citation.

(b) (i) A citation shall be in writing and describe with particularity the nature of the violation, including a reference to the provision of the chapter, rule, or order alleged to have been violated.

(ii) A citation shall clearly state that the recipient must notify the division in writing within 20 calendar days of service of the citation if the recipient wishes to contest the citation at a hearing conducted under Title 63G, Chapter 4, Administrative Procedures Act.

(iii) A citation shall clearly explain the consequences of failure to timely contest the citation or to make payment of any fines assessed by the citation within the time specified in the citation.

(c) A citation issued under this section, or a copy of a citation, may be served upon a person upon whom a summons may be served:

(i) in accordance with the Utah Rules of Civil Procedure;

(ii) personally or upon the person's agent by a division investigator or by a person specially designated by the director; or

(iii) by mail.

(d) (i) If within 20 calendar days after the day on which a citation is served, the person to whom the citation was issued fails to request a hearing to contest the citation, the citation becomes the final order of the division and is not subject to further agency review.

(ii) The period to contest a citation may be extended by the division for cause.

(e) The division may refuse to issue or renew, suspend, revoke, or place on probation the license of a licensee who fails to comply with a citation after the citation becomes final.

(f) The failure of an applicant for licensure to comply with a citation after the citation becomes final is a ground for denial of license.

(g) A citation may not be issued under this section after the expiration of one year following the date on which the violation that is the subject of the citation is reported to the division.

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(h) (i) Except as provided in Subsections (4)(h)(ii) and (5), the director or the director's designee shall assess a fine in accordance with the following:

(A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;

(B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

and

(C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000 for each day of continued offense.

(ii) Except as provided in Subsection (5), if a person violates Subsection 58-55-501(16)(e) or (28), the director or the director's designee shall assess a fine in accordance with the following:

(A) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;

(B) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000;

and

(C) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to \$4,000 for each day of continued offense.

(i) (i) For purposes of issuing a final order under this section and assessing a fine under Subsection (4)(h), an offense constitutes a second or subsequent offense if:

(A) the division previously issued a final order determining that a person committed a first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (23), (24), (25), (26), (27), or (28), or Subsection 58-55-504(2); or

(B) (I) the division initiated an action for a first or second offense;

(II) a final order has not been issued by the division in the action initiated under Subsection (4)(i)(i)(B)(I);

(III) the division determines during an investigation that occurred after the initiation of the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (16)(e), (18), (19), (23), (24), (25), (26), (27), (28), or Subsection 58-55-504(2); and

(IV) after determining that the person committed a second or subsequent offense under Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under

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Subsection (4)(i)(i)(B)(I).

(ii) In issuing a final order for a second or subsequent offense under Subsection (4)(i)(i), the division shall comply with the requirements of this section.

(j) In addition to any other licensure sanction or fine imposed under this section, the division shall revoke the license of a licensee that violates Subsection 58-55-501(23) or (24) two or more times within a 12-month period, unless, with respect to a violation of Subsection 58-55-501(23), the licensee can demonstrate that the licensee successfully verified the federal legal working status of the individual who was the subject of the violation using a status verification system, as defined in Section 13-47-102.

(k) For purposes of this Subsection (4), a violation of Subsection 58-55-501(23) or (24) for each individual is considered a separate violation.

(5) If a person violates Section 58-55-501, the division may not treat the violation as a subsequent violation of a previous violation if the violation occurs five years or more after the day on which the person committed the previous violation.

(6) If, after an investigation, the division determines that a person has committed multiple of the same type of violation of Section 58-55-501, the division may treat each violation as a separate violation of Section 58-55-501 and apply a penalty under this section to each violation.

(7) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited into the Commerce Service Account created by Section 13-1-2.

(b) A penalty that is not paid may be collected by the director by either referring the matter to a collection agency or bringing an action in the district court of the county in which the person against whom the penalty is imposed resides or in the county where the office of the director is located.

(c) A county attorney or the attorney general of the state shall provide legal assistance and advice to the director in an action to collect a penalty.

(d) In an action brought to collect a penalty, the court shall award reasonable attorney fees and costs to the prevailing party.

Section 12. Section ~~{63I-1-226}~~63M-7-404 is amended to read:

~~{~~ ~~63I-1-226. Repeal dates: Titles 26 through 26B.~~

~~—— (1) Section 26-1-7.5, which creates the Utah Health Advisory Council, is repealed July~~

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~~1, 2025.~~

~~—— (2) Section 26-1-40 is repealed July 1, 2022.~~

~~—— (3) Section 26-1-41 is repealed July 1, 2026.~~

~~—— (4) Section 26-1-43 is repealed December 31, 2025.~~

~~—— (5) Section 26-7-10 is repealed July 1, 2025.~~

~~—— (6) Subsection 26-7-11(5), regarding reports to the Legislature, is repealed July 1, 2028.~~

~~—— (7) Section 26-7-14 is repealed December 31, 2027.~~

~~—— (8) Section 26-8a-603 is repealed July 1, 2027.~~

~~—— (9) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July 1, 2025.~~

~~—— (10) Subsection 26-10-6(5), which creates the Newborn Hearing Screening Committee, is repealed July 1, 2026.~~

~~—— (11) Section 26-10b-106, which creates the Primary Care Grant Committee, is repealed July 1, 2025.~~

~~—— (12) Subsection 26-15c-104(3), relating to a limitation on the number of microenterprise home kitchen permits that may be issued, is repealed July 1, 2022.~~

~~—— (13) Subsection 26-18-2.6(9), which addresses reimbursement for dental hygienists, is repealed July 1, 2028.~~

~~—— (14) Section 26-18-27 is repealed July 1, 2025.~~

~~—— (15) Section 26-18-28 is repealed June 30, 2027.~~

~~—— (16) Title 26, Chapter 18, Part 2, Drug Utilization Review Board, is repealed July 1, 2027.~~

~~—— (17) Subsection 26-18-418(2), the language that states "and the Behavioral Health Crisis Response Commission created in Section 63C-18-202" is repealed July 1, 2023.~~

~~—— (18) Section 26-33a-117 is repealed December 31, 2023.~~

~~—— (19) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2024.~~

~~—— (20) Title 26, Chapter 36b, Inpatient Hospital Assessment Act, is repealed July 1, 2024.~~

~~—— (21) Title 26, Chapter 36c, Medicaid Expansion Hospital Assessment Act, is repealed July 1, 2024.~~

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- ~~———— (22) Title 26, Chapter 36d, Hospital Provider Assessment Act, is repealed July 1, 2024.~~
- ~~———— (23) Section 26-39-201, which creates the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.~~
- ~~———— (24) Section 26-39-405, Drinking water quality in child care centers, is repealed July 1, 2027.~~
- ~~———— (25) Section 26-40-104, which creates the Utah Children's Health Insurance Program Advisory Council, is repealed July 1, 2025.~~
- ~~———— (26) Section 26-50-202, which creates the Traumatic Brain Injury Advisory Committee, is repealed July 1, 2025.~~
- ~~———— (27) Title 26, Chapter 54, Spinal Cord and Brain Injury Rehabilitation Fund and Pediatric Neuro-Rehabilitation Fund, is repealed January 1, 2025.~~
- ~~———— (28) Title 26, Chapter 66, Early Childhood Utah Advisory Council, is repealed July 1, 2026.~~
- ~~———— (29) Title 26, Chapter 68, COVID-19 Vaccine Restrictions Act, is repealed July 1, 2024.~~
- ~~———— (30) Section 26-69-406 is repealed July 1, 2025.~~
- ~~———— (31) Subsection 26B-1-204(2)(i), related to the Residential Child Care Licensing Advisory Committee, is repealed July 1, 2024.~~
- ~~———— (32) Subsection 26B-1-204(2)(k), related to the Primary Care Grant Committee, is repealed July 1, 2025.~~
- ~~———— Section 13. 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;

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(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

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

(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 State 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 State Commission on Criminal and Juvenile Justice for reducing recidivism.

(b) The modifications to the criminal history score under Subsection (3)(a) shall

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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) For a situation described in Subsection (4)(a), the guidelines shall recommend that a court consider:

- (i) the seriousness of any violation of the condition of probation;
- (ii) the probationer's conduct while on probation; and
- (iii) 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) For a situation described in Subsection (5)(a), the guidelines shall recommend that the Board of Pardons and Parole consider:

- (i) the seriousness of any violation of the condition of parole;
- (ii) the individual's conduct while on parole; and
- (iii) 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, to implement the recommendations of the State 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

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(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;
- (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 and maintain supervision length guidelines in accordance with this section.

(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 \$50,000:

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

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(ii) sale by an unlicensed broker-dealer, agent, investment adviser, or investment adviser representative, Sections 61-1-3 and 61-1-21;

(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;

(v) arson, Section 76-6-102;

(vi) burglary, Section 76-6-202;

(vii) theft~~[, Section 76-6-412]~~ under Title 76, Chapter 6, Part 4, Theft;

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

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

(x) ~~[fraudulent insurance act]~~ insurance fraud, Section 76-6-521;

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

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

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

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

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

(xvi) other offenses in the discretion of the commission.

(b) The guidelines described in Subsection (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 shall publish for public comment the guidelines described in Subsection (10)(a).

(11) (a) Before January 1, 2023, the commission shall study the offenses of sexual exploitation of a minor and aggravated sexual exploitation of a minor under Sections 76-5b-201 and 76-5b-201.1.

(b) The commission shall update sentencing and release guidelines and juvenile disposition guidelines to reflect appropriate sanctions for an offense listed in Subsection (11)(a), including the application of aggravating and mitigating factors specific to the offense.

Section ~~{14}~~13. Section **73-2-27** is amended to read:

### **73-2-27. Criminal penalties.**

(1) This section applies to offenses committed under:

(a) Section 73-1-14;

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- (b) Section 73-1-15;
- (c) Section 73-2-20;
- (d) Section 73-3-3;
- (e) Section 73-3-26;
- (f) Section 73-3-29;
- (g) Section 73-5-9;
- (h) Section 76-10-201;
- (i) Section 76-10-202; and
- (j) Section 76-10-203.

(2) Under circumstances not amounting to an offense with a greater penalty under Subsection [~~76-6-106(2)(b)(ii)~~] 76-6-106(2)(a)(ii) or Section 76-6-404, violation of a provision listed in Subsection (1) is punishable:

(a) as a felony of the third degree if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater;

and

(ii) the person violating the provision has previously been convicted of violating the same provision;

(b) as a class A misdemeanor if:

(i) the value of the water diverted or property damaged or taken is \$2,500 or greater; or

(ii) the person violating the provision has previously been convicted of violating the

same provision; or

(c) as a class B misdemeanor if Subsection (2)(a) or (b) does not apply.

Section ~~{15}~~14. Section **76-3-203.1** is amended to read:

**76-3-203.1. Offenses committed in concert with three or more persons or in relation to a criminal street gang -- Notice -- Enhanced penalties.**

(1) As used in this section:

(a) "Criminal street gang" means the same as that term is defined in Section 76-9-802.

(b) "In concert with three or more persons" means:

(i) the defendant was aided or encouraged by at least three other persons in committing the offense and was aware of this aid or encouragement; and

(ii) each of the other persons:

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(A) was physically present; and

(B) participated as a party to any offense listed in Subsection (4), (5), or (6).

(c) "In concert with three or more persons" means, regarding intent:

(i) other persons participating as parties need not have the intent to engage in the same offense or degree of offense as the defendant; and

(ii) a minor is a party if the minor's actions would cause the minor to be a party if the minor were an adult.

(2) A person who commits any offense in accordance with this section is subject to an enhanced penalty as provided in Subsection (4), (5), or (6) if the trier of fact finds beyond a reasonable doubt that the person acted:

(a) in concert with three or more persons;

(b) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(c) to gain recognition, acceptance, membership, or increased status with a criminal street gang as defined in Section 76-9-802.

(3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

(4) (a) For an offense listed in Subsection (4)(b), a person may be charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor; and

(ii) for a class A misdemeanor, as a third degree felony.

(b) The following offenses are subject to Subsection (4)(a):

(i) criminal mischief as ~~[defined]~~ described in Section 76-6-106; ~~[and]~~

~~(ii)~~ property damage or destruction as described in Section 76-6-106.1; and

~~[(ii)]~~ (iii) defacement by graffiti as [defined] described in Section 76-6-107.

(5) (a) For an offense listed in Subsection (5)(b), a person may be charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor;

(ii) for a class A misdemeanor, as a third degree felony; and

(iii) for a third degree felony, as a second degree felony.

(b) The following offenses are subject to Subsection (5)(a):

(i) burglary, if committed in a dwelling as defined in Subsection ~~[76-6-202 (b)]~~ (2)

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### 76-6-202(3)(b);

(ii) any offense of obstructing government operations under Chapter 8, Part 3, Obstructing Governmental Operations, except Sections 76-8-302, 76-8-303, 76-8-307, 76-8-308, and 76-8-312;

(iii) tampering with a witness or other violation of Section 76-8-508;

(iv) retaliation against a witness, victim, informant, or other violation of Section 76-8-508.3;

(v) extortion or bribery to dismiss a criminal proceeding as defined in Section 76-8-509;

(vi) any weapons offense under Chapter 10, Part 5, Weapons; and

(vii) any violation of Chapter 10, Part 16, Pattern of Unlawful Activity Act.

(6) (a) For an offense listed in Subsection (6)(b), a person may be charged as follows:

(i) for a class B misdemeanor, as a class A misdemeanor;

(ii) for a class A misdemeanor, as a third degree felony;

(iii) for a third degree felony, as a second degree felony; and

(iv) for a second degree felony, as a first degree felony.

(b) The following offenses are subject to Subsection (6)(a):

(i) assault and related offenses under Chapter 5, Part 1, Assault and Related Offenses;

(ii) any criminal homicide offense under Chapter 5, Part 2, Criminal Homicide;

(iii) kidnapping and related offenses under Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(iv) any felony sexual offense under Chapter 5, Part 4, Sexual Offenses;

(v) sexual exploitation of a minor as defined in Section 76-5b-201;

(vi) aggravated sexual exploitation of a minor as defined in Section 76-5b-201.1;

(vii) robbery and aggravated robbery under Chapter 6, Part 3, Robbery; and

(viii) aggravated exploitation of prostitution under Section 76-10-1306.

(7) The sentence imposed under Subsection (4), (5), or (6) may be suspended and the individual placed on probation for the higher level of offense.

(8) It is not a bar to imposing the enhanced penalties under this section that the persons with whom the actor is alleged to have acted in concert are not identified, apprehended, charged, or convicted, or that any of those persons are charged with or convicted of a different

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or lesser offense.

Section ~~{16}~~15. Section **76-3-203.3** is amended to read:

### **76-3-203.3. Penalty for hate crimes -- Civil rights violation.**

As used in this section:

- (1) "Primary offense" means those offenses provided in Subsection (4).
- (2) (a) A person who commits any primary offense with the intent to intimidate or terrorize another person or with reason to believe that his action would intimidate or terrorize that person is subject to Subsection (2)(b).
  - (b) (i) A class C misdemeanor primary offense is a class B misdemeanor; and
  - (ii) a class B misdemeanor primary offense is a class A misdemeanor.
- (3) "Intimidate or terrorize" means an act which causes the person to fear for his physical safety or damages the property of that person or another. The act must be accompanied with the intent to cause or has the effect of causing a person to reasonably fear to freely exercise or enjoy any right secured by the Constitution or laws of the state or by the Constitution or laws of the United States.
- (4) Primary offenses referred to in Subsection (1) are the misdemeanor offenses for:
  - (a) assault and related offenses under Sections 76-5-102, 76-5-102.4, 76-5-106, 76-5-107, and 76-5-108;
  - (b) any misdemeanor property destruction offense under Sections 76-6-102 and 76-6-104, and Subsection ~~[76-6-106(2){f}(b)]~~ 76-6-106(2)(a);
  - (c) any criminal trespass offense under Sections 76-6-204 and 76-6-206;
  - (d) any misdemeanor theft offense under Section 76-6-412;
  - (e) any offense of obstructing government operations under Sections 76-8-301, 76-8-302, 76-8-305, 76-8-306, 76-8-307, 76-8-308, and 76-8-313;
  - (f) any offense of interfering or intending to interfere with activities of colleges and universities under Title 76, Chapter 8, Part 7, Colleges and Universities;
  - (g) any misdemeanor offense against public order and decency as defined in Title 76, Chapter 9, Part 1, Breaches of the Peace and Related Offenses;
  - (h) any telephone abuse offense under Title 76, Chapter 9, Part 2, Electronic Communication and Telephone Abuse;
  - (i) any cruelty to animals offense under Section 76-9-301;

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- (j) any weapons offense under Section 76-10-506; or
- (k) a violation of Section 76-9-102, if the violation occurs at an official meeting.

(5) This section does not affect or limit any individual's constitutional right to the lawful expression of free speech or other recognized rights secured by the Constitution or laws of the state or by the Constitution or laws of the United States.

Section ~~{17}~~16. Section **76-3-203.5** is amended to read:

### **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

(1) As used in this section:

(a) "Felony" means any violation of a criminal statute of the state, any other state, the United States, or any district, possession, or territory of the United States for which the maximum punishment the offender may be subjected to exceeds one year in prison.

(b) "Habitual violent offender" means a person convicted within the state of any violent felony and who on at least two previous occasions has been convicted of a violent felony and committed to either prison in Utah or an equivalent correctional institution of another state or of the United States either at initial sentencing or after revocation of probation.

(c) "Violent felony" means:

(i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit any of the following offenses punishable as a felony:

(A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief, Chapter 6, Part 1, Property Destruction;

(B) assault by prisoner, Section 76-5-102.5;

(C) disarming a police officer, Section 76-5-102.8;

(D) aggravated assault, Section 76-5-103;

(E) aggravated assault by prisoner, Section 76-5-103.5;

(F) mayhem, Section 76-5-105;

(G) stalking, Subsection 76-5-106.5(2);

(H) rhreat of terrorism, Section 76-5-107.3;

(I) aggravated child abuse, Subsection 76-5-109.2(3)(a) or (b);

(J) commission of domestic violence in the presence of a child, Section 76-5-114;

(K) abuse or neglect of a child with a disability, Section 76-5-110;

(L) abuse or exploitation of a vulnerable adult, Section 76-5-111, 76-5-111.2,

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76-5-111.3, or 76-5-111.4;

(M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

(N) criminal homicide offenses under Chapter 5, Part 2, Criminal Homicide;

(O) kidnapping, child kidnapping, and aggravated kidnapping under Chapter 5, Part 3,

Kidnapping, Trafficking, and Smuggling;

(P) rape, Section 76-5-402;

(Q) rape of a child, Section 76-5-402.1;

(R) object rape, Section 76-5-402.2;

(S) object rape of a child, Section 76-5-402.3;

(T) forcible sodomy, Section 76-5-403;

(U) sodomy on a child, Section 76-5-403.1;

(V) forcible sexual abuse, Section 76-5-404;

(W) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;

(X) aggravated sexual assault, Section 76-5-405;

(Y) sexual exploitation of a minor, Section 76-5b-201;

(Z) aggravated sexual exploitation of a minor, Section 76-5b-201.1;

(AA) sexual exploitation of a vulnerable adult, Section 76-5b-202;

(BB) aggravated burglary and burglary of a dwelling under Chapter 6, Part 2, Burglary and Criminal Trespass;

(CC) aggravated robbery and robbery under Chapter 6, Part 3, Robbery;

(DD) theft by extortion under ~~Subsection 76-6-406(2)(a) or (b)~~ Section 76-6-406 under the circumstances described in Subsection ~~76-6-406(2)(a) or (b)~~; 76-6-406(1)(a)(i) or (ii);

(EE) tampering with a witness under Subsection 76-8-508(1);

(FF) retaliation against a witness, victim, or informant under Section 76-8-508.3;

(GG) tampering with a juror under Subsection 76-8-508.5(2)(c);

(HH) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat or by use of force theft by extortion has been committed ~~[pursuant to Subsections 76-6-406(2)(a), (b), and (i)] under Section 76-6-406 under the circumstances described in Subsection 76-6-406(1)(a)(i), (ii), or (ix);~~

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(II) possession, use, or removal of explosive, chemical, or incendiary devices under Subsections 76-10-306(3) through (6);

(JJ) unlawful delivery of explosive, chemical, or incendiary devices under Section 76-10-307;

(KK) purchase or possession of a dangerous weapon or handgun by a restricted person under Section 76-10-503;

(LL) unlawful discharge of a firearm under Section 76-10-508;

(MM) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);

(NN) bus hijacking under Section 76-10-1504; and

(OO) discharging firearms and hurling missiles under Section 76-10-1505; or

(ii) any felony violation of a criminal statute of any other state, the United States, or any district, possession, or territory of the United States which would constitute a violent felony as defined in this Subsection (1) if committed in this state.

(2) If a person is convicted in this state of a violent felony by plea or by verdict and the trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender under this section, the penalty for a:

(a) third degree felony is as if the conviction were for a first degree felony;

(b) second degree felony is as if the conviction were for a first degree felony; or

(c) first degree felony remains the penalty for a first degree penalty except:

(i) the convicted person is not eligible for probation; and

(ii) the Board of Pardons and Parole shall consider that the convicted person is a habitual violent offender as an aggravating factor in determining the length of incarceration.

(3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide notice in the information or indictment that the defendant is subject to punishment as a habitual violent offender under this section. Notice shall include the case number, court, and date of conviction or commitment of any case relied upon by the prosecution.

(b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant intends to deny that:

(A) the defendant is the person who was convicted or committed;

(B) the defendant was represented by counsel or had waived counsel; or

(C) the defendant's plea was understandingly or voluntarily entered.

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(ii) The notice of denial shall be served not later than five days prior to trial and shall state in detail the defendant's contention regarding the previous conviction and commitment.

(4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried to a jury, the jury may not be told, until after it returns its verdict on the underlying felony charge, of the:

(i) defendant's previous convictions for violent felonies, except as otherwise provided in the Utah Rules of Evidence; or

(ii) allegation against the defendant of being a habitual violent offender.

(b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of being an habitual violent offender by the same jury, if practicable, unless the defendant waives the jury, in which case the allegation shall be tried immediately to the court.

(c) (i) Before or at the time of sentencing the trier of fact shall determine if this section applies.

(ii) The trier of fact shall consider any evidence presented at trial and the prosecution and the defendant shall be afforded an opportunity to present any necessary additional evidence.

(iii) Before sentencing under this section, the trier of fact shall determine whether this section is applicable beyond a reasonable doubt.

(d) If any previous conviction and commitment is based upon a plea of guilty or no contest, there is a rebuttable presumption that the conviction and commitment were regular and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If the conviction and commitment occurred prior to January 1, 1970, the burden is on the prosecution to establish by a preponderance of the evidence that the defendant was then represented by counsel or had lawfully waived the right to have counsel present, and that the defendant's plea was understandingly and voluntarily entered.

(e) If the trier of fact finds this section applicable, the court shall enter that specific finding on the record and shall indicate in the order of judgment and commitment that the defendant has been found by the trier of fact to be a habitual violent offender and is sentenced under this section.

(5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the provisions of this section.

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(b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in Subsection (1)(c) shall include any felony sexual offense violation of Chapter 5, Part 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

(6) The sentencing enhancement described in this section does not apply if:

(a) the offense for which the person is being sentenced is:

- (i) a grievous sexual offense;
- (ii) child kidnapping, Section 76-5-301.1;
- (iii) aggravated kidnapping, Section 76-5-302; or
- (iv) forcible sexual abuse, Section 76-5-404; and

(b) applying the sentencing enhancement provided for in this section would result in a lower maximum penalty than the penalty provided for under the section that describes the offense for which the person is being sentenced.

Section ~~{18}~~17. Section **76-3-203.15**, which is renumbered from Section 76-6-109 is renumbered and amended to read:

~~[76-6-109].~~ **76-3-203.15. Offenses committed against timber, mining, or agricultural industries -- Enhanced penalties.**

(1) ~~[A person]~~ An actor who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the management or operations of agricultural or mining industries is subject to an enhanced penalty for the offense as provided below. ~~[However, this section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.]~~

(2) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the complaint in misdemeanor cases or the information or indictment in felony cases notice that the defendant is subject to the enhanced penalties provided under this section.

(3) If the trier of fact finds beyond a reasonable doubt that the defendant committed any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful management, cultivation, or harvesting of trees or timber, or the management or operations of agricultural or mining industries, the penalties are enhanced as provided in this Subsection (3):

(a) a class C misdemeanor is a class B misdemeanor, with a mandatory fine of not less

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than \$1,000, which is in addition to any term of imprisonment the court may impose;

(b) a class B misdemeanor is a Class A misdemeanor, with a fine of not less than \$2,500, which is in addition to any term of imprisonment the court may impose;

(c) a class A misdemeanor is a third degree felony, with a fine of not less than \$5,000, which is in addition to any term of imprisonment the court may impose;

(d) a third degree felony is a second degree felony, with a fine of not less than \$7,500, which is in addition to any term of imprisonment the court may impose; and

(e) a second degree felony is subject to a fine of not less than \$10,000, which is in addition to any term of imprisonment the court may impose.

(4) This section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.

Section ~~{19}~~18. Section **76-3-203.16**, which is renumbered from Section 76-6-110 is renumbered and amended to read:

~~[76-6-110]~~. **76-3-203.16. Offenses committed against animal enterprises -- Definitions -- Enhanced penalties.**

(1) As used in this section:

(a) "Animal enterprise" means a commercial or academic enterprise that:

(i) uses animals for food or fiber production;

(ii) is an agricultural operation, including a facility for the production of crops or livestock, or livestock products;

(iii) operates a zoo, aquarium, circus, rodeo, or lawful competitive animal event; or

(iv) any fair or similar event intended to advance agricultural arts and sciences.

(b) "Livestock" means cattle, sheep, goats, swine, horses, mules, poultry, domesticated elk as defined in Section 4-39-102, or any other domestic animal or domestic furbearer raised or kept for profit.

(c) "Property" includes any buildings, vehicles, animals, data, records, stables, livestock handling facilities, livestock watering troughs or other watering facilities, and fencing or other forms of enclosure.

(2) ~~[(a)]~~ A person who commits any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal

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enterprise, is subject to an enhanced penalty under Subsection ~~[(3)]~~ (4).

~~[(b) Subsection (2)(a) does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.]~~

~~[(c)]~~ (3) The prosecuting attorney, or grand jury if an indictment is returned, shall cause to be subscribed upon the information or indictment notice that the defendant is subject to the enhanced penalties provided under this section.

~~[(3)]~~ (4) If the trier of fact finds beyond a reasonable doubt that the defendant committed any criminal offense with the intent to halt, impede, obstruct, or interfere with the lawful operation of an animal enterprise or to damage, take, or cause the loss of any property owned by, used by, or in the possession of a lawful animal enterprise, the penalties are enhanced as provided in this Subsection ~~[(3)]~~ (4):

(a) a class C misdemeanor is a class B misdemeanor, with a mandatory fine of not less than \$1,000, which is in addition to any term of imprisonment the court may impose;

(b) a class B misdemeanor is a class A misdemeanor, with a fine of not less than \$2,500, which is in addition to any term of imprisonment the court may impose;

(c) a class A misdemeanor is a third degree felony, with a fine of not less than \$5,000, which is in addition to any term of imprisonment the court may impose;

(d) a third degree felony is a second degree felony, with a fine of not less than \$7,500, which is in addition to any term of imprisonment the court may impose; and

(e) a second degree felony is subject to a fine of not less than \$10,000, which is in addition to any term of imprisonment the court may impose.

(5) This section does not apply to action protected by the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.

Section ~~{20}~~19. Section **76-3-410**, which is renumbered from Section 76-6-107.1 is renumbered and amended to read:

~~[76-6-107.1].~~            **76-3-410. Compensatory service -- Graffiti penalties.**

(1) If an ~~[offender uses]~~ actor uses graffiti and is convicted under Section 76-6-106, 76-6-106.1, 76-6-107, or 76-6-206 for the use of graffiti, the court may, as a condition of probation under Subsection 77-18-105(6), order the ~~[offender]~~ actor to clean up graffiti of the ~~[offender]~~ actor and any other at a time and place within the jurisdiction of the court.

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(a) For a first conviction or adjudication, the court may require the [offender] actor to clean up graffiti for not less than eight hours.

(b) For a second conviction or adjudication, the court may require the [offender] actor to clean up graffiti for not less than 16 hours.

(c) For a third conviction or adjudication, the court may require the [offender] actor to clean up graffiti for not less than 24 hours.

(2) The [offender] actor convicted under Section 76-6-106, 76-6-106.1, 76-6-206, or 76-6-107 shall be responsible for removal costs as determined under Section 76-6-107, unless waived by the court for good cause.

(3) The court may also require the [offender] actor to perform other alternative forms of restitution or repair to the damaged property in accordance with Subsection 77-18-105(6).

### Section 20. Section 76-5-102.1 is amended to read:

#### **76-5-102.1. Negligently operating a vehicle resulting in injury.**

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

(a) (i) "Controlled substance" means the same as that term is defined in Section 58-37-2.

(b) (ii) "Drug" means the same as that term is defined in Section 76-5-207.

(c) (iii) "Negligent" or "negligence" means the same as that term is defined in Section 76-5-207.

(d) (iv) "Vehicle" means the same as that term is defined in Section 41-6a-501.

#### (b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits negligently operating a vehicle resulting in injury if the actor:

(a) (i) operates a vehicle in a negligent manner causing bodily injury to another; and

(ii) (A) has sufficient alcohol in the actor's body such that a subsequent chemical test shows that the actor has a blood or breath alcohol concentration of .05 grams or greater at the time of the test;

(B) is under the influence of alcohol, a drug, or the combined influence of alcohol and a drug to a degree that renders the actor incapable of safely operating a vehicle; or

(C) has a blood or breath alcohol concentration of .05 grams or greater at the time of operation; or

(b) (i) operates a vehicle in a criminally negligent manner causing bodily injury to

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another; and

(ii) has in the actor's body any measurable amount of a controlled substance.

(3) Except as provided in Subsection (4), a violation of Subsection (2) is:

(a) (i) a class A misdemeanor; or

(ii) a third degree felony if the bodily injury is serious bodily injury; and

(b) a separate offense for each victim suffering bodily injury as a result of the actor's violation of this section, regardless of whether the injuries arise from the same episode of driving.

(4) An actor is not guilty of negligently operating a vehicle resulting in injury under Subsection (2)(b) if:

(a) the controlled substance was obtained under a valid prescription or order, directly from a practitioner while acting in the course of the practitioner's professional practice, or as otherwise authorized by Title 58, Occupations and Professions;

(b) the controlled substance is 11-nor-9-carboxy-tetrahydrocannabinol; or

(c) the actor possessed, in the actor's body, a controlled substance listed in Section 58-37-4.2 if:

(i) the actor is the subject of medical research conducted by a holder of a valid license to possess controlled substances under Section 58-37-6; and

(ii) the substance was administered to the actor by the medical researcher.

(5) (a) A judge imposing a sentence under this section may consider:

(i) the sentencing guidelines developed in accordance with Section 63M-7-404;

(ii) the defendant's history;

(iii) the facts of the case;

(iv) aggravating and mitigating factors; or

(v) any other relevant fact.

(b) The judge may not impose a lesser sentence than would be required for a conviction based on the defendant's history under Section 41-6a-505.

(c) The standards for chemical breath analysis under Section 41-6a-515 and the provisions for the admissibility of chemical test results under Section 41-6a-516 apply to determination and proof of blood alcohol content under this section.

(d) A calculation of blood or breath alcohol concentration under this section shall be

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made in accordance with Subsection 41-6a-502(2).

(e) Except as provided in Subsection (4), the fact that an actor charged with violating this section is or has been legally entitled to use alcohol or a drug is not a defense.

(f) Evidence of a defendant's blood or breath alcohol content or drug content is admissible except if prohibited by the Utah Rules of Evidence, the United States Constitution, or the Utah Constitution.

(g) In accordance with Subsection 77-2a-3(8), a guilty or no contest plea to an offense described in this section may not be held in abeyance.

### Section 21. Section 76-5-207.5 is amended to read:

#### **76-5-207.5. Automobile homicide involving a handheld wireless communication device while driving.**

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

(i) "Criminally negligent" means the same as that term is described in Subsection 76-2-103(4).

(ii) "Motor vehicle" means any self-propelled vehicle, including an automobile, truck, van, motorcycle, train, engine, watercraft, or aircraft.

(iii) "Negligent" means the failure to exercise the degree of care that a reasonable and prudent person exercises under similar circumstances.

(iv) "Wireless communication device" means the same as that term is defined in Section ~~{41-6a-1716}~~41-6a-1716.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits automobile homicide if the actor:

(a) operates a moving motor vehicle~~[:]~~ in a negligent manner;

~~[(i) (A) in a negligent manner; or]~~

~~[(B) in a criminally negligent manner; and]~~

~~[(iii) (b) while using a wireless communication device in violation of Section 41-6a-1716; and~~

~~[(b) (c) causes the death of another individual.~~

(3) (a) ~~[A]~~ Except as provided in Subsection (3)(b), a violation of Subsection ~~[(2)(a)(i)(A)]~~ (2) is a third degree felony.

(b) A violation of Subsection ~~[(2)(a)(i)(B)]~~ (2) is a second degree felony if the actor

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operated the moving motor vehicle in a criminally negligent manner.

Section 22. Section 76-5-208 is amended to read:

### **76-5-208. Child abuse homicide -- Penalties.**

(1) (a) As used in this section, "child abuse" means an offense described in Sections 76-5-109, 76-5-109.2, 76-5-109.3, and 76-5-114.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) Unless a violation amounts to aggravated murder as described in Section 76-5-202, an actor commits child abuse homicide if:

(a) (i) the actor causes the death of another individual who is younger than 18 years old; and

(ii) the individual's death results from child abuse; and

(b) (i) the child abuse is done recklessly under Subsection 76-5-109.2(3)(b);

(ii) the child abuse is done with criminal negligence under Subsection 76-5-109.2(3)(c); or

(iii) under circumstances not amounting to the type of child abuse homicide described in Subsection (2)(b)(i), the child abuse is done intentionally, knowingly, recklessly, or with criminal negligence, under Subsection 76-5-109(3)(a), (b), or (c).

(3) (a) A violation of Subsection (2) under the circumstances described in Subsection (2)(b)(i) is a first degree felony.

(b) A violation of Subsection (2) under the circumstances described in Subsection (2)(b)(ii) or (iii) is a second degree felony.

Section ~~21~~23. Section 76-6-101 is amended to read:

### **76-6-101. Definitions.**

(1) [~~For purposes of this chapter~~] As used in this part:

(a) "Etching" means defacing, damaging, or destroying hard surfaces by means of an abrasive object, a knife, or an engraving device, or a chemical action which uses any caustic cream, gel, liquid, or solution.

(b) "Fire" means a flame, heat source capable of combustion, or material capable of combustion that is caused, set, or maintained by a person for any purpose.

(c) "Graffiti" means any form of unauthorized printing, writing, spraying, scratching, painting, affixing, etching, or inscribing on the property of another regardless of the content or

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the nature of the material used in the commission of the act.

~~[(b)]~~ (d) "Habitable structure" means any building, vehicle, trailer, railway car, aircraft, or watercraft used for lodging or assembling persons or conducting business whether a person is actually present or not.

~~[(c)]~~ (e) "Property" means:

(i) any form of real property or tangible personal property which is capable of being damaged or destroyed and includes a habitable structure; and

(ii) the property of another, if anyone other than the actor has a possessory or proprietary interest in any portion of the property.

~~[(d)]~~ (f) "Value" means:

(i) the market value of the property, if totally destroyed, at the time and place of the offense, or where cost of replacement exceeds the market value; or

(ii) where the market value cannot be ascertained, the cost of repairing or replacing the property within a reasonable time following the offense.

(2) Terms defined in Section 76-1-101.5 apply to this part.

~~[(2)]~~ (3) If the property damaged has a value that cannot be ascertained by the criteria set forth in Subsection ~~[(1)(d)]~~ (1)(f), the property shall be considered to have a value less than \$500.

Section ~~[(22)]~~24. Section **76-6-102** is amended to read:

### **76-6-102. Arson.**

(1) ~~[A person is guilty of]~~ Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) An actor commits 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)]~~ (3) (a) A violation of Subsection ~~[(1)(a)]~~ (2)(a) is a second degree felony.

~~[(3)]~~ (b) A violation of Subsection ~~[(1)(b)]~~ (2)(b) is a second degree felony if:

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

~~[(b)]~~ (ii) 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 76-1-101.5;

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

~~[(ii)]~~ (B) 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)]~~ (2)(b).

~~[(4)]~~ (c) A violation of Subsection ~~[(1)]~~ ~~[(b)]~~ (2)(b) is a third degree felony if:

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

~~[(b)]~~ (ii) 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 76-1-101.5;

~~[(c)]~~ (iii) the fire or explosion endangers human life; or

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

~~[(ii)]~~ (B) 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)]~~ (2)(b).

~~[(5)]~~ (d) A violation of Subsection ~~[(1)]~~ ~~[(b)]~~ (2)(b) is a class A misdemeanor if the damage caused:

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

~~[(b)]~~ ~~[(i)]~~ (ii) ~~[(i)]~~ (A) is less than \$500; and

~~[(ii)]~~ (B) 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)]~~ (2)(b).

~~[(6)]~~ (e) A violation of Subsection ~~[(1)]~~ ~~[(b)]~~ (2)(b) is a class B misdemeanor if the damage caused is less than \$500.

Section ~~[(23)]~~ 25. Section **76-6-103** is amended to read:

### **76-6-103. Aggravated arson.**

(1) ~~[A person is guilty of]~~ Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) An actor commits aggravated arson if by means of fire or explosives [he] the actor intentionally and unlawfully damages:

(a) a habitable structure; or

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(b) any structure or vehicle when any person not a participant in the offense is in the structure or vehicle.

~~[(2) Aggravated arson is a felony of the first degree.]~~

~~(3) A violation of Subsection (2) is a first degree felony [of the] first degree~~  
felony.

Section ~~{24}~~26. Section **76-6-104** is amended to read:

### **76-6-104. Reckless burning.**

(1) ~~[A person is guilty of]~~ Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) An actor commits reckless burning if the ~~[person]~~ actor:

(a) recklessly starts a fire or causes an explosion which endangers human life;

(b) having started a fire, whether recklessly or not, and knowing that it is spreading and will endanger the life or property of another, either fails to take reasonable measures to put out or control the fire or fails to give a prompt fire alarm;

(c) builds or maintains a fire without taking reasonable steps to remove all flammable materials surrounding the site of the fire as necessary to prevent the fire's spread or escape; or

(d) damages the property of another by reckless use of fire or causing an explosion.

~~[(2)]~~ (3) (a) A violation of Subsection ~~[(1)(a)]~~ (2)(a) or (b) is a class A misdemeanor.

(b) A violation of Subsection ~~[(1)(c)]~~ (2)(c) is a class B misdemeanor.

(c) A violation of Subsection ~~[(1)(d)]~~ (2)(d) is:

(i) a class A misdemeanor if damage to property is or exceeds \$1,500 in value;

(ii) a class B misdemeanor if the damage to property is or exceeds \$500 but is less than \$1,500 in value; and

(iii) a class C misdemeanor if the damage to property is or exceeds \$150 but is less than \$500 in value.

(d) Any other violation under Subsection ~~[(1)(d)]~~ (2)(d) is an infraction.

Section ~~{25}~~27. Section **76-6-104.5** is amended to read:

### **76-6-104.5. Abandonment of a fire -- Penalties.**

(1) ~~[A person is guilty of abandoning]~~ Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) An actor commits abandonment of a fire if, under circumstances not amounting to

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the offense of arson, aggravated arson, or causing a catastrophe [~~under Title 76, Chapter 6, Part 1, Property Destruction, the person~~], the actor leaves a fire:

- (a) without first completely extinguishing it; and
- (b) with the intent to not return to the fire.

~~[(2) A person does not commit a violation of Subsection (1) if the person leaves a fire to report an uncontrolled fire.]~~

(3) A violation of Subsection ~~[(1)]~~ (2):

- (a) is a class C misdemeanor if there is no property damage;
- (b) is a class B misdemeanor if property damage is less than \$1,000 in value; and
- (c) is a class A misdemeanor if property damage is or exceeds \$1,000 in value.

(4) An actor does not commit a violation of Subsection (2) if the actor leaves a fire to report an uncontrolled fire.

~~[(4)]~~ (5) If a violation of Subsection ~~[(1)]~~ (2) involves a wildland fire, the ~~[violation]~~ actor is also liable for suppression costs under Section 65A-3-4.

~~[(5)]~~ (6) A fire spreading or reigniting is prima facie evidence that the ~~[person]~~ actor ~~+~~ did not completely extinguish the fire as required by Subsection ~~[(1)(a)]~~ (2)(a).

Section ~~26~~ 28. Section **76-6-105** is amended to read:

### **76-6-105. Causing a catastrophe -- Penalties.**

(1) ~~[Any person is guilty of]~~ Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) An actor commits causing a catastrophe if the ~~[person]~~ actor causes widespread injury or damage to persons or property by:

- (a) use of a weapon of mass destruction as defined in Section 76-10-401; or
- (b) explosion, fire, flood, avalanche, collapse of a building, or other harmful or

destructive force or substance that is not a weapon of mass destruction.

~~[(2)]~~ (3) ~~[Causing a catastrophe]~~ ~~[(3)]~~ A violation of Subsection (2) is:

(a) a first degree felony if the ~~[person]~~ actor causes the catastrophe knowingly and by the use of a weapon of mass destruction;

(b) a second degree felony if the ~~[person]~~ actor causes the catastrophe knowingly and by a means other than a weapon of mass destruction; and

(c) a class A misdemeanor if the ~~[person]~~ actor causes the ca catastrophe recklessly.

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~~[(3)]~~ (4) In addition to any other penalty authorized by law, a court shall order ~~[any person]~~ an actor convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to the violation, unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section ~~{27}~~29. Section **76-6-106** is amended to read:

### **76-6-106. Criminal mischief.**

(1) (a) As used in this section, "critical infrastructure" includes:

~~[(a)]~~ (i) information and communication systems;

~~[(b)]~~ (ii) financial and banking systems;

~~[(c)]~~ (iii) any railroads, airlines, airports, airways, highways, bridges, waterways, fixed guideways, or other transportation systems intended for the transportation of persons or property;

~~[(d)]~~ (iv) any public utility service, including the power, energy, and water supply systems;

~~[(e)]~~ (v) sewage and water treatment systems;

~~[(f)]~~ (vi) health care facilities as listed in Section 26-21-2, and emergency fire, medical, and law enforcement response systems;

~~[(g)]~~ (vii) public health facilities and systems;

~~[(h)]~~ (viii) food distribution systems; and

~~[(i)]~~ (ix) other government operations and services.

(b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) ~~[A person]~~ An actor commits criminal mischief if the ~~[person]~~ actor:

~~[(a) under circumstances not amounting to arson, damages or destroys property with the intention of defrauding an insurer;]~~

~~[(b)]~~ (a) intentionally and unlawfully tampers with the property of another and as a result:

(i) recklessly endangers:

(A) human life; or

(B) human health or safety; or

(ii) recklessly causes or threatens a substantial interruption or impairment of any

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critical infrastructure; or

~~[(c) intentionally damages, defaces, or destroys the property of another; or]~~

~~[(d) (b) recklessly or willfully shoots or propels a missile or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing.~~

~~[(3) (a) (i) A violation of Subsection (2)(a) is a third degree felony.]~~

~~[(ii) (3) (a) A violation of Subsection ~~[(2) (b) (a) (i) (A)]~~ (2)(a)(i)(A) is a class A misdemeanor.~~

~~[(iii) (b) A violation of Subsection ~~[(2) (b) (a) (i) (B)]~~ (2)(a)(i)(B) is a class B misdemeanor.~~

~~[(iv) (c) A violation of Subsection ~~[(2) (b) (a) (ii)]~~ (2)(a)(ii) is a second degree felony.~~

~~[(b) (d) Any other violation of this section is a:~~

~~(i) second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$5,000 in value;~~

~~(ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$1,500 but is less than \$5,000 in value;~~

~~(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$500 but is less than \$1,500 in value; and~~

~~(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than \$500 in value.~~

(4) In determining the value of damages under this section, or for computer crimes under Section 76-6-703, the value of any item, computer, computer network, computer property, computer services, software, or data includes the measurable value of the loss of use of the items and the measurable cost to replace or restore the items.

(5) In addition to any other penalty authorized by law, a court shall order ~~[any person]~~ an actor convicted of any violation of this section to reimburse any federal, state, or local unit of government, or any private business, organization, individual, or entity for all expenses incurred in responding to a violation of Subsection ~~[(2) (b) (a) (ii)]~~ (2)(a)(ii), unless the court states on the record the reasons why the reimbursement would be inappropriate.

Section ~~{28}~~30. Section **76-6-106.1** is enacted to read:

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### **76-6-106.1. Property damage or destruction.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) An actor commits property damage or destruction if the actor under circumstances not amounting to arson or criminal mischief:

(a) damages or destroys property with the intention of defrauding an insurer; or

(b) intentionally damages, defaces, or destroys the property of another.

(3) (a) ~~{A}~~(i) Except as provided in Subsection (3)(a)(ii), a violation of Subsection (2)(a) is a third degree felony.

~~{b}~~(ii) ~~{Any other}~~A violation of ~~{this section}~~Subsection (2)(a) is a second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$5,000.

(b) A violation of Subsection (2)(b) is a:

(i) second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$5,000 in value;

(ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$1,500 but is less than \$5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$500 but is less than \$1,500 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than \$500 in value.

(4) In determining the value of damages under this section, or for computer crimes under Section 76-6-703, the value of any item, computer, computer network, computer property, computer services, software, or data includes the measurable value of the loss of use of the items and the measurable cost to replace or restore the items.

Section ~~{29}~~31. Section **76-6-107** is amended to read:

**76-6-107. Defacement by graffiti defined -- Penalties -- Removal costs -- Reimbursement liability -- Victim liability.**

(1) (a) As used in this section[?], "victim" means the person whose property is defaced or damaged by the use of graffiti and who bears the expense for removal of the graffiti.

(b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) An actor commits defacement by graffiti if the actor, without permission, defaces or

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### damages the property of another by graffiti.

~~[(a) "Etching" means defacing, damaging, or destroying hard surfaces by means of a chemical action which uses any caustic cream, gel, liquid, or solution.]~~

~~[(b) "Graffiti" means any form of unauthorized printing, writing, spraying, scratching, affixing, etching, or inscribing on the property of another regardless of the content or the nature of the material used in the commission of the act.]~~

~~[(c) "Victim" means the person whose property is defaced by graffiti and who bears the expense for removal of the graffiti.]~~

~~[(2) Except as provided in Section 76-6-107, graffiti is a:]~~

~~{ (b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.~~

~~— (2) An actor commits defacement by graffiti if the actor, without permission, defaces or damages the property of another by graffiti.~~

~~‡ (3) A violation of Subsection (2) is a:~~

~~(a) second degree felony if the damage caused is in excess of \$5,000;~~

~~(b) third degree felony if the damage caused is equal to or in excess of \$1,000 but less than or equal to \$5,000;~~

~~(c) class A misdemeanor if the damage caused is equal to or in excess of \$300 but less than \$1,000; and~~

~~(d) class B misdemeanor if the damage caused is less than \$300.~~

~~[(3)] (4) Damages under Subsection [(2)] (3) include removal costs, repair costs, or replacement costs, whichever is less.~~

~~[(4)] (5) The court shall order an individual convicted under Subsection [(2)] (3) to pay restitution to the victim in an amount equal to the costs incurred by the victim as a result of the graffiti.~~

~~[(5)] (6) An additional amount of \$1,000 in restitution shall be added to removal costs if the graffiti is positioned on an overpass or an underpass, requires that traffic be interfered with in order to remove it, or the entity responsible for the area in which the clean-up is to take place must provide assistance in order for the removal to take place safely.~~

~~[(6)] (7) An individual who voluntarily, at the individual's own expense, and with the consent of the property owner, removes graffiti for which the individual is responsible may be credited for the removal costs against restitution ordered by a court.~~

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~~[(7)]~~ (8) Before an authorized government agency may issue a citation or assess a fine to a victim for the victim's failure to remove graffiti from the victim's property, the agency shall:

- (a) provide written notice to the victim alerting the victim of the graffiti;
- (b) allow the victim one week after the day on which the agency provides written notice of the graffiti to remove the graffiti; and
- (c) provide the victim with a list of resources available to assist the victim with removal of the graffiti.

~~[(8)]~~ (9) (a) After receiving notification of graffiti under Subsection ~~[(7)]~~~~(a)]~~ (8)(a), a victim who is unable to remove the graffiti due to physical or financial hardship may alert the agency that provided notice under Subsection ~~[(7)]~~~~(a)]~~ (8)(a) of the hardship.

(b) If an authorized government agency finds a victim has demonstrated that the victim would experience significant hardship in removing the graffiti, the agency:

- (i) may not issue a citation or assess a fee to the victim for failure to remove the graffiti; and
- (ii) shall provide, or hire an outside entity to provide, the assistance necessary to remove the graffiti from the victim's property.

(c) An authorized government agency that provides, or hires an outside agency to provide, assistance under Subsection ~~[(8)]~~~~(b)(ii)]~~ (9)(b)(ii), may request reimbursement from a restitution order, under Subsection ~~[(4)]~~ (5), against an individual who used graffiti to damage the property that the agency removed, or paid another to remove.

Section ~~{30}~~32. Section 76-6-107.5 is amended to read:

### **76-6-107.5. Defacing by graffiti on public lands.**

(1) (a) As used in this section~~[:]~~, "public lands" means state or federally owned property that is held substantially in the property's natural state, including canyons, parks owned or managed by the state, national parks, land managed by the Bureau of Land Management, and other lands owned or maintained by a government entity for outdoor recreational use.

(b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

~~[(a) "Etching" means defacing, damaging, or destroying a hard surface by using a chemical, an abrasive object, a knife, or an engraving device.]~~

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~~[(b) "Graffiti" means unauthorized printing, spraying, scratching, affixing, etching, or inscribing on property owned by the state regardless of the content or the nature of the material used in the commission of the act.]~~

~~[(c) "Public lands" means state or federally owned property that is held substantially in its natural state, including canyons, parks owned or managed by the state, national parks, land managed by the Bureau of Land Management, and other lands owned or maintained by a government entity for outdoor recreational use.]~~

~~{ (b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section. }~~

~~{~~ (2) An ~~[individual is guilty of]~~ actor commits defacing by graffiti on public lands ~~[vandalism {}] if the {} individual]~~ if the actor creates, or assists in creating, graffiti on any public lands or state-owned object permanently located on public lands.

(3) ~~[An individual convicted under]~~ A violation of Subsection (2) is ~~[guilty of]~~ a class B misdemeanor.

(4) If an ~~[individual]~~ actor is convicted of defacing by graffiti on public lands ~~[vandalism]~~, the court shall sentence the ~~[individual]~~ actor to a term of community service as follows:

(a) for a first conviction, the court shall sentence the ~~[individual]~~ actor to 100 hours of community service, to be completed within 90 days after the day on which the court issues the order;

(b) for a second conviction, the court shall sentence the ~~[individual]~~ actor to 200 hours of community service, to be completed within 180 days after the day on which the court issues the order; or

~~{~~ (c) for a third or subsequent conviction, the court shall sentence the ~~[individual]~~ actor ~~{~~ to 300 hours of community service, to be completed within 270 days after the day on which the court issues the order.

(5) If an ~~[individual]~~ actor is enrolled in school or maintains full or part-time employment, the ordered community service may not be scheduled at a time the ~~[individual]~~ actor is scheduled to be in school or performing the individual's employment duties.

(6) A sentence of community service described in Subjection (4) shall, to the greatest extent possible, be for the benefit of public lands.

(7) If an ~~[individual]~~ actor is convicted of defacing by graffiti on public lands

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[vandalism], the court may impose a fine up to the full amount of the estimated cost to restore the damaged land, caused by the [individual] actor, to the land's original state.

(8) An [individual] actor who voluntarily, at the [individual's] actor's own expense, and with the consent of the property owner, removes graffiti for which the [individual] actor is responsible shall be credited for costs ordered by the court under Subsection (7).

Section ~~31~~33. Section 76-6-108 is amended to read:

### **76-6-108. Damage to or interruption of a communication device -- Penalty.**

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

~~(a)~~ (i) "Communication device" means any device, including a telephone, cellular telephone, computer, or radio, which may be used in an attempt to summon police, fire, medical, or other emergency aid.

~~(b)~~ (ii) "Emergency aid" means aid or assistance, including law enforcement, fire, or medical services, commonly summoned by persons concerned with imminent or actual:

~~(i)~~ (A) jeopardy to any person's health or safety; or

~~(ii)~~ (B) damage to any person's property.

(b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) ~~[A person is guilty of]~~ An actor commits damage to or interruption of a communication device if the actor attempts to prohibit or interrupt, or prohibits or interrupts, another person's use of a communication device when the other person is attempting to summon emergency aid or has communicated a desire to summon emergency aid, and in the process the actor:

(a) uses force, intimidation, or any other form of violence;

(b) destroys, disables, or damages a communication device; or

(c) commits any other act in an attempt to prohibit or interrupt the person's use of a communication device to summon emergency aid.

(3) ~~[Damage to or interruption of a communication device]~~ A violation of Subsection (2) is a class B misdemeanor.

Section ~~32~~34. Section 76-6-111 is amended to read:

### **76-6-111. Wanton destruction of livestock -- Penalties -- Restitution criteria -- Seizure and disposition of property.**

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

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~~(a)~~ (i) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

~~(b)~~ (ii) "Livestock" means a domestic animal or fur bearer raised or kept for profit or as an asset, including:

~~(i)~~ (A) cattle;

~~(ii)~~ (B) sheep;

~~(iii)~~ (C) goats;

~~(iv)~~ (D) swine;

~~(v)~~ (E) horses;

~~(vi)~~ (F) mules;

~~(vii)~~ (G) poultry;

~~(viii)~~ (H) domesticated elk as defined in Section 4-39-102; and

~~(ix)~~ (I) livestock guardian dogs.

~~(c)~~ (iii) "Livestock guardian dog" means a dog that is being used to live with and guard livestock, other than itself, from predators.

(b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) Unless authorized by Section 4-25-201, 4-25-202, 4-25-401, 4-39-401, or 18-1-3, ~~[a person is guilty of]~~ an actor commits wanton destruction of livestock if ~~[that person]~~ the actor:

(a) injures, physically alters, releases, or causes the death of livestock; and

(b) does so:

(i) intentionally or knowingly; and

(ii) without the permission of the owner of the livestock.

~~[(3) For purposes of this section, a livestock guardian dog is presumed to belong to an owner of the livestock with which the livestock guardian dog was living at the time of an alleged violation of Subsection (2).]~~

~~[(4)]~~ [(3)] ~~[Wanton destruction of livestock]~~ [(3)] A violation of Subsection (2) is ~~[punishable as]~~ a:

(a) class B misdemeanor if the aggregate value of the livestock is \$250 or less;

(b) class A misdemeanor if the aggregate value of the livestock is more than \$250, but does not exceed \$750;

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(c) third degree felony if the aggregate value of the livestock is more than \$750, but does not exceed \$5,000; and

(d) second degree felony if the aggregate value of the livestock is more than \$5,000.

(4) For purposes of this section, a livestock guardian dog is presumed to belong to an owner of the livestock with which the livestock guardian dog was living at the time of an alleged violation of Subsection (2).

(5) When a court orders [~~a person~~] an actor who is convicted of wanton destruction of livestock to pay restitution under Title 77, Chapter 38b, Crime Victims Restitution Act, the court shall consider the restitution guidelines in Subsection (6) when setting the amount of restitution under Section 77-38b-205.

(6) The minimum restitution value for cattle and sheep is the sum of the following, unless the court states on the record why it finds the sum to be inappropriate:

(a) the fair market value of the animal, using as a guide the market information obtained from the Department of Agriculture and Food created under Section 4-2-102; and

(b) 10 years times the average annual value of offspring, for which average annual value is determined using data obtained from the National Agricultural Statistics Service within the United States Department of Agriculture, for the most recent 10-year period available.

(7) A material, device, or vehicle used in violation of Subsection (2) is subject to forfeiture under the procedures and substantive protections established in Title 24, Forfeiture and Disposition of Property Act.

(8) A peace officer may seize a material, device, or vehicle used in violation of Subsection (2):

(a) upon notice and service of process issued by a court having jurisdiction over the property; or

(b) without notice and service of process if:

(i) the seizure is incident to an arrest under:

(A) a search warrant; or

(B) an inspection under an administrative inspection warrant;

(ii) the material, device, or vehicle has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding under this section; or

(iii) the peace officer has probable cause to believe that the property has been used in

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violation of Subsection (2).

(9) (a) A material, device, or vehicle seized under this section is not repleviable but is in custody of the law enforcement agency making the seizure, subject only to the orders and decrees of a court or official having jurisdiction.

(b) A peace officer who seizes a material, device, or vehicle under this section may:

(i) place the property under seal;

(ii) remove the property to a place designated by the warrant under which it was seized;

or

(iii) take custody of the property and remove it to an appropriate location for disposition in accordance with law.

Section ~~33~~35. Section 76-6-112 is amended to read:

### **76-6-112. Agricultural operation interference -- Penalties.**

(1) (a) As used in this section, "agricultural operation" means private property used for the production of livestock, poultry, livestock products, or poultry products.

(b) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

(2) [~~A person is guilty of~~] An actor commits agricultural operation interference if the [~~person~~] actor:

(a) without consent from the owner of the agricultural operation, or the owner's agent, knowingly or intentionally records an image of, or sound from, the agricultural operation by leaving a recording device on the agricultural operation;

(b) obtains access to an agricultural operation under false pretenses;

(c) (i) applies for employment at an agricultural operation with the intent to record an image of, or sound from, the agricultural operation;

(ii) knows, at the time that the [~~person~~] actor accepts employment at the agricultural operation, that the owner of the agricultural operation prohibits the employee from recording an image of, or sound from, the agricultural operation; and

(iii) while employed at, and while present on, the agricultural operation, records an image of, or sound from, the agricultural operation; or

(d) without consent from the owner of the operation or the owner's agent, knowingly or intentionally records an image of, or sound from, an agricultural operation while the person is committing criminal trespass, as described in Section 76-6-206, on the agricultural operation.

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(3) (a) A ~~[person who commits agricultural operation interference described in]~~ violation of Subsection (2)(a) is ~~[guilty of]~~ a class A misdemeanor.

~~[(4)]~~ (b) ~~[A ~~{} person who commits agricultural operation interference described in]~~ A violation of Subsection (2)(b), (c), or (d) is ~~[guilty of]~~ a class B misdemeanor.~~

Section ~~{34}~~36. Section **76-6-202** is amended to read:

### **76-6-202. Burglary.**

~~{}~~(1) Terms defined in Sections 76-1-101.5 and 76-6-101 apply to this section.

~~{(1)}~~(2) An actor ~~[is guilty of { burglary who}]~~ commits burglary ~~[who]~~ if the actor 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]~~ in violation of Section 76-9-702;
- (e) sexual battery, ~~[a]~~ in violation of Section 76-9-702.1;
- (f) lewdness involving a child, in violation of Section 76-9-702.5; or
- (g) voyeurism ~~[under]~~, in violation of Section 76-9-702.7.

~~{(2)}~~(3) (a) [Burglary] ~~{(3) (a)}~~ Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony [unless it was committed in a dwelling, in which event it is a second degree felony].

(b) A violation of Subsection (2) is a second degree felony if the violation is committed in a dwelling.

~~{(3)}~~ (4) A violation of this section is a separate offense from any of the offenses listed in Subsections ~~[(1) ~~{(2)}~~ (a) through (g)]~~ (2)(a) through (g), and which may be committed by the actor while in the building.

Section ~~{35}~~37. Section **76-6-203** is amended to read:

### **76-6-203. Aggravated burglary.**

~~{}~~(1) ~~[A person is guilty of] ~~{(1)}~~~~ Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) An actor commits aggravated burglary if in attempting, committing, or fleeing from a burglary the actor or another participant in the crime:

- (a) causes bodily injury to any person who is not a participant in the crime;

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(b) uses or threatens the immediate use of a dangerous weapon against any person who is not a participant in the crime; or

(c) possesses or attempts to use any explosive or dangerous weapon.

~~[(2)]~~ ~~[(3)]~~ ~~[Aggravated burglary]~~ ~~[(3)]~~ A violation of Subsection (2) is a first degree felony.

~~[(3)]~~ As used in this section, "dangerous weapon" has the same definition as under Section 76-1-101.5.]

Section ~~[(36)]~~ 38. Section 76-6-204 is amended to read:

### **76-6-204. Burglary of a vehicle -- Charge of other offense.**

~~[(1)]~~ ~~[(1)]~~ ~~[Any person who]~~ ~~[(1)]~~ Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) An actor commits burglary of a vehicle if the actor unlawfully enters any vehicle with intent to commit a felony or theft ~~[is guilty of a burglary of a vehicle]~~.

~~[(2)]~~ ~~[(3)]~~ ~~[Burglary of a vehicle]~~ ~~[(3)]~~ A violation of Subsection (2) is a class A misdemeanor.

~~[(3)]~~ (4) A charge against ~~[any person]~~ an actor for a violation of Subsection ~~[(1)]~~ ~~shall~~ (2) does not preclude a charge for a commission of any other offense.

Section ~~[(37)]~~ 39. Section 76-6-204.5 is amended to read:

### **76-6-204.5. Burglary of a railroad car -- Charge of other offenses.**

~~[(1)]~~ ~~[(1)]~~ ~~[Any person]~~ ~~[(1)]~~ Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) An actor commits burglary of a railroad car ~~[when the person]~~ if the actor breaks the lock or seal on any railroad car, with the intent to commit a felony or theft.

~~[(2)]~~ ~~[(3)]~~ ~~[Burglary of a railroad car]~~ ~~[(3)]~~ A violation of Subsection (2) is a third degree felony.

~~[(3)]~~ (4) Charging a person for a violation of Subsection ~~[(1)]~~ (2) does not preclude charging the person for any other offense.

Section ~~[(38)]~~ 40. Section 76-6-205 is amended to read:

### **76-6-205. Manufacture or possession of instrument for burglary or theft.**

~~[(Any person who)]~~ (1) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

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(2) ~~[Any person who]~~ An actor commits manufacture or possession of an instrument for burglary or theft if the actor manufactures or possesses any instrument, tool, device, article, or other thing adapted, designed, or commonly used in advancing or facilitating the commission of any offense under circumstances manifesting an intent to use or knowledge that ~~[some]~~ another person intends to use the same in the commission of a burglary or theft ~~[is guilty of]~~.

(3) A violation of Subsection (2) is a class B misdemeanor.

Section ~~{39}~~41. Section **76-6-206** is amended to read:

### **76-6-206. Criminal trespass.**

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

~~[(a)]~~ (i) "Enter" means intrusion of the entire body or the entire unmanned aircraft.

(ii) "Graffiti" means the same as that term is defined in Section 76-6-101.

~~[(b)]~~ (iii) "Remain unlawfully," as that term relates to an unmanned aircraft, means remaining on or over private property when:

~~[(i)]~~ (A) the private property or any portion of the private property is not open to the public; and

~~[(ii)]~~ (B) the person operating the unmanned aircraft is not otherwise authorized to fly the unmanned aircraft over the private property or any portion of the private property.

(b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) ~~[A person is guilty of]~~ An actor commits criminal trespass if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204~~(a)~~ or a violation of Section 76-10-2402 regarding commercial obstruction:

(a) the ~~[person]~~ actor enters or remains unlawfully on or causes an unmanned aircraft to enter and remain unlawfully over property and:

(i) intends to cause annoyance or injury to any person or damage to any property, including the use of graffiti ~~[as defined in Section 76-6-107]~~;

(ii) intends to commit any crime, other than theft or a felony; or

(iii) is reckless as to whether the ~~[person's]~~ actor's or unmanned aircraft's presence will cause fear for the safety of another;

(b) knowing the ~~[person's]~~ actor's or unmanned aircraft's entry or presence is unlawful, the ~~[person]~~ actor enters or remains on or causes an unmanned aircraft to enter or remain

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unlawfully over property to which notice against entering is given by:

- (i) personal communication to the [person] actor by the owner or someone with apparent authority to act for the owner;
- (ii) fencing or other enclosure obviously designed to exclude intruders; or
- (iii) posting of signs reasonably likely to come to the attention of intruders; or
- (c) the [person] actor enters a condominium unit in violation of Subsection 57-8-7(8).

(3) (a) [~~A~~] Except as provided in Subsection (3)(b), a violation of Subsection (2)(a) or (b) is a class B misdemeanor [unless the violation is committed in a dwelling, in which event the violation is a class A misdemeanor].

(b) If a violation of Subsection (2)(a) or (b) is committed in a dwelling, the violation is a class A misdemeanor.

~~[(b)]~~ (c) A violation of Subsection (2)(c) is an infraction.

(4) It is a defense to prosecution under this section that:

- (a) the property was at the time open to the public; and
- (b) the [~~actor~~] defendant complied with all lawful conditions imposed on access to or remaining on the property.

(5) In addition to an order for restitution under Section 77-38b-205, [~~a person~~] an actor who commits a violation of Subsection (2) may also be liable for:

- (a) statutory damages in the amount of three times the value of damages resulting from the violation of Subsection (2) or \$500, whichever is greater; and
- (b) reasonable attorney fees not to exceed \$250, and court costs.
- (6) Civil damages under Subsection (5) may be collected in a separate action by the property owner or the owner's assignee.

Section ~~{40}~~42. Section **76-6-206.1** is amended to read:

### **76-6-206.1. Criminal trespass of abandoned or inactive mines.**

(1) (a) For purposes of this section:

~~[(a)]~~ (i) "Abandoned or inactive mine" means an underground mine which is no longer open for access or no longer under excavation and has been clearly marked as closed or protected from entry.

(ii) "Burglary" means an offense described in Section 76-6-202, 76-6-203, or 76-6-204.

~~[(b)]~~ (iii) "Enter" means intrusion of the entire body.

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(b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) [~~A person is guilty of~~] An actor commits criminal trespass of an abandoned or inactive mine if, under circumstances not amounting to burglary [~~as defined in Section 76-6-202, 76-6-203, or 76-6-204~~], the actor:

(a) [~~the person~~] intentionally enters and remains unlawfully in the underground workings of an abandoned or inactive mine; or

(b) intentionally and without authority removes, destroys, or tampers with any warning sign, covering, fencing, or other method of protection from entry placed on, around, or over any mine shaft, mine portal, or other abandoned or inactive mining excavation property.

(3) (a) A violation of Subsection (2)(a) is a class B misdemeanor.

~~(4)~~ (b) A violation of Subsection (2)(b) is a class A misdemeanor.

Section ~~{41}~~43. Section **76-6-206.2** is amended to read:

### **76-6-206.2. Criminal trespass on state park lands.**

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

~~(a)~~ (i) "Authorization" means specific written permission by, or contractual agreement with, the Division of State Parks.

~~(b)~~ (ii) "Criminal trespass" means the elements of the crime of criminal trespass, as set forth in Section 76-6-206.

~~(c)~~ (iii) "Division" means the Division of State Parks created in Section 79-4-201.

~~(d)~~ (iv) "State park lands" means all lands administered by the division.

(b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) [~~A person is guilty of~~] An actor commits criminal trespass on state park lands and is liable for the civil damages prescribed in Subsection (5) if, under circumstances not amounting to a greater offense, and without authorization, the [~~person~~] actor:

(a) constructs improvements or structures on state park lands;

(b) uses or occupies state park lands for more than 30 days after the cancellation or expiration of authorization;

(c) knowingly or intentionally uses state park lands for commercial gain;

(d) intentionally or knowingly grazes livestock on state park lands, except as provided in Section 72-3-112; or

(e) remains, after being ordered to leave by [~~someone~~] a person with actual authority to

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act for the division, or by a law enforcement officer.

(3) A violation of Subsection (2) is a class B misdemeanor.

~~(3)~~ (4) ~~[A person is not guilty of]~~ ~~(4)~~ A person does not commit criminal trespass if that person enters onto state park lands:

(a) without first paying the required fee; and

(b) for the sole purpose of pursuing recreational activity.

~~(4) A violation of Subsection (2) is a class B misdemeanor.]~~

(5) (a) In addition to an order for restitution under Section 77-38b-205, ~~[a person]~~ an actor who commits any act described in Subsection (2) may also be liable for civil damages in the amount of three times the value of:

~~(a)~~ (i) damages resulting from a violation of Subsection (2);

~~(b)~~ (ii) the water, mineral, vegetation, improvement, or structure on state park lands that is removed, destroyed, used, or consumed without authorization;

~~(c)~~ (iii) the historical, prehistorical, archaeological, or paleontological resource on state park lands that is removed, destroyed, used, or consumed without authorization; or

~~(d)~~ (iv) the consideration which would have been charged by the division for unauthorized use of the land and resources during the period of trespass.

~~(6)~~ (b) Civil damages awarded under Subsection (5)(a):

(i) may be collected in a separate action by the division~~;~~; and

(ii) shall be deposited ~~[in]~~ into the State ~~[Parks]~~ Park Fees Restricted Account as established in Section 79-4-402.

Section ~~(42)~~ 44. Section **76-6-206.3** is amended to read:

### **76-6-206.3. Criminal trespass on agricultural land or range land.**

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

~~(a)~~ (i) "Agricultural or range land" and "land" mean land as defined under Subsections ~~[(1)(d) and (e)]~~ (1)(a)(iv) and (v).

~~(b)~~ (ii) "Authorization" means specific written permission by, or contractual agreement with, the owner or manager of the property.

~~(c)~~ (iii) "Criminal trespass" means the elements of the crime of criminal trespass under Section 76-6-206.

~~(d)~~ (iv) "Land in agricultural use" has the same meaning as in Section 59-2-502.

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~~[(e)]~~ (v) (A) "Range land" means privately owned land that is not fenced or divided into lots and that is generally unimproved. ~~[This land]~~

(B) "Range land" includes land used for livestock.

(b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

~~(2) [A person is guilty of the class B misdemeanor criminal offense of]~~ An actor commits criminal trespass on agricultural or range land and is liable for the civil damages under Subsection (5) if, under circumstances not amounting to a greater offense, and without authorization or a right under state law, the ~~[person]~~ actor enters or remains on agricultural or range land regarding which notice prohibiting entry is given by:

(a) personal communication to the ~~[person]~~ actor by the owner of the land, an employee of the owner, or a person with apparent authority to act for the owner;

(b) fencing or other form of enclosure a reasonable person would recognize as intended to exclude intruders; or

(c) posted signs or markers that would reasonably be expected to be seen by persons in the area of the borders of the land.

~~[(3) A person is guilty of the class B misdemeanor criminal offense of cutting, destroying, or rendering ineffective the fencing of agricultural or range land if the person willfully cuts, destroys, or renders ineffective any fencing as described under Subsection (2)(b).]~~

~~[(4)]~~ (3) A violation of Subsection (2) is a class B misdemeanor.

(4) In addition to an order for restitution under Section 77-38b-205, ~~[a person]~~ an actor who commits any violation of Subsection (2) ~~[or (3)]~~ may also be liable for:

(a) statutory damages in the amount of three times the value of damages resulting from the violation of Subsection (2) or \$500, whichever is greater; ~~[and]~~

(b) reasonable attorney fees not to exceed \$250~~[,]~~; and

(c) court costs.

(5) Civil damages under Subsection (4) may be collected in a separate action by the owner of the agricultural or range land or the owner's assignee.

Section ~~{43}~~ 45. Section **76-6-206.4** is amended to read:

**76-6-206.4. Criminal trespass by long-term guest to a residence.**

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

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(i) "Burglary" means an offense described in Section 76-6-202, 76-6-203, or 76-6-204.

~~[(a)]~~ (ii) "Long-term guest" means an individual who is not a tenant but who is given express or implied permission by the person who is the primary occupant of the residence or someone with apparent authority to act for the primary occupant to enter a portion of a residence or temporarily occupy a portion of a residence:

~~[(i)]~~ (A) for a period of time longer than 48 hours; and

~~[(ii)]~~ (B) without providing the owner or primary occupant of the residence compensation or entering into an agreement that the individual provide labor in lieu of providing the owner or primary occupant compensation for occupying the residence.

~~[(b)]~~ (iii) "Residence" means an improvement to real property used or occupied as a primary or secondary dwelling.

~~[(c)]~~ (iv) "Tenant" means a person who has the right to occupy a residence under a rental agreement or lease, or has a tenancy by operation of law.

~~[(2) A long-term guest is guilty of criminal trespass of a residence if, under circumstances not amounting to burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204, the long-term guest]~~

(b) Terms defined in Sections 76-1-101.5 and 76-6-201 apply to this section.

(2) An actor commits criminal trespass of a residence if the actor:

(a) is a long-term guest; and

(b) in circumstances not amounting to burglary, remains in a residence after the [long-term guest] actor receives notice against remaining in the residence by personal communication to the [long-term guest] actor by the person who is the primary occupant of the residence or someone with apparent authority to act for the primary occupant.

(3) A violation of Subsection (2) is a class B misdemeanor.

(4) Before a law enforcement officer escorts an [individual] actor from a residence for a violation of [this section] Subsection (2), the law enforcement officer shall provide the [individual] actor a reasonable time for the [individual] actor to collect the [individual's] actor's personal belongings.

Section ~~{44}~~46. Section 76-6-206.5 is enacted to read:

**76-6-206.5. Cutting, destroying, or rendering ineffective fencing of agricultural or range land.**

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(1) Terms defined in Sections 76-1-101.5, 76-6-201, and 76-6-206.3 apply to this section.

(2) An actor commits cutting, destroying, or rendering ineffective the fencing of agricultural or range land if the person willfully cuts, destroys, or renders ineffective any fencing or other form of enclosure a reasonable person would recognize as intended to exclude intruders.

(3) A violation of Subsection (2) is a class B misdemeanor.

(4) In addition to an order for restitution under Section 77-38b-205, an actor who commits a violation of Subsection (2) may also be liable for:

(a) statutory damages in the amount of \$500;

(b) reasonable attorney fees not to exceed \$250; and

(c) court costs.

(5) Civil damages under Subsection (4) may be collected in a separate action by the owner of the agricultural or range land or the owner's assignee.

Section ~~{45}~~47. Section **76-6-301** is amended to read:

### **76-6-301. Robbery.**

~~{1}~~(1) ~~(a)~~ [A person] ~~{(1)(a)}~~ As used in this section, an act is considered to be "in the course of committing a theft or unauthorized possession of property" if the act occurs:

(i) in the course of an attempt to commit theft or unauthorized possession of property;

(ii) in the commission of theft or unauthorized possession of property; or

(iii) in the immediate flight after the attempt or commission.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits robbery if the actor:

(a) [the person] unlawfully and intentionally takes or attempts to take personal property in the possession of [another] an individual from [his] the individual's person, or immediate presence, against [his] the individual's will, by means of force or fear, and with a purpose or intent to deprive the [person] individual permanently or temporarily of the personal property;  
or

(b) [the person] intentionally or knowingly uses force or fear of immediate force against [another] an individual in the course of committing a theft or [wrongful appropriation] unauthorized possession of property.

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~~[(2) An act is considered to be "in the course of committing a theft or wrongful appropriation" if it occurs:]~~

~~[(a) in the course of an attempt to commit theft or wrongful appropriation;]~~

~~[(b) in the commission of theft or wrongful appropriation; or]~~

~~[(c) in the immediate flight after the attempt or commission.]~~

~~{(3) [Robbery is a felony of the] (3) }~~ A violation of Subsection (2) is a second degree felony.

Section ~~{46}~~48. Section **76-6-302** is amended to read:

### **76-6-302. Aggravated robbery.**

~~{(1) (a) [A person] (1) (a) }~~ As used in this section, an act is considered to be "in the course of committing a robbery" if the act occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits aggravated robbery if in the course of committing a robbery, [he] the actor:

(a) uses or threatens to use a dangerous weapon [as defined in Section 76-1-101.5];

(b) causes serious bodily injury [upon another] to another individual; or

(c) takes or attempts to take an operable motor vehicle.

**(3) A violation of Subsection (2) is a first degree felony.**

~~[(2) Aggravated robbery is a first degree felony.]~~

~~[(3) For the purposes of this part, an act shall be considered to be "in the course of committing a robbery" if it occurs in an attempt to commit, during the commission of, or in the immediate flight after the attempt or commission of a robbery.]~~

~~{ (3) A violation of Subsection (2) is a first degree felony. }~~

~~{~~ Section ~~{47}~~49. Section **76-6-403** is amended to read:

### **76-6-403. Theft -- Evidence to support accusation.**

Conduct denominated theft in this part constitutes a single offense embracing the separate offenses such as those heretofore known as larceny, larceny by trick, larceny by bailees, embezzlement, false pretense, extortion, blackmail, receiving stolen property. An accusation of theft may be supported by evidence that it was committed in any manner specified in [~~Sections 76-6-404 through 76-6-410~~] this part, subject to the power of the court to

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ensure a fair trial by granting a continuance or other appropriate relief where the conduct of the defense would be prejudiced by lack of fair notice or by surprise.

Section ~~{48}~~50. Section 76-6-404 is amended to read:

### 76-6-404. Theft -- Elements.

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) [A person] An actor commits theft if [he] the actor obtains or exercises unauthorized control over [the] another person's property [of another] with a purpose to deprive [him thereof] the person of the person's property.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the:

(i) value of the property 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) a third degree felony if:

(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

(ii) the property is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the property 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

(iv) (A) the value of property 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 Subsection 78B-3-108(4); or

(v) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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

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the current conviction is based;

(c) 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 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 Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

Section ~~{49}~~51. Section **76-6-404.5** is amended to read:

### **76-6-404.5. Unauthorized possession of property.**

~~{f}~~(1) ~~[A person]~~ ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits ~~[wrongful appropriation]~~ unauthorized possession of property if ~~[he]~~ the actor obtains or exercises unauthorized control over ~~[the]~~ another person's property ~~{f}~~ of another, ~~{f}~~ without the consent of the property's owner or legal custodian, and with the intent to temporarily appropriate, possess, or use the property or to temporarily deprive the property's ~~{f}~~ owner or legal custodian of possession of the property.

~~[(2) The consent of the owner or legal custodian of the property to its control by the actor is not presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the property by any person.]~~

~~[(3) Wrongful appropriation is punishable one degree lower than theft, as provided in Section 76-6-412, so that a violation which would have been:]~~

~~[(a) a second degree felony under Section 76-6-412 if it had been theft is a third degree felony if it is wrongful appropriation;]~~

~~[(b) a third degree felony under Section 76-6-412 if it had been theft is a class A misdemeanor if it is wrongful appropriation;]~~

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~~[(c) a class A misdemeanor under Section 76-6-412 if it had been theft is a class B misdemeanor if it is wrongful appropriation; and]~~

~~[(d) a class B misdemeanor under Section 76-6-412 if it had been theft is a class C misdemeanor if it is wrongful appropriation.]~~

~~[(4)]~~ (3) ~~[Wrongful appropriation]~~ A violation of Subsection (2) is:

(a) a third degree felony if:

(i) the value of the property is or exceeds \$5,000;

(ii) the property is a firearm or an operable motor vehicle; or

(iii) the property is taken from the person of another;

(b) a class A misdemeanor if:

(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

(ii) the property is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the property 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

(iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;

(B) the unauthorized possession of property 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 Subsection 78B-3-108(4); or

(v) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if:

(i) the value of the property is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of property is less than \$500;

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(B) the unauthorized possession of property 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 Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class C misdemeanor if the value of the property is less than \$500 and the unauthorized possession of property is not an offense under Subsection (3)(c).

(4) ~~[[Wrongful appropriation]]~~ Unauthorized possession of property is a lesser included offense of the offense of theft under Section 76-6-404.

(5) The consent of the owner or legal custodian of the property to the property's control by the actor is not presumed or implied because of the owner's or legal custodian's consent on a previous occasion to the control of the property by any person.

Section ~~50~~52. Section ~~76-6-404.7~~ is amended to read:

### **76-6-404.7. Theft of motor vehicle fuel.**

(1) (a) As used in this section, "motor vehicle fuel" means any combustible gas, liquid, matter, or substance that is used in an internal combustion engine for the generation of power.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A person is guilty of]~~ An actor commits theft of motor vehicle fuel ~~[who]~~ if the actor:

(a) causes a motor vehicle to leave any premises where motor vehicle fuel is offered for retail sale when motor fuel has been dispensed into:

(i) the fuel tank of the motor vehicle; or

(ii) any other container that is then removed from the premises by means of the motor vehicle; and

(b) commits the act under Subsection (2)(a) with the intent to deprive the owner or operator of the premises of the motor vehicle fuel without making full payment for the fuel.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the value of the motor vehicle fuel is or exceeds \$5,000;

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(b) a third degree felony if:

(i) the value of the motor vehicle fuel is or exceeds \$1,500 but is less than \$5,000; or

(ii) the value of the motor vehicle fuel 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);

(iii) (A) the value of the motor vehicle fuel 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 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 (3)(b)(ii)(A) through (3)(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) a class A misdemeanor if:

(i) the value of the motor vehicle fuel is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of the motor vehicle fuel 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 Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class B misdemeanor if the value of the motor vehicle fuel is less than \$500 and the theft is not an offense under Subsection (3)(c).

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~~[(3)] (4) (a)~~ In addition to the penalties ~~[for theft under Section 76-6-412]~~ described in Subsection (3), the sentencing court may order the suspension of the driver license of ~~[a person]~~ an actor convicted of theft of motor vehicle fuel.

(b) The suspension described in Subsection (4)(a) may not be for more than 90 days as provided in Section 53-3-220.

Section ~~{51}~~53. Section **76-6-405** is amended to read:

### **76-6-405. Theft by deception.**

(1) (a) As used in this section, "puffing" means an exaggerated commendation of wares or worth in a communication addressed to an individual, group, or the public.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) ~~[A person]~~ An actor commits theft by deception if the ~~[person]~~ actor obtains or exercises control over property of another person:

(i) by deception; and

(ii) with a purpose to deprive the other person of property.

(b) The deception described in Subsection (2)(a)(i) and the deprivation described in Subsection (2)(a)(ii) may occur at separate times.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the:

(i) value of the property is or exceeds \$5,000; or

(ii) property stolen is a firearm or an operable motor vehicle;

(b) a third degree felony if:

(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

(ii) the property is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the property 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

(iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;

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(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 Subsection 78B-3-108(4); or

(v) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) 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 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 Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

~~[(3)]~~ (4) Theft by deception does not occur when there is only:

(a) falsity as to matters having no pecuniary significance; or

(b) puffing by statements unlikely to deceive an ordinary person in the group addressed.

Section ~~{52}~~54. Section **76-6-406** is amended to read:

### **76-6-406. Theft by extortion.**

~~[(1)] An actor is guilty of theft if the actor obtains or exercises control over the property of another person by extortion and with a purpose to deprive the person of the person's property.]~~

~~[(2)]~~ (1) (a) As used in this section, extortion occurs when an actor threatens to:

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~~[(a)]~~ (i) cause physical harm in the future to the person threatened, ~~or~~ ~~[(c)]~~ to any other person, or to property at any time;

~~[(b)]~~ (ii) subject the person threatened or any other person to physical confinement or restraint;

~~[(c)]~~ (iii) engage in other conduct constituting a crime;

~~[(d)]~~ (iv) accuse any person of a crime or expose any person to hatred, contempt, or ridicule;

~~[(e)]~~ (v) reveal any information sought to be concealed by the person threatened;

~~[(f)]~~ (vi) testify ~~or~~, provide information, or withhold testimony or information with respect to a person's legal claim or defense;

~~[(g)]~~ (vii) take action as an official against anyone or anything, or withhold official action, or cause such action or withholding;

~~[(h)]~~ (viii) bring about or continue a strike, boycott, or other similar collective action to obtain property that is not demanded or received for the benefit of the group that the actor purports to represent; or

~~[(i)]~~ (ix) do any other act which would not in itself substantially benefit the actor but which would harm substantially any other person with respect to that person's health, safety, business, calling, career, financial condition, reputation, or personal relationships.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits theft by extortion if the actor obtains or exercises control over the property of another person by extortion and with a purpose to deprive the person of the person's property.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the:

(i) value of the property 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) a third degree felony if:

(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

(ii) the property is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the property is or exceeds \$500 and the actor has been twice before

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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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

(iv) (A) the value of property 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 Subsection 78B-3-108(4); or

(v) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) 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 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 Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

~~(3)~~ (4) (a) A person who is adversely impacted by the conduct prohibited in Subsection ~~[(1)]~~ (2) may bring a civil action for equitable relief and damages.

(b) In accordance with Section 78B-2-305, a person who brings an action under

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Subsection ~~[(3)(a)]~~ (4)(a) shall commence the action within three years after the day on which the cause of action arises.

Section ~~{53}~~55. Section 76-6-407 is amended to read:

### 76-6-407. Theft of lost, mislaid, or mistakenly delivered property.

~~[A person commits theft when:]~~

~~[(1) He]~~ (1) He Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits theft of lost, mislaid, or mistakenly delivered property if the actor:

~~[(1) He]~~ (a) obtains another person's property [of another which he] and knows the property to have been lost or mislaid, or to have been delivered under a mistake as to the identity of the recipient or as to the nature or amount of the property, without taking reasonable measures to return ~~[it] the property~~ to the owner; and

~~[(2) He]~~ (b) He has the purpose to deprive the owner of the property when ~~[he] the actor~~ obtains the property or at any time ~~[prior to] before~~ taking the measures ~~[designated in paragraph (1)]~~ described in Subsection (2)(a).

(3) A violation of Subsection (2) is:

(a) a second degree felony if the:

(i) value of the property 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) a third degree felony if:

(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

(ii) the property is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the property 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

(iv) (A) the value of property is or exceeds \$500 but is less than \$1,500;

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(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 Subsection 78B-3-108(4); or

(v) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) 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 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 Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

Section ~~{54}~~56. Section **76-6-408** is amended to read:

**76-6-408. Theft by receiving stolen property -- Duties of pawnbrokers, secondhand businesses, coin dealers, and catalytic converter purchasers.**

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

~~[(a)]~~ (i) "Catalytic converter purchaser" means the same as that term is defined in Section 13-32a-102.

~~[(b)]~~ (ii) "Coin dealer" means the same as that term is defined in Section 13-32a-102.

~~[(c)]~~ (iii) "Pawnbroker" means the same as that term is defined in Section 13-32a-102.

~~[(d)]~~ (iv) "Receives" means acquiring possession, control, title, or lending on the security of the property.

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~~(e)~~ (v) "Scrap metal processor" means the same as that term is defined in Section 76-6-1402.

~~(f)~~ (vi) "Secondhand actor" means:

~~(i)~~ (A) a pawnbroker;

~~(ii)~~ (B) a person who has or operates a business dealing in or collecting used or secondhand merchandise or personal property; or

~~(iii)~~ (C) an agent, employee, or representative of a pawnbroker or person who buys, receives, or obtains property.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A person]~~ An actor commits theft by receiving stolen property if the ~~[person]~~ actor receives, retains, or disposes of the property of another knowing that the property is stolen, or believing that the property is probably stolen, or who conceals, sells, withholds, or aids in concealing, selling, or withholding the property from the owner, knowing or believing the property to be stolen, intending to deprive the owner of the property.

(3) A violation of Subsection (2) is:

(a) a second degree felony if:

(i) the value of the property is or exceeds \$5,000; or

(ii) the property is a firearm or an operable motor vehicle;

(b) a third degree felony if:

(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

(ii) the property is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the property 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B); or

(iv) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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

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the current conviction is based:

(c) a class A misdemeanor if:

(i) the value of the property is or exceeds \$500 but is less than \$1,500; or

(ii) the actor has been twice before convicted of any of the offenses listed in

Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if the value of the property is less than \$500 and the theft is not an offense under Subsection (3)(c).

~~[(3)]~~ (4) Except as provided in Subsection ~~[(4)]~~ (5), the knowledge or belief required under Subsection (2) is presumed in the case of an actor who:

(a) is found in possession or control of other property stolen on a separate occasion; or

(b) has received other stolen property within the year preceding the receiving offense charged.

~~[(4)]~~ (5) (a) The knowledge or belief required under Subsection (2) may only be presumed of a secondhand actor if the secondhand actor does not substantially comply with the material requirements of Section 13-32a-104.

(b) The knowledge or belief required under Subsection (2) may only be presumed of a coin dealer or an employee of a coin dealer if the coin dealer or the employee of the coin dealer does not substantially comply with the requirements of Section 13-32a-104.5.

(c) The knowledge or belief required under Subsection (2) may only be presumed of a catalytic converter purchaser if the catalytic converter purchaser does not substantially comply with the material requirements of Section 13-32a-104.7.

~~[(5)]~~ (6) Unless acting as a catalytic ~~converter~~ purchaser, Subsection ~~[(4)]~~~~(c)]~~ (5)(c) does not apply to a scrap metal processor.

~~[(6)]~~ (7) This section does not preclude the admission of evidence in accordance with the Utah Rules of Evidence.

(8) An actor who violates Subsection (2) 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 ~~{55}~~57. Section 76-6-409 is amended to read:

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### 76-6-409. Theft of service.

~~{(1) (a) [A person] {(1) (a)}~~ As used in this section, "service" includes:

(i) labor, professional service, a public utility or transportation service, restaurant, hotel, motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, a tool, a vehicle, or a trailer for temporary use, telegraph service, steam, admission to entertainment, an exhibition, a sporting event, or other event for which a charge is made;

(ii) gas, electricity, water, sewer, or cable television service, only if the service is obtained by threat, force, or a form of deception not described in Section 76-6-409.3; and

(iii) telephone service, only if the service is obtained by threat, force, or a form of deception not described in Section 76-6-409.6, 76-6-409.7, 76-6-409.8, or 76-6-409.9.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits theft [if he] of service if:

(a) the actor, by deception, threat, force, or another means designed to avoid due payment, obtains [services which he] a service that the actor knows [are] is available only for compensation [by deception, threat, force, or any other means designed to avoid the due payment for them.]; or

~~{(2) A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts the services to his own benefit or to the benefit of another who he knows is not entitled to them.}~~

~~———[(3) In this section "services" includes, but is not limited to, labor, professional service, public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, steam, admission to entertainment, exhibitions, sporting events, or other events for which a charge is made.]~~

~~———[(4) Under this section "services" includes gas, electricity, water, sewer, or cable television services, only if the services are obtained by threat, force, or a form of deception not described in Section 76-6-409.3.]~~

~~———[(5) Under this section "services" includes telephone services only if the services are obtained by threat, force, or a form of deception not described in Sections 76-6-409.5 through 76-6-409.9.]~~

~~———} (b) the actor:~~

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(i) has control over the disposition of another person's service; and

(ii) (A) diverts the other person's service to the benefit of the actor, knowing that the actor is not entitled to the service; or

(B) diverts the other person's service to the benefit of a third person, knowing that the third person is not entitled to the service.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the value of the service is or exceeds \$5,000;

(b) a third degree felony if:

(i) the value of the service is or exceeds \$1,500 but is less than \$5,000;

(ii) the value of the service 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);

(iii) (A) the value of the service 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 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 (3)(b)(ii)(A) through (3)(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) a class A misdemeanor if:

(i) the value of the service stolen is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of the service 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

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from entering the property pursuant to Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class B misdemeanor if the value of the service is less than \$500 and the theft is not an offense under Subsection (3)(c).

~~[(2) A person commits theft if, having control over the disposition of services of another, to which he knows he is not entitled, he diverts the services to his own benefit or to the benefit of another who he knows is not entitled to them.]~~

~~[(3) In this section "services" includes, but is not limited to, labor, professional service, public utility and transportation services, restaurant, hotel, motel, tourist cabin, rooming house, and like accommodations, the supplying of equipment, tools, vehicles, or trailers for temporary use, telephone or telegraph service, steam, admission to entertainment, exhibitions, sporting events, or other events for which a charge is made.]~~

~~[(4) Under this section "services" includes gas, electricity, water, sewer, or cable television services, only if the services are obtained by threat, force, or a form of deception not described in Section 76-6-409.3.]~~

~~[(5) Under this section "services" includes telephone services only if the services are obtained by threat, force, or a form of deception not described in Sections 76-6-409.5 through 76-6-409.9.]~~

Section ~~{56}~~58. Section 76-6-409.1 is amended to read:

**76-6-409.1. Unlawful device for theft of service -- Seizure and destruction -- Civil actions for damages.**

~~[(1) A person may not knowingly:]~~

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits unlawful device for theft of service if the actor:

(a) [~~make or possess any~~] makes or possesses an instrument, apparatus, equipment, or device for the use of, or for the purpose of, committing or attempting to commit theft under Section 76-6-409 or 76-6-409.3; or

(b) [~~sell, offer to sell, advertise, give, transport, or otherwise transfer~~ to another any

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information] sells, offers to sell, advertises, gives, transports, or otherwise transfers to another ~~[[any information,]]~~ person:

(i) an instrument, apparatus, equipment, or device]; or

(ii) any information, plan, or instruction for obtaining, making, or assembling [~~the same~~] an instrument, apparatus, equipment, or device, with intent that [it] the instrument, apparatus, equipment, or device be used, or caused to be used, to commit or attempt to commit theft under Section 76-6-409 or 76-6-409.3.

~~[(2)(a) Any information, instrument, apparatus, equipment, or device, or information, plan, or instruction referred to in Subsection (1) may be seized pursuant to a court order, lawful search and seizure, lawful arrest, or other lawful process:]~~

~~[(b) Upon the conviction of any person for a violation of any provision of this section, any information, instrument, apparatus, equipment, device, plan, or instruction shall be destroyed as contraband by the sheriff of the county in which the person was convicted:]~~

~~[(3)(a) [A person who violates any provision] [(3)(a)] A violation~~ of Subsection ~~[(1) or] (2)~~ is ~~[guilty of]~~ a class A misdemeanor.

(b) Any instrument, apparatus, equipment, device, information, plan, or instruction referred to in Subsection (2) may be seized pursuant to a court order, lawful search and seizure, lawful arrest, or other lawful process.

(c) Upon the conviction of an actor for a violation of this section, the sheriff of the county in which the actor was convicted shall destroy as contraband any instrument, apparatus, equipment, device, information, plan, or instruction.

(4) ~~[Criminal prosecutions]~~ A criminal prosecution under this section ~~[do]~~ does not affect any person's right of civil action for redress for damages suffered as a result of ~~[any]~~ a violation of this section.

Section ~~{57}~~59. Section **76-6-409.3** is amended to read:

**76-6-409.3. Theft of utility or cable television ~~{service}~~services -- Restitution -- Civil action for damages.**

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

~~[(a)] (i)~~ "Cable television service" means ~~[any]~~ an audio, video, or data service provided for payment by a cable television company over ~~[its]~~ the cable ~~{television}~~ company's cable system facilities ~~[for payment]~~, but does not include the use of a satellite dish or antenna.

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(ii) "Occupant" includes a person, including the owner, who occupies the whole or part of a building, whether alone or with others.

~~[(b)]~~ (iii) "Owner" includes [any part-owner] a partial owner, joint owner, tenant in common, joint tenant, or tenant by the entirety of the whole or a part of [any] a building and the property on which [it] the building is located.

~~[(c)]~~ (iv) "Person" means [any] an individual, firm, partnership, corporation, company, association, or other legal entity.

~~[(d)]~~ (v) "Tenant [or occupant]" includes [any] a person, including the owner, who occupies the whole or part of any building, whether alone or with others.

~~[(e)]~~ (vi) "Utility" means any public utility, [municipally-owned] municipally owned utility, or cooperative utility [which] that provides electricity, gas, water, or sewer, or any combination of [them] electricity, gas, water, or sewer, for sale to consumers.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) [A person is guilty of] An actor commits theft of a utility or cable television service if [the person commits any prohibited acts which make], with intent to avoid due payment to the utility or cable television company, the actor makes gas, electricity, water, sewer, or cable television available to a tenant or occupant, including [himself, with intent to avoid due payment to the utility or cable television company. Any person aiding and abetting in these prohibited acts is a party to the offense under Section 76-2-202. Prohibited acts include:] to the actor, by committing any of the following acts:

(a) connecting [any] a tube, pipe, wire, cable, or other instrument with any meter, device, or other instrument used for conducting gas, electricity, water, sewer, or cable television in a manner as permits the use of the gas, electricity, water, sewer, or cable television without [its] the gas, electricity, water, sewer, or cable television passing through a meter or other instrument recording the usage for billing;

(b) altering, injuring, or preventing the normal action of a meter, valve, stopcock, or other instrument used for measuring quantities of gas, electricity, water, or sewer service, or making or maintaining any modification or alteration to any device installed with the authorization of a cable television company for the purpose of intercepting or receiving any program or other service carried by the company [which the person] that the actor is not authorized by the company to receive;

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(c) reconnecting a gas, electricity, water, sewer, or cable television [~~connections~~] connection or otherwise restoring service when one or more of those utilities or cable service [~~have~~] has been lawfully disconnected or turned off by the provider of the utility or cable service;

(d) intentionally breaking, defacing, or causing to be broken or defaced [~~any~~] a seal, locking device, or other part of a metering device for recording usage of gas, electricity, water, or sewer service, or a security system for the recording device, or a cable television control device;

(e) removing a metering device designed to measure quantities of gas, electricity, water, or sewer service;

(f) transferring from one location to another location a metering device for measuring quantities of public utility services of gas, electricity, water, or sewer service;

(g) changing the indicated consumption, jamming the measuring device, bypassing the meter or measuring device with a jumper so that it does not indicate use or registers use incorrectly, or otherwise obtaining quantities of gas, electricity, water, or sewer service from the utility without [~~their~~] the gas, electricity, water, or sewer service passing through a metering device for measuring quantities of consumption for billing purposes;

(h) using a metering device belonging to the utility that has not been assigned to the location and installed by the utility;

(i) fabricating or using a device to pick or otherwise tamper with the locks used to deter utility service diversion, meter tampering, meter thefts, and unauthorized cable television service;

(j) assisting or instructing [~~any~~] a person in obtaining or attempting to obtain any cable television service without payment of all lawful compensation to the company providing the service;

(k) making or maintaining a connection or connections, whether physical, electrical, mechanical, acoustical, or by other means, with [~~any cables, wires, components, or other devices~~] a cable, wire, component, or other device used for the distribution of cable television services without authority from the cable television company; or

(l) possessing without authority any device or printed circuit board designed in whole or in part to receive any cable television programming or [~~services~~] service offered for sale

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over a cable television system, unless the device or printed circuit board includes the use of a satellite dish or antenna, with the intent that the device or printed circuit be used for the reception of the cable television company's services without payment. ~~[For purposes of this subsection, device or printed circuit board does not include the use of a satellite dish or antenna.]~~

(3) (a) A violation of Subsection (2), if the violation is a theft of a utility service, is:

(i) a second degree felony if:

(A) the value of the gas, electricity, water, or sewer service is or exceeds \$5,000; or

(B) if the actor previously has been convicted of a violation of this section;

(ii) a third degree felony if the value of the gas, electricity, water, or sewer service is or exceeds \$1,500 but is not more than \$5,000;

(iii) a class A misdemeanor if the value of the gas, electricity, water, or sewer service is or exceeds \$500 but is not more than \$1,500; or

(iv) a class B misdemeanor if the value of the gas, electricity, water, or sewer service is less than \$500.

(b) A violation of Subsection (2), if the violation is a theft of a cable television service,

is:

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

(ii) a third degree felony if:

(A) the value of the service is or exceeds \$1,500 but is less than \$5,000;

(B) the value of the service 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:

(I) any theft, any robbery, or any burglary with intent to commit theft;

(II) any offense under Part 5, Fraud; or

(III) any attempt to commit any offense under Subsection (3)(b)(ii)(B)(I) or (II); or

(C) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(ii)(B)(I) through (3)(b)(ii)(B)(III), 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;

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(iii) a class A misdemeanor if:

(A) the value of the service stolen is or exceeds \$500 but is less than \$1,500; or

(B) the actor has been twice before convicted of any of the offenses listed in

Subsections (3)(b)(ii)(B)(I) through (3)(b)(ii)(B)(III), 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

(iv) a class B misdemeanor if the value of the service is less than \$500 and the theft is not an offense under Subsection (3)(b)(iii).

(c) (i) An actor who violates this section shall make restitution to the utility or cable television company for the value of the gas, electricity, water, sewer, or cable television service consumed in violation of this section plus all reasonable expenses and costs incurred on account of the violation of this section.

(ii) Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employee time, and equipment use.

~~[(3)]~~ (4) (a) The presence on property in the possession of ~~[a person of any device]~~ an actor of a device or alteration ~~[which]~~ that permits the diversion or use of utility or cable service to avoid the registration of the use by or on a meter installed by the utility or to otherwise avoid the recording of use of the service for payment or otherwise avoid payment gives rise to an inference that the ~~[person]~~ actor in possession of the property installed the device or caused the alteration if:

~~[(a)]~~ (i) the presence of the device or alteration can be attributed only to a deliberate act in furtherance of an intent to avoid payment for utility or cable television service; and

~~[(b)]~~ (ii) the ~~[person]~~ actor charged has received the direct benefit of the reduction of the cost of the utility or cable television service.

~~[(4) A person who violates this section is guilty of the offense of theft of utility or cable television service.]~~

~~[(a) In the case of theft of utility services, if the value of the gas, electricity, water, or sewer service:]~~

~~[(i) is less than \$500, the offense is a class B misdemeanor;]~~

~~[(ii) is or exceeds \$500 but is not more than \$1,500, the offense is a class A misdemeanor;]~~

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~~[(iii) is or exceeds \$1,500 but is not more than \$5,000, the offense is a third degree felony, and]~~

~~[(iv) is or exceeds \$5,000 or if the offender has previously been convicted of a violation of this section, the offense is a second degree felony.]~~

~~[(b) In the case of theft of cable television services, the penalties are prescribed in Section 76-6-412.]~~

~~[(5) A person who violates this section shall make restitution to the utility or cable television company for the value of the gas, electricity, water, sewer, or cable television service consumed in violation of this section plus all reasonable expenses and costs incurred on account of the violation of this section. Reasonable expenses and costs include expenses and costs for investigation, disconnection, reconnection, service calls, employee time, and equipment use.]~~

~~(b) An actor who aids or abets in a prohibited act is a party to the offense under Section 76-2-202.~~

~~[(6) (5) (a) Criminal prosecution under this section does not affect the right of a utility or cable television company to bring a civil action for redress for damages suffered as a result of the commission of any of the acts prohibited by this section.~~

~~[(7) (b) This section does not abridge or alter any other right, action, or remedy otherwise available to a utility or cable television company.~~

Section ~~{58}~~60. Section **76-6-409.5** is amended to read:

### **76-6-409.5. Definitions.**

As used in this section and Sections 76-6-409.6 ~~[through]~~, 76-6-409.7, 76-6-409.8, 76-6-409.9, and 76-6-409.10:

(1) "Access device" means any telecommunication device including the telephone calling card number, electronic serial number, account number, mobile identification number, or personal identification number that can be used to obtain telephone service.

(2) "Clone cellular telephone" or "counterfeit cellular telephone" means a cellular telephone whose electronic serial number has been altered from the electronic serial number that was programmed in the telephone by the manufacturer by someone other than the manufacturer.

(3) "Cloning paraphernalia" means materials that, when possessed in combination, are

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capable of the creation of a cloned cellular telephone. These materials include scanners to intercept the electronic serial number and mobile identification number, cellular telephones, cables, EPROM chips, EPROM burners, software for programming the cloned telephone with a false electronic serial number and mobile identification number combination, a computer containing such software, and lists of electronic serial number and mobile identification number combinations.

(4) "Electronic serial number" means the unique number that:

(a) was programmed into a cellular telephone by its manufacturer;

(b) is transmitted by the cellular telephone; and

(c) is used by cellular telephone providers to validate radio transmissions to the system as having been made by an authorized device.

(5) "EPROM" or "Erasable programmable read-only memory" means an integrated circuit memory that can be programmed from an external source and erased, for reprogramming, by exposure to ultraviolet light.

(6) "Intercept" means to electronically capture, record, reveal, or otherwise access, the signals emitted or received during the operation of a cellular telephone without the consent of the sender or receiver, by means of any instrument, device or equipment.

(7) "Manufacture of an unlawful telecommunication device" means to produce or assemble an unlawful telecommunication device, or to modify, alter, program, or reprogram a telecommunication device to be capable of acquiring or facilitating the acquisition of telecommunication service without the consent of the telecommunication service provider.

(8) "Mobile identification number" means the cellular telephone number assigned to the cellular telephone by the cellular telephone carrier.

(9) "Possess" means to have physical possession or otherwise to exercise control over tangible property.

(10) "Sell" means to offer to, agree to offer to, or to sell, exchange, give, or dispose of an unlawful telecommunications device to another.

(11) "Telecommunication device" means:

(a) any type of instrument, device, machine, or equipment which is capable of transmitting or receiving telephonic, electronic, or radio communications; or

(b) any part of an instrument, device, machine, or equipment, or other computer circuit,

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computer chip, electronic mechanism, or other component, which is capable of facilitating the transmission or reception of telephonic or electronic communications within the radio spectrum allocated to cellular radio telephony.

(12) "Telecommunication service" includes any service provided for a charge or compensation to facilitate the origination, transmission, emission, or reception of signs, signals, writings, images, and sounds or intelligence of any nature by telephone, including cellular telephones, wire, radio, television optical or other electromagnetic system.

(13) "Telecommunication service provider" means any person or entity providing telecommunication service including a cellular telephone or paging company or other person or entity which, for a fee, supplies the facility, cell site, mobile telephone switching office, or other equipment or telecommunication service.

(14) "Unlawful telecommunication device" means any telecommunication device that is capable of, or has been altered, modified, programmed, or reprogrammed, alone or in conjunction with another access device, so as to be capable of, acquiring or facilitating the acquisition of a telecommunication service without the consent of the telecommunication service provider. Unlawful devices include tumbler phones, counterfeit phones, tumbler microchips, counterfeit microchips, and other instruments capable of disguising their identity or location or of gaining access to a communications system operated by a telecommunication service provider.

Section ~~{59}~~61. Section 76-6-409.6 is amended to read:

**76-6-409.6. Use of telecommunication device to avoid lawful charge for service.**

~~{1}~~(1) ~~[Any person who uses]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

(2) An actor commits use of a telecommunication device to avoid lawful charge for service if the actor uses a telecommunication device:

(a) with the intent to avoid the payment of [any] a lawful charge for telecommunication service; or

(b) with the knowledge that [it] the use of the telecommunication device was to avoid the payment of [any] a lawful charge for telecommunication service [is guilty of].

(3) (a) A violation of Subsection (2) is:

~~{a}~~ (i) a class B misdemeanor, if the value of the telecommunication service is less

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than \$300 or cannot be ascertained;

~~[(b)]~~ (ii) a class A misdemeanor, if the value of the telecommunication service charge is or exceeds \$300 but is not more than \$1,000;

~~[(c)]~~ (iii) a third degree felony, if the value of the telecommunication service is or exceeds \$1,000 but is not more than \$5,000; or

~~[(d)]~~ (iv) a second degree felony, if:

~~[(i)]~~ (A) the value of the telecommunication service is or exceeds \$5,000; ~~[(or)]~~

~~[(ii)]~~ (B) the cloned cellular telephone was used to facilitate the commission of a felony~~[-];~~ or

~~[(2) Any person who has been convicted previously of an offense under this section is guilty of a second degree felony upon a second conviction and any subsequent conviction.]~~

~~[(C) the actor previously has been convicted of a violation of this section.]~~

(b) An actor who violates this section is subject to the restitution and civil action provisions described in Section 76-6-409.10.

~~[(2) Any person who has been convicted previously of an offense under this section is guilty of a second degree felony upon a second conviction and any subsequent conviction.]~~

Section ~~{60}~~62. Section **76-6-409.7** is amended to read:

### **76-6-409.7. Possession of unlawful telecommunication device.**

~~[(1) [Any person who] {1} Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.]~~

(2) An actor commits possession of unlawful telecommunication device if the actor knowingly possesses an unlawful telecommunication device [is guilty of a class B misdemeanor].

~~[(2) (3) (a) [Any person who] {3} (a) Except as provided in Subsection (3)(b) or (3)(c), a violation of Subsection (2) is a class B misdemeanor.]~~

(b) Except as provided in Subsection (3)(c), a violation of Subsection (2) is a third degree felony if the actor knowingly possesses five or more unlawful telecommunication devices in the same criminal episode [is guilty of a third degree felony].

~~[(3) (c) [Any person is guilty of a] {c} A violation of Subsection (2) is a second degree felony [who] if the actor:~~

~~[(a)] (i) knowingly and unlawfully possesses an instrument capable of intercepting~~

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electronic serial number and mobile identification number combinations under circumstances evidencing an intent to clone; or

~~[(b)]~~ (ii) knowingly and unlawfully possesses cloning paraphernalia under circumstances evidencing an intent to clone.

(d) An actor who violates this section is subject to the restitution and civil action provisions described in Section 76-6-409.10.

Section ~~{61}~~63. Section **76-6-409.8** is amended to read:

### **76-6-409.8. Sale of an unlawful telecommunication device.**

~~{1}~~(1) ~~[Any person is guilty of a third degree felony who]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

(2) An actor commits sale of unlawful telecommunication device if the actor intentionally sells an unlawful telecommunication device or material, including hardware, data, computer software, or other information or equipment, knowing that the purchaser or a third person intends to use such material in the manufacture of an unlawful telecommunication device.

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

~~(2)~~~~{1f}~~ (b) [If] A violation of Subsection (2) is a second degree felony if the offense [under this section] involves the intentional sale of five or more unlawful telecommunication devices within a six-month period[; the person committing the offense is guilty of a second degree felony].

(c) An actor who violates this section is subject to the restitution and civil action provisions described in Section 76-6-409.10.~~{}~~

Section ~~{62}~~64. Section **76-6-409.9** is amended to read:

### **76-6-409.9. Manufacture of an unlawful telecommunication device.**

~~{1}~~(1) ~~[Any person who]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

(2) An actor commits manufacture of unlawful telecommunication device if the actor intentionally manufactures an unlawful telecommunication device [is guilty of a third degree felony].

~~(2)~~(3) (a) ~~[If the offense under this section]~~ ~~{(3) (a)}~~ Except as provided in

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Subsection (3)(b), a violation of Subsection (2) is third degree felony.

(b) A violation of Subsection (2) is a second degree felony if the offense involves the intentional manufacture of five or more unlawful telecommunication devices within a six-month period~~[, the person committing the offense is guilty of a second degree felony]~~.

(c) An actor who violates this section is subject to the restitution and civil action provisions described in Section 76-6-409.10.

Section ~~{63}~~65. Section **76-6-409.10** is amended to read:

**76-6-409.10. Payment of restitution -- Civil action -- Other remedies retained.**

~~{1}~~(1) ~~[A person]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-409.5 apply to this section.

(2) (a) (i) An actor who violates ~~[Sections 76-6-409.5 through]~~ Section 76-6-409.6, 76-6-409.7, 76-6-409.8, or 76-6-409.9 shall make restitution to the telecommunication service provider for the value of the telecommunication service consumed in ~~[violation of this section]~~ the violation plus all reasonable expenses and costs incurred on account of the violation ~~[of this section]~~.

(ii) Reasonable expenses and costs include expenses and costs for investigation, service calls, employee time, and equipment use.

~~{2}~~(b) ~~[Criminal]~~ ~~{(b)}~~ A criminal prosecution under ~~[this section]~~ Section 76-6-409.6, 76-6-409.7, 76-6-409.8, or 76-6-409.9 does not affect the right of a telecommunication service provider to bring a civil action for redress for damages suffered as a result of the commission of any of the acts prohibited by ~~[this section]~~ Section 76-6-409.6, 76-6-409.7, 76-6-409.8, or 76-6-409.9.

(3) This section does not abridge or alter any other right, action, or remedy otherwise available to a telecommunication service provider.

Section ~~{64}~~66. Section **76-6-410** is amended to read:

**76-6-410. Theft by custodian of property pursuant to repair or rental agreement.**

~~[A person is guilty of theft if:]~~

(1) ~~[Having]~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits theft by custodian of property pursuant to repair or rental agreement if:

(a) (i) the actor has custody of property pursuant to an agreement between ~~[himself]~~ the

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actor or another person and the property's owner [~~thereof whereby~~];

(ii) the actor or another person is to perform for compensation a specific service for the property's owner involving the maintenance, repair, or use of [~~such~~] the owner's property[~~, he~~];  
and

(iii) the actor intentionally uses or operates [~~it~~] the owner's property, without the consent of the owner, for [~~his~~] the actor's own purposes in a manner constituting a gross deviation from the agreed purpose; or

[~~(2) { Having }~~] (b) (i) [~~Having~~] the actor has custody of any property pursuant to a rental or lease agreement [~~where it~~] in which the property is to be returned in a specified manner or at a specified time[~~;~~]; and

(ii) the actor intentionally fails to comply with the terms of the agreement concerning return so as to render such failure a gross deviation from the agreement.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the:

(i) value of the property is or exceeds \$5,000; or

(ii) property stolen is a firearm or an operable motor vehicle;

(b) a third degree felony if:

(i) the value of the property is or exceeds \$1,500 but is less than \$5,000;

(ii) the property is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the property 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B); or

(iv) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class A misdemeanor if:

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(i) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or

(ii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

Section ~~{65}~~67. Section **76-6-410.5** is amended to read:

### **76-6-410.5. Theft of a rental vehicle.**

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

~~[(a)]~~ (i) "Motor vehicle" means a self-propelled vehicle that is intended primarily for use and operation on the highways.

~~[(b)]~~ (ii) "Rental agreement" means ~~[any]~~ a written agreement stating the terms and conditions governing the use of a motor vehicle provided by a rental company.

~~[(c)]~~ (iii) "Rental company" means ~~[any]~~ a person or organization in the business of providing motor vehicles to the public.

~~[(d)]~~ (iv) "Renter" means ~~[any]~~ a person or organization obtaining the use of a motor vehicle from a rental company under the terms of a rental agreement.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A renter is guilty of]~~ An actor commits theft of a rental vehicle if~~;~~ the actor:

(a) is a renter; and

(b) without notice to and permission of the rental company, ~~[the renter]~~ knowingly fails without good cause to return the vehicle within 72 hours after the time established for the return in the rental agreement.

(3) A violation of Subsection (2) is a second degree felony.

~~[(3)]~~ (4) If ~~[the]~~ ~~[(4) If]~~ a motor vehicle is not rented on a periodic tenancy basis, the rental company shall include the following information, legibly written, as part of the terms of the rental agreement:

(a) the date and time the motor vehicle is required to be returned; and

(b) the maximum penalties under state law if the motor vehicle is not returned within 72 hours from the date and time stated in compliance with Subsection ~~[(3)]~~ (a) (4)(a).

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Section ~~{66}~~68. Section **76-6-412.1** is enacted to read:

### **76-6-412.1. Civil remedy for animal theft.**

In addition to a criminal penalty under this chapter, an actor who commits theft of a stallion, mare, colt, gelding, cow, heifer, steer, ox, bull, calf, sheep, goat, mule, jack, jenny, swine, poultry, 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 ~~{67}~~69. Section **76-6-413** is amended to read:

### **76-6-413. Release of a fur-bearing animal -- Finding.**

~~{1}~~(1) ~~[In any case not amounting to a felony of the second degree, any person who]~~  
~~{1}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits release of a fur-bearing animal if the actor intentionally and without permission of the owner releases [any] a fur-bearing animal raised for commercial purposes [is guilty of a felony of the third degree].

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

(b) A violation of Subsection (2) is a second degree felony if the value of the property is or exceeds \$5,000.

~~{2}~~ (4) The Legislature finds that the release of a fur-bearing ~~[animals]~~ animal raised for commercial purposes subjects the ~~[animals]~~ animal to unnecessary suffering through deprivation of food and shelter and compromises ~~[their]~~ the animal's genetic integrity, thereby permanently depriving the owner of substantial value.

(5) An actor who violates Subsection (2) 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 ~~{68}~~70. Section **76-6-501** is amended to read:

### **76-6-501. Definitions -- Forgery.**

(1) (a) As used in this ~~[part]~~ section:

~~{a}~~ (i) "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

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document, document-making implement, or means of identification to determine if the document is counterfeit, altered, or otherwise falsified.

~~[(b)]~~ (ii) "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)]~~ (iii) "False authentication feature" means an authentication feature that:

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

~~[(+)]~~ (B) is genuine, but has been distributed, or is intended for distribution, without the 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

~~[(+)]~~ (C) appears to be genuine, but is not.

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

~~[(+)]~~ (A) 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

~~[(+)]~~ (B) appears to be issued by or under the authority of a governmental entity.

~~[(c)]~~ (v) "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.

~~[(+)]~~ (vi) "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)]~~ (vii) "Issuing authority" means:

~~[(+)]~~ (A) any governmental entity that is authorized to issue identification documents, means of identification, or authentication features; or

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~~(ii)~~ (B) a business organization or financial institution or its agent that issues a financial transaction card as defined in Section 76-6-506.

~~(h)~~ (viii) "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:

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

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

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

~~(+)~~ (x) "Produce" includes altering, authenticating, or assembling.

~~(k)~~ (xi) "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.

~~(+)~~ (xii) "Traffic" means to:

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

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

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

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

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

~~(iii)~~ (C) 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.

(b) Terms defined in Section 76-1-101.5 apply to this section.

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

(a) alters any writing of another person without ~~[his]~~ the person's 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 person, 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) A violation of Subsection (2) is a third degree felony.

~~[(3)]~~ (4) 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, 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]~~

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

~~[(5) A person who violates:]~~

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

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

~~[(6)] (5) This [part] section may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.~~

~~[(7)] (6) The forfeiture of property under this [part] section, 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)] (7) 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 ~~{69}~~71. Section **76-6-501.5** is enacted to read:

### **76-6-501.5. Producing or transferring false identification.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-501 apply to this section.

(2) An actor commits producing or transferring a false identification document if the actor:

(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.

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(3) A violation of Subsection (2) is a second degree felony.

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

(5) The forfeiture of property under this section, 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.

(6) The court shall order, in addition to the penalty prescribed for a 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 ~~{70}~~72. Section **76-6-502** is amended to read:

### **76-6-502. Possession of forged writing or device for a forgery writing.**

(1) ~~{}~~(a) As used in this section[, "device"]:

(i) "Device" means any equipment, mechanism, material, or program.

(ii) "Writing" means the same as that term is defined in Section 76-6-501.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An [~~individual~~] actor who, with intent to defraud, knowingly possesses a writing[; as defined in Section 76-6-501;] that is a forgery under Section 76-6-501~~;~~ or 76-6-501.5~~;~~ ~~{}~~ or who with intent to defraud knowingly possesses a device for making a writing[; as defined in Section 76-6-501;] that is a forgery under Section ~~[76-6-501 { or 76-6-501.5}, {}]~~ is guilty of a third degree felony~~;~~ 76-6-501 or 76-6-501.5, commits possession of a forged writing or device for making a forgery writing~~;~~ {}

(3) A violation of Subsection (2) is a third degree felony.

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

(5) The forfeiture of property under this section, 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.

Section ~~{71}~~73. Section **76-6-503.5** is amended to read:

### **76-6-503.5. Wrongful liens.**

~~{}~~(1) (a) ~~[ "Lien" ]~~ ~~{(1)(a)}~~ As used in this section, "lien" means:

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~~[(a)]~~ (i) an instrument or document filed pursuant to Section 70A-9a-516;

~~[(b)]~~ (ii) a nonconsensual common law document as defined in Section 38-9-102;

~~[(c)]~~ (iii) a wrongful lien as defined in Section 38-9-102; or

~~[(d)]~~ (iv) any instrument or document that creates or purports to create a lien or encumbrance on an owner's interest in real or personal property or a claim on another's assets.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A person is guilty of]~~ An actor commits the crime of wrongful lien if ~~[that person]~~ the actor knowingly makes, utters, records, or files a lien:

(a) having no objectively reasonable basis to believe ~~[he]~~ that the actor has a present and lawful property interest in the property or a claim on the assets; or

(b) if the ~~[person]~~ actor files the lien in violation of a civil wrongful lien injunction pursuant to Title 38, Chapter 9a, Wrongful Lien Injunctions.

~~[(3)]~~ ~~(a)~~ [A violation of this section] ~~[(3)]~~ ~~(a)~~ Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony [unless the person].

(b) If an actor has been previously convicted of an offense under this section[; in which case the violation] or Section 76-6-503.6, a violation of Subsection (2) is a second degree felony.

~~[(4)]~~ ~~(a) Any person who with intent to deceive or injure anyone falsifies, destroys, removes, records, or conceals any will, deed, mortgage, security instrument, lien, or other writing for which the law provides public recording is guilty of fraudulent handling of recordable writings.]~~

~~[(b) A violation of Subsection (4)(a) is a third degree felony unless the person has been previously convicted of an offense under this section, in which case the violation is a second degree felony.]~~

~~[(5)]~~ (4) This section does not prohibit prosecution for any act in violation of Section 76-8-414 or for any offense greater than an offense under this section.

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

(6) The forfeiture of property under this section, 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.

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Section ~~{72}~~74. Section **76-6-503.6** is enacted to read:

### **76-6-503.6. Fraudulent handling of recordable writings.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-503.5 apply to this section.

(2) An actor commits fraudulent handling of recordable writings if the actor:

(a) has intent to deceive or injure; and

(b) falsifies, destroys, removes, records, or conceals any will, deed, mortgage, security instrument, lien, or other writing for which the law provides public recording.

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

(b) If an actor has been previously convicted of an offense under this section or 76-6-503.5, a violation of Subsection (2) is a second degree felony.

(4) This section does not prohibit prosecution for any act in violation of Section 76-8-414 or for any offense greater than an offense under this section.

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

(6) The forfeiture of property under this section, 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.

Section ~~{73}~~75. Section **76-6-503.7** is amended to read:

### **76-6-503.7. Records filed with intent to harass or defraud.**

~~[(1) No person shall cause a record to be communicated to the filing office, as defined in Section 70A-9a-513.5, for filing if:]~~

~~[(a) the person is not authorized to file the record under Section 70A-9a-509, 70A-9a-708, or 70A-9a-807;]~~

(1) (a) As used in this section, "filing office" means the same as that term is defined in Section 70A-9a-513.5.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits filing a record with intent to harass or defraud if:

(a) the actor causes a record to be communicated to the filing office for filing;

(b) the actor is not authorized to file the record under Section 70A-9a-509, 70A-9a-708, or 70A-9a-807;

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~~[(b)]~~ (c) the record is not related to an existing or anticipated transaction that is or will be governed by Title 70A, Chapter 9a, Uniform Commercial Code - Secured Transactions; and

~~[(e)]~~ (d) the record is filed knowingly or intentionally to:

- (i) harass the person identified as the debtor in the record; or
- (ii) defraud the person identified as the debtor in the record.

~~[(2)]~~ (3) (a) ~~[A person who violates]~~ ~~[(3)(a)]~~ A violation of Subsections ~~[(1)(a)]~~ (2)(a), (b), (c), and ~~[(e)]~~ ~~[(d)]~~ (i) is ~~[(d)]~~ guilty of (d)(i) is a class B misdemeanor for a first offense and a class A misdemeanor for a second or subsequent offense.

(b) ~~[A person who violates]~~ A violation of Subsections ~~[(1)(a)]~~ (2)(a), (b), (c), and ~~[(e)]~~ ~~[(d)]~~ (ii) is ~~[(d)]~~ guilty of (d)(ii) is a third degree felony.

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

(5) The forfeiture of property under this section, 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.

Section ~~[(74)]~~ 76. Section **76-6-504** is amended to read:

### **76-6-504. Tampering with records.**

~~[(1)]~~ (1) (a) ~~[Any person who,]~~ As used in this section, "writing" means the same as that term is defined in Section 76-6-501.

~~[(1) Any person who,]~~ (b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits tampering with records if the actor:

(a) having no privilege to do so, knowingly falsifies, destroys, removes, or conceals any writing, other than the writings enumerated in Section 76-6-503.5 for which the law provides public recording or any record, public or private; and

(b) executes an action described in Subsection (1)(a) with intent to:

(i) deceive or injure any person; or ~~[(to)]~~

(ii) conceal any wrongdoing ~~[is guilty of tampering with records].~~

~~[(2)]~~ (3) ~~[Tampering with records]~~ ~~[(3)]~~ A violation of Subsection (2) is a class B misdemeanor.

(4) This section may not be construed to impose criminal or civil liability on any law

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enforcement officer acting within the scope of a criminal investigation.

(5) The forfeiture of property under this section, 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.

Section ~~{75}~~77. Section **76-6-505** is amended to read:

### **76-6-505. Issuing a bad check or draft -- Presumption.**

~~[(1)(a) Any person who]~~{}

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) (i) An actor commits issuing a bad check or draft if:

(A) the actor issues or passes a check or draft for the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value or paying for any services, wages, salary, labor, or rent~~[, knowing it];~~{}

(B) the actor knows the check or draft will not be paid by the drawee; and

~~{~~—~~}~~(C) payment is refused by the drawee[; is guilty of issuing a bad check or draft].

~~[(b) (ii) For purposes of this Subsection [(1), a person] (2)(a), an actor who issues a check or draft for which payment is refused by the drawee is presumed to know the check or draft would not be paid if [he] the actor had no account with the drawee at the time of issue.~~

~~[(2) (b) [Any person who] { (b) }~~An actor commits issuing a bad check or draft if:

(i) the actor issues or passes a check or draft for:

(A) the payment of money, for the purpose of obtaining from any person, firm, partnership, or corporation, any money, property, or other thing of value; or

(B) paying for any services, wages, salary, labor, or rent[;];

(ii) payment of [which] the check or draft is legally refused by the drawee[; is guilty of issuing a bad check or draft if he]; and

(iii) the actor fails to make good and actual payment to the payee in the amount of the refused check or draft within 14 days of [his] the actor receiving actual notice of the check or draft's nonpayment.

(3) [An offense of issuing a bad check or draft shall be] A violation of Subsection (2)(a) or (b) is punished as follows:

(a) [If] if the check or draft or series of checks or drafts made or drawn in this state

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within a period not exceeding six months amounts to a sum that is less than \$500, the offense is a class B misdemeanor[-];

(b) [Hf] if the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds \$500 but is less than \$1,500, the offense is a class A misdemeanor[-];

(c) [Hf] if the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds \$1,500 but is less than \$5,000, the offense is a third degree felony [~~of the third degree.~~]; or

(d) [Hf] if the check or draft or checks or drafts made or drawn in this state within a period not exceeding six months amounts to a sum that is or exceeds \$5,000, the offense is a second degree felony.

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

(5) The forfeiture of property under this section, 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.

Section ~~76~~78. Section **76-6-506** is amended to read:

### **76-6-506. Financial transaction card offenses -- Definitions.**

As used in [~~this part~~] Sections 76-6-506.2, 76-6-506.3, 76-6-506.6, 76-6-506.8, and 76-6-506.9:

(1) "Authorized credit card merchant" means a person who is authorized by an issuer to furnish money, goods, services, or anything else of value upon presentation of a financial transaction card by a card holder and to present valid credit card sales drafts to the issuer for payment.

(2) "Automated banking device" means any machine which, when properly activated by a financial transaction card or a personal identification code, may be used for any of the purposes for which a financial transaction card may be used.

(3) "Card holder" means any person or organization named on the face of a financial transaction card to whom or for whose benefit a financial transaction card is issued.

(4) "Credit card sales draft" means any sales slip, draft, or other written or electronic record of a sale of money, goods, services, or anything else of value made or purported to be

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made to or at the request of a card holder with a financial transaction card, financial transaction card credit number, or personal identification code, whether the record of the sale or purported sale is evidenced by a sales draft, voucher, or other similar document in writing or electronically recorded and transmitted.

(5) "Financial transaction card" means:

(a) any credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card, or any other card, issued by an issuer for the use of the card holder in obtaining money, goods, services, or anything else of value on credit, or in certifying or guaranteeing to a person or business the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check payable to the order of the person or business; or

(b) any instrument or device used in providing the card holder access to a demand or time deposit account for the purpose of making deposits of money or checks in the account, or withdrawing funds from the account in the form of money, money orders, travelers' checks, or other form representing value, or transferring funds from any demand or time deposit account to any credit card account in full or partial satisfaction of any outstanding balance existing in the credit card account.

(6) "Issuer" means a business organization or financial institution or its agent that issues a financial transaction card.

(7) "Personal identification code" means any numerical or alphabetical code assigned to a card holder by the issuer to permit the authorized electronic use of the holder's financial transaction card.

Section ~~{77}~~79. Section **76-6-506.2** is amended to read:

### **76-6-506.2. Unlawful use of financial transaction card.**

~~[It is unlawful for any person to:]~~

~~{~~(1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

~~(2) An actor commits unlawful use of financial transaction card if the actor:~~

~~{(1)}~~(a) knowingly [~~use a false, fictitious, altered, counterfeit,~~] uses a revoked, expired, stolen, or fraudulently obtained financial transaction card to obtain or attempt to obtain credit, goods, property, or services;

~~{2}~~ (b) knowingly, with the intent to defraud, [~~use~~] uses a financial transaction card,

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credit number, personal identification code, or any other information contained on the card or in the account from which the card is issued, to obtain or attempt to obtain credit, goods, or services;

~~[(3)]~~ (c) knowingly, with the intent to defraud, ~~[use]~~ uses a financial transaction card to willfully exceed an authorized credit line by \$500 or more, or by 50% or more of the line of credit, whichever is greater; or

~~[(4)(a)]~~ ~~knowingly, with the intent to defraud, make application for a financial transaction card to an issuer and make or cause to be made a false statement or report of the person's name, occupation, financial condition, assets, or personal identifying information; or]~~

~~[(b)]~~ willfully and substantially undervalue or understate any indebtedness for the purposes of influencing the issuer to issue the financial transaction card; or]

~~[(5)]~~ (d) knowingly, with the intent to defraud, ~~[present or cause]~~ presents or causes to be presented to the issuer or an authorized credit card merchant, for payment or collection, any credit card sales draft, if:

~~[(a)]~~ (i) the draft is counterfeit or fictitious;

~~[(b)]~~ (ii) the purported sales evidenced by any credit card sales draft did not take place;

~~[(c)]~~ (iii) the purported sale was not authorized by the card holder; or

~~[(d)]~~ (iv) the items or services purported to be sold as evidenced by the credit card sales drafts are not delivered or rendered to the card holder or person intended to receive them.

(3) (a) A violation of Subsection (2) is:

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

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

(iii) a third degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

(iv) a second degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$5,000.

(b) Multiple violations of Subsection (2)(a) may be aggregated into a single offense, and the degree of the offense is determined by the total value of all property, money, or things obtained or attempted to be obtained through the multiple violations.

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(4) The court shall make appropriate findings in any prosecution under this section that the card holder did not commit the crime.

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

(6) The forfeiture of property under this section, 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.

Section ~~{78}~~80. Section **76-6-506.3** is amended to read:

**76-6-506.3. Unlawful acquisition, possession, or transfer of financial transaction card.**

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

(1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

(2) An actor commits unlawful acquisition, possession, or transfer of a financial transaction card if the actor:

(a) under circumstances that do not constitute a violation of Subsection (2)(b):

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

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

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

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

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

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

~~[(c)]~~ (v) 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

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card, or the personal identification code related to the card:

~~[(+)]~~ (A) ~~[(A)]~~ (I) without the consent of the card holder or the issuer; or

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

~~[(+)]~~ (B) with intent to use the information in violation of Section 76-6-506.2~~[-];~~ or

~~[(2)]~~ ~~[(b)]~~ ~~[An individual is guilty of a second degree felony who]~~ ~~[(b)]~~

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

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

(3) (a) A violation of Subsection (2)(a) is a third degree felony.

(b) A violation of Subsection (2)(b) is a second degree felony.

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

(5) The forfeiture of property under this section, 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.

Section ~~{79}~~ 81. Section **76-6-506.6** is amended to read:

**76-6-506.6. ~~{Unauthorized}~~ Financial transaction card offenses -- Unauthorized factoring of credit card sales drafts.**

~~[It is unlawful for any person,]~~ ~~[(+)]~~

(1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

(2) An actor commits an unauthorized factoring of credit card sales draft if the actor acts:

(a) knowingly, with intent to defraud~~[-acting]~~;

(b) without the express authorization of the issuer~~[-];~~ and

(c) to employ, solicit, or otherwise cause an authorized credit card merchant, or for the authorized credit card merchant himself or herself, to present any credit card sales draft to the issuer;

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(i) for payment pertaining to any sale or purported sale of goods or services [which was]; and

(ii) the sale or purported sale was not made by the authorized credit card merchant in the ordinary course of business.

(3) (a) A violation of Subsection (2) is:

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

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

(iii) a third degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

(iv) a second degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$5,000.

(b) Multiple violations of Subsection (2) may be aggregated into a single offense, and the degree of the offense is determined by the total value of all property, money, or things obtained or attempted to be obtained through the multiple violations.

(4) The court shall make appropriate findings in any prosecution under this section that the card holder did not commit the crime.

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

(6) The forfeiture of property under this section, 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.

Section ~~80~~82. Section 76-6-506.7 is amended to read:

**76-6-506.7. Obtaining encoded information on a financial transaction card with the intent to defraud the issuer, holder, or merchant.**

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

(i) "Card holder" means the same as that term is defined in Section 76-6-506.

~~(a)~~ (ii) "Financial transaction card" or "card" means any credit card, credit plate, bank services card, banking card, check guarantee card, debit card, telephone credit card, or any other card, issued by an issuer for the use of the card holder in:

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~~[(+)]~~ (A) obtaining money, goods, services, or anything else of value on credit; or

~~[(+)]~~ (B) certifying or guaranteeing to a merchant the availability to the card holder of the funds on deposit that are equal to or greater than the amount necessary to honor a draft or check as the instrument for obtaining, purchasing, or receiving goods, services, money, or any other thing of value from the merchant.

~~[(b) + (+)]~~ (iii) ~~[(+)]~~ (A) "Merchant" means an owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee, or independent contractor of the owner or operator.

~~[(+)]~~ (B) "Merchant" also means a person:

~~[(A)]~~ (I) who receives from a card holder, or a third person the merchant believes to be the card holder, a financial transaction card or information from a financial transaction card, or what the merchant believes to be a financial transaction card or information from a card; and

~~[(B)]~~ (II) who accepts the financial transaction card or information from a card under Subsection (1)(a)(ii)(B) as the instrument for obtaining, purchasing, or receiving goods, services, money, or any other thing of value from the merchant.

~~[(+)]~~ (iv) "Reencoder" means an electronic device that places encoded information from the magnetic strip or stripe of a financial transaction card onto the magnetic strip or stripe of a different financial transaction card.

~~[(d)]~~ (v) "Scanning device" means a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card.

~~[(2)(a) A person is guilty of a third degree felony who uses:]~~

~~(b) Terms defined in ~~[(Section)]~~ Sections 76-1-101.5 and 76-6-506 apply to this section.~~

~~(2) An actor commits obtaining encoded information on a financial transaction card with the intent to defraud the issuer, holder, or merchant if the actor uses:~~

~~[(+)]~~ (a) a scanning device to access, read, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a financial transaction card;

~~(i) without the permission of the card holder; and~~

~~(ii) with intent to defraud the card holder, the issuer, or a merchant; or~~

~~[(+)]~~ (b) a reencoder to place information encoded on the magnetic strip or stripe of a

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financial transaction card onto the magnetic strip or stripe of a different card:

(i) without the permission of the authorized user of the card from which the information is being reencoded; and

(ii) with the intent to defraud the card holder, the issuer, or a merchant.

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

(b) [~~Any person~~] An actor who has been convicted previously of an offense under Subsection ~~[(2)(a)]~~ (2) is guilty of a second degree felony upon a second conviction and any subsequent conviction for the offense.

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

(5) The forfeiture of property under this section, 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.

Section ~~{81}~~83. Section **76-6-506.8** is enacted to read:

### **76-6-506.8. False application for financial transaction card.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

(2) An actor commits false application for a card if the actor:

(a) knowingly, with the intent to defraud:

(i) makes application for a financial transaction card to an issuer; and

(ii) makes or causes to be made a false statement or report of the actor's name, occupation, financial condition, assets, or personal identifying information; or

(b) willfully and substantially undervalues or understates any indebtedness for the purposes of influencing the issuer to issue the financial transaction card.

(3) A violation of Subsection (2) is:

(a) a class B misdemeanor if the value of the property, money, or thing obtained or sought to be obtained is less than \$500;

(b) a class A misdemeanor if 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) a third degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

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(d) a second degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$5,000.

(4) The court shall make appropriate findings in any prosecution under this section that the card holder did not commit the crime.

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

(6) The forfeiture of property under this section, 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.

Section ~~{82}~~84. Section **76-6-506.9** is enacted to read:

**76-6-506.9.** ~~{Use}~~ **Use of fraudulent financial transaction card.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-506 apply to this section.

(2) An actor commits fraudulent use of a financial transaction card if the actor knowingly uses a false, fictitious, altered, or counterfeit financial transaction card to obtain or attempt to obtain credit, goods, property, or services.

(3) (a) A violation of Subsection (2) is:

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

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

(iii) a third degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$1,500 but is less than \$5,000; or

(iv) a second degree felony if the value of the property, money, or thing obtained or attempted to be obtained is or exceeds \$5,000.

(b) Multiple violations of Subsection (2) may be aggregated into a single offense, and the degree of the offense is determined by the total value of all property, money, or things obtained or attempted to be obtained through the multiple violations.

~~{3}~~4 The court shall make appropriate findings in any prosecution under this section that the card holder did not commit the crime.

~~{4}~~5 This section may not be construed to impose criminal or civil liability on any law enforcement officer acting within the scope of a criminal investigation.

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~~(5)6~~ The forfeiture of property under this section, 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.

Section ~~(83)85~~. Section **76-6-507** is amended to read:

### **76-6-507. Deceptive business practices.**

~~[(1) A person is guilty of a class B misdemeanor if, in the course of business, he:]~~

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

~~(i) "Adulterated" means varying from the standard of composition or quality prescribed, or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage.~~

~~(ii) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage.~~

~~(b) Terms defined in Section 76-1-101.5 apply to this section.~~

~~(2) An actor commits deceptive business practices if the actor, in the course of business:~~

~~(a) uses or possesses for use a false weight or measure, or any other device for falsely determining or recording any quality or quantity;~~

~~(b) takes or attempts to take more than the represented quantity of any commodity or service when as buyer [he] the actor furnishes the weight or measure; or~~

~~(c) sells, offers, or exposes for sale adulterated or mislabeled commodities.~~

~~[(2)(a) "Adulterated" means varying from the standard of composition or quality prescribed, or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage:]~~

~~[(b) "Mislabeled" means varying from the standard of truth or disclosure in labeling prescribed by or pursuant to any statute providing criminal penalties for a variance, or set by established commercial usage:]~~

~~(3) A violation of Subsection (2) is a class B misdemeanor.~~

~~(3)(4) It is an affirmative defense to prosecution under this section that the defendant's conduct was not knowing or reckless.~~

~~(5) This section may not be construed to impose criminal or civil liability on any law~~

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enforcement officer acting within the scope of a criminal investigation.

(6) The forfeiture of property under this section, 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.

Section ~~{84}~~86. Section **76-6-508** is amended to read:

**76-6-508. Bribery of or receiving bribe by person in the business of selection, appraisal, or criticism of goods or services.**

~~{f}~~(1) ~~[A person is guilty of a class A misdemeanor when,]~~ ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits bribery or receiving a bribe if the actor:

(a) without the consent of the employer or principal, and contrary to the interests of the employer or principal:

~~{(a)}~~ ~~{he}~~ (i) ~~[he]~~ confers, offers, or agrees to confer upon the employee, agent, or fiduciary of an employer or principal any benefit with the purpose of influencing the conduct of the employee, agent, or fiduciary in relating to his employer's or principal's affairs; or

~~{(b)}~~ ~~{he}~~ (ii) ~~[he]~~ as an employee, agent, or fiduciary of an employer or principal, solicits, accepts, or agrees to accept any benefit from another upon an agreement or understanding that such benefit will influence ~~[his]~~ the actor's conduct in relation to ~~[his]~~ the actor's employer's or principal's affairs; ~~provided that this section does not apply to inducements made or accepted solely for the purpose of causing a change in employment by an employee, agent, or fiduciary.~~ ~~{}~~ or

~~{(2)}~~ (b) (i) ~~[A person is guilty of violation of this section if he~~ ~~{(b) (i)}~~ holds ~~{}~~ himself holds the actor's self out to the public as being engaged in the business of making disinterested selection, appraisal, or criticism of goods or services; and ~~{}~~ ~~[he]~~ ~~{}~~

(ii) solicits, accepts, or agrees to accept any benefit to influence ~~[his]~~ the actor's selection, appraisal, or criticism.

(3) A violation of Subsection (2) is a class A misdemeanor.

(4) This section does not apply to inducements made or accepted solely for the purpose of causing a change in employment by an employee, agent, or fiduciary.

(5) This section may not be construed to impose criminal or civil liability on any law

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enforcement officer acting within the scope of a criminal investigation.

(6) The forfeiture of property under this section, 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.

Section ~~{85}~~87. Section **76-6-509** is amended to read:

### **76-6-509. Bribery of a labor official.**

~~{1}~~(1) ~~[Any person who]~~ ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits bribery of a labor official if the actor:

(a) offers, confers, or agrees to confer upon a labor official any benefit [with]; and

(b) has intent to influence [him] the labor official in respect to any of [his] the labor official's acts, decisions, or duties as a labor official [is guilty of bribery of a labor official].

~~{(2)}~~(3) ~~[Bribery of a labor official is a]~~ ~~{(3)}~~ A violation of Subsection (2) is a third degree felony [of the third degree].

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

(5) The forfeiture of property under this section, 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.

Section ~~{86}~~88. Section **76-6-510** is amended to read:

### **76-6-510. Receiving a bribe by a labor official.**

~~{(1)}~~(1) ~~[Any labor official who]~~ ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) A labor official commits receiving a bribe by a labor official if the labor official solicits, accepts, or agrees to accept any benefit from another person upon an agreement or understanding that the benefit will influence [him] the labor official in any of [his] the labor official's acts, decisions, or duties as a labor official [is guilty of bribe receiving by a labor official].

~~{(2)}~~(3) ~~[Bribe receiving by a labor official is a]~~ ~~{(3)}~~ A violation of Subsection (2) is a third degree felony [of the third degree].

(4) This section may not be construed to impose criminal or civil liability on any law

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enforcement officer acting within the scope of a criminal investigation.

(5) The forfeiture of property under this section, 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.

Section ~~{87}~~89. Section 76-6-511 is amended to read:

### **76-6-511. Defrauding of creditors.**

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

(1) ~~[he]~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits defrauding of creditors if the actor:~~;~~

~~{(1) he}~~(a) destroys, removes, conceals, encumbers, transfers, or otherwise deals with property subject to a security interest with a purpose to hinder enforcement of that interest; or

~~{(2)}~~ (b) knowing that proceedings have been or are about to be instituted for the appointment of a person entitled to administer property for the benefit of creditors~~;~~

~~{(a)}~~ (i) destroys, removes, conceals, encumbers, transfers, or otherwise deals with any property with a purpose to defeat or obstruct the claim of any creditor, or otherwise to obstruct the operation of any law relating to administration of property for the benefit of creditors; or

~~{(b)}~~ (ii) presents to any creditor or to an assignee for the benefit of creditors, orally or in writing, any statement relating to the debtor's estate, knowing that a material part of such statement is false.

(3) A violation of Subsection (2) is a class A misdemeanor.

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

(5) The forfeiture of property under this section, 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.

Section ~~{88}~~90. Section 76-6-512 is amended to read:

### **76-6-512. Acceptance of deposit by insolvent financial institution.**

~~[A person is guilty of a felony of the third degree if:]~~

(1) (a) As used in this section, "financial institution" means the same as that term is defined in Section 7-1-103.

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(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits acceptance of a deposit by an insolvent financial institution if:

~~ff(1))~~(a) as an officer, manager, or other person participating in the direction of a financial institution, as defined in Section 7-1-103, ~~[he]~~ the actor receives or permits receipt of a deposit or other investment knowing that the institution is or is about to become unable, from any cause, to pay its obligations in the ordinary course of business; and

~~[(2)(he)]~~ (b) ~~[he]~~ the actor knows that the person making the payment to the institution is unaware of such present or prospective inability.

(3) A violation of Subsection (2) is a third degree felony.

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

(5) The forfeiture of property under this section, 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.

Section ~~{89}~~91. Section **76-6-513** is amended to read:

### **76-6-513. Unlawful dealing of property by a fiduciary.**

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

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

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

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

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

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

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A person is guilty of]~~ An actor commits unlawfully dealing with property by a fiduciary if the ~~[person]~~ actor:

(a) deals with property:

(i) that has been entrusted to ~~[him]~~ the actor as a fiduciary, or property of a governmental entity, public money, or of a financial institution~~[-];~~ and

(ii) in a manner which:

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(A) the ~~[person]~~ actor knows is a violation of the ~~[person's]~~ actor's duty; and ~~[which]~~

(B) involves substantial risk of loss or detriment to the ~~property~~ owner or to a person for whose benefit the property was entrusted~~[- A violation of this Subsection (2) is punishable under Section 76-6-412.]; or~~

~~{(b) acting as a fiduciary pledges:~~

~~(i) 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; and~~

~~(ii) without permission of the owner of the property or some other authorized person.~~

(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 offense under Subsection (3)(a) is punishable as:}~~

~~{(b) acting as a fiduciary pledges:~~

~~(i) 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; and~~

~~(ii) without permission of the owner of the property or some other authorized person.~~

~~(3) (a) } A violation of Subsection (2)(a) is:~~

~~(i) a second degree felony if the:~~

~~(A) value of the property is or exceeds \$5,000; or~~

~~(B) property is stolen from the person of another;~~

~~(ii) a third degree felony if:~~

~~(A) the value of the property is or exceeds \$1,500 but is less than \$5,000;~~

~~(B) the value of the property 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:~~

~~(I) any theft, any robbery, or any burglary with intent to commit theft;~~

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(II) any offense under Part 5, Fraud; or

(III) any attempt to commit any offense under Subsection (3)(a)(ii)(C)(I) or (II);

(C) the value of property is or exceeds \$500 but is less than \$1,500; or

(D) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(a)(ii)(C)(I) through (3)(a)(ii)(C)(III), 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;

(iii) a class A misdemeanor if:

(A) the value of the property stolen is or exceeds \$500 but is less than \$1,500; or

(B) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(a)(ii)(C)(I) through (3)(a)(ii)(C)(III), 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

(iv) a class B misdemeanor if the value of the property stolen is less than \$500 and the theft is not an offense under Subsection (3)(a)(iii)(B).

~~(b) [An offense under Subsection (3)(a) is punishable as:]~~ A violation of Subsection (2)(b) is:

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

(ii) a [~~felony of the~~] third degree felony 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 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.

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

(5) The forfeiture of property under this section, 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.

Section ~~90~~92. Section **76-6-514** is amended to read:

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### 76-6-514. Unlawful influence of a contest.

[A person is guilty of a felony of the third degree if:]

~~§~~(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits unlawful influence of a contest if the actor:

(a) ~~[(1)]~~ With ~~[(a)]~~ with a purpose to influence any participant or prospective participant not to give ~~[his]~~ the participant's or prospective participant's best efforts in a publicly exhibited contest, ~~[he]~~ confers or offers or agrees to confer any benefit upon or threatens any injury to a participant or prospective participant; ~~[or]~~

~~[(2)]~~ (b) ~~[(b)]~~ with a purpose to influence an official in a publicly exhibited contest to perform ~~[his]~~ the official's duties improperly, ~~[he]~~ confers or offers or agrees to confer any benefit upon or threatens any injury to such official; ~~[or]~~

~~[(3)]~~ (c) ~~[(c)]~~ with a purpose to influence the outcome of a publicly exhibited contest, ~~[he]~~ tampers with any person, animal, or thing contrary to the rules and usages purporting to govern the contest; or

~~[(4)]~~ ~~[(He)]~~ (d) [(He)] knowingly solicits, accepts, or agrees to accept any benefit, the giving of which would be criminal under Subsection ~~[(1)]~~ ~~[or]~~ (2)(a) or (b).

(3) A violation of Subsection (2) is a third degree felony.

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

(5) The forfeiture of property under this section, 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.

Section ~~[(91)]~~ 93. Section 76-6-515 is amended to read:

### 76-6-515. Using or making slugs.

~~[(1)]~~ A person is guilty of a class B misdemeanor if:]

~~[(a)]~~ With a purpose to defraud the supplier of property or a service offered or sold by means of a coin machine, he inserts, deposits, or uses a slug in that machine; or]

~~[(b)]~~ He makes, possesses, or disposes of a slug with the purpose of enabling a person to use it fraudulently in a coin machine.]

~~[(2)]~~ (1) (a) As used in this section:

~~[(a)]~~ (i) "Coin machine" means any mechanical or electronic device or receptacle

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designed to receive a coin or bill of a certain denomination, or a token made for the purpose, and, in return for the insertion or deposit thereof, automatically to offer, provide, assist in providing or permit the acquisition of property or a public or private service.

~~[(b)]~~ (ii) "Slug" means any object which, by virtue of its size, shape, or other quality, is capable of being inserted, deposited, or otherwise used in a coin machine as an improper substitute for a genuine coin, bill, or token.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits using or making slugs if the actor:

(a) with a purpose to defraud the supplier of property or a service offered or sold by means of a coin machine, inserts, deposits, or uses a slug in that machine; or

(b) makes, possesses, or disposes of a slug with the purpose of enabling a person to use it fraudulently in a coin machine.

(3) A violation of Subsection (2) is a class B misdemeanor.

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

(5) The forfeiture of property under this section, 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.

Section ~~92~~94. Section **76-6-516** is amended to read:

**76-6-516. Fraudulent conveyance of marital real estate.**

(1) [Any married man who] ~~[(1)]~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits fraudulent conveyance of marital real estate if the actor:

(a) is married;

(b) falsely represents [himself] the actor as unmarried; and [under such representation]

(c) knowingly conveys or mortgages real estate [situate] situated in this state, without the assent or concurrence of [his wife] the actor's spouse when such consent or concurrence is necessary to relinquish [her] the spouse's inchoate statutory interest [therein, is guilty of a felony of the third degree].

(3) A violation of Subsection (2) is a third degree felony.

(4) This section may not be construed to impose criminal or civil liability on any law

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enforcement officer acting within the scope of a criminal investigation.

(5) The forfeiture of property under this section, 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.

Section ~~{93}~~95. Section **76-6-517** is amended to read:

### **76-6-517. Making a false credit report.**

~~{1}~~(1) ~~[Any person who]~~ ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits making a false credit report if the actor knowingly makes a materially false or misleading written statement to obtain property or credit for himself or another [is guilty of making a false credit report].

~~{(2)}~~(3) ~~[Making a false credit report]~~ ~~{(3)}~~ A violation of Subsection (2) is a class A misdemeanor.

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

(5) The forfeiture of property under this section, 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.

Section ~~{94}~~96. Section **76-6-518** is amended to read:

### **76-6-518. Criminal simulation.**

~~{1}~~(1) ~~[A person is guilty of]~~ ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits criminal simulation if, with intent to defraud another, the actor:

(a) ~~[he]~~ makes or alters an object in whole or in part so that it appears to have value because of age, antiquity, rarity, source, or authorship that it does not have;

(b) ~~[he]~~ sells, passes, or otherwise utters an object so made or altered;

(c) ~~[he]~~ possesses an object so made or altered with intent to sell, pass, or otherwise utter it; or

(d) ~~[he]~~ authenticates or certifies an object so made or altered as genuine or as different from what it is.

~~{(2)}~~(3) ~~[Criminal simulation]~~ ~~{(3)}~~ A violation of Subsection (2) is punishable as

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follows:

(a) [Hf] if the value defrauded or intended to be defrauded is less than \$500, the offense is a class B misdemeanor[-];

(b) [Hf] if the value defrauded or intended to be defrauded is or exceeds \$500 but is less than \$1,500, the offense is a class A misdemeanor[-];

(c) [Hf] if the value defrauded or intended to be defrauded is or exceeds \$1,500 but is less than \$5,000, the offense is a third degree felony [~~of the third degree~~]; or

(d) [Hf] if the value defrauded or intended to be defrauded is or exceeds \$5,000, the offense is a second degree felony [~~of the second degree~~].

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

(5) The forfeiture of property under this section, 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.

Section ~~{95}~~97. Section **76-6-520** is amended to read:

### **76-6-520. Criminal usury.**

~~{1}~~(1) [A person is guilty of criminal usury when he] ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits criminal usury if the actor knowingly engages in, or directly or indirectly provides financing for, the business of making loans at a higher rate of interest or consideration therefor than is authorized by law.

~~{(2)}~~(3) [Criminal usury is a felony of the third degree] ~~{(3)}~~ A violation of Subsection (2) is a ~~third degree felony [of the]~~ third degree ~~{1}~~ felony.

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

(5) The forfeiture of property under this section, 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.

Section ~~{96}~~98. Section **76-6-521** is amended to read:

### **76-6-521. Insurance fraud.**

~~{(1)}~~(a) [A person] ~~{(1)(a)}~~ As used in this section, "runner" means the same as that

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term is defined in Section 31A-31-102.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits a fraudulent insurance act if [~~that person~~] the actor with intent to deceive or 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 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;

(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

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31A-23a-411.1.

~~[(2)] (3)~~ (a) A violation of Subsection ~~[(1)(a)(i)]~~ (2)(a)(i) is a class A misdemeanor.

(b) A violation of Subsections ~~[(1)(a)(ii)]~~ (2)(a)(ii) or ~~[(1)(b)]~~ (2)(b) through ~~[(1)(h)]~~ (2)(h) is ~~[punishable as in the manner prescribed by Section 76-10-1801 for communication fraud for property of like value.]:~~

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

(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;

(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; or

(iv) a second degree felony when the value of the property, money, or thing obtained or sought to be obtained is or exceeds \$5,000.

(c) A violation of Subsection ~~[(1)(a)(iii)]~~ (2)(a)(iii) is:

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

~~[(ii)] (ii) [if the value of the loss is \$1,500 or more, is punishable as in the manner prescribed by Section 76-10-1801 for communication fraud for property of like value.]:~~

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

(iii) a second degree felony when the value of the loss is or exceeds \$5,000.

~~[(3)] (4)~~ 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)] (5)~~ The determination of the degree of any offense under Subsections ~~[(1)(a)(ii)]~~ (2)(a)(ii) and ~~[(1)(b)]~~ (2)(b) through ~~[(1)(h)]~~ (2)(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 described in Subsections ~~[(1)(a)(ii)]~~ (2)(a)(ii) and ~~[(1)(b)]~~ (2)(b) through ~~[(1)(h)]~~ (2)(h).

(6) This section 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 section, including any seizure and disposition

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of the property and any related judicial or administrative proceeding, shall be conducted in accordance with Title 24, Forfeiture and Disposition of Property Act.

Section ~~{97}~~99. Section 76-6-522 is amended to read:

### **76-6-522. Equity skimming of a vehicle.**

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

(i) "Actor" means a broker, dealer, or a person in collusion with a dealer or broker.

~~[(a)]~~ (ii) "Broker" means any person who, for compensation of any kind, arranges for the sale, lease, sublease, or transfer of a vehicle.

~~[(b)]~~ (iii) "Dealer" means any person engaged in the business of selling, leasing, or exchanging vehicles for compensation of any kind.

~~[(c)]~~ (iv) "Lease" means any grant of use or possession of a vehicle for consideration, with or without an option to buy.

~~[(d)]~~ (v) "Security interest" means an interest in a vehicle that secures payment or performance of an obligation.

~~[(e)]~~ (vi) "Transfer" means any delivery or conveyance of a vehicle to another from one person to another.

~~[(f)]~~ (vii) "Vehicle" means every device in, upon, or by which any person or property is or may be transported or drawn upon a highway, or through the air or water, or over land and includes a manufactured home or mobile home as defined in Section 41-1a-102.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A dealer or broker or any other person in collusion with a dealer or broker is guilty of]~~ An actor commits equity skimming of a vehicle if [he] the actor:

(a) (i) transfers or arranges the transfer of a vehicle for consideration or profit~~[-when he]; and~~

(ii) has not first obtained written authorization of the lessor or holder of the security interest; and

(b) knows or should have known the vehicle is subject to a lease or security interest~~[-without first obtaining written authorization of the lessor or holder of the security interest].~~

(3) ~~[Equity skimming of a vehicle]~~ A violation of Subsection (2) is a third degree felony.

(4) It is a defense to ~~[the crime of equity skimming of a vehicle if the accused]~~ a

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violation of Subsection (2) if the defendant proves by a preponderance of the evidence that the lease obligation or security interest has been satisfied within 30 days following the transfer of the vehicle.

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

(6) The forfeiture of property under this section, 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.

Section ~~98~~100. Section 76-6-523 is amended to read:

### **76-6-523. Obstruction of the leasing of real property for natural resource or agricultural production.**

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

~~(a)~~ (i) "Competitive process" includes public auction or other public competitive bidding process.

~~(b)~~ (ii) "Natural resource or agricultural production" means:

~~(i)~~ (A) the extraction or production of oil, gas, hydrocarbons, or other minerals;

~~(ii)~~ (B) production for commercial purposes of crops, livestock, and livestock products, including grazing; or

~~(iii)~~ (C) activities similar in purpose to those listed in Subsections ~~(1)(b)(i) and (ii)~~ (1)(a)(ii)(A) and (B).

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) ~~[A person is guilty of]~~ An actor commits obstruction of the leasing of real property for natural resource or agricultural production if the ~~[person]~~ actor:

(a) bids for a lease as part of a competitive process for the lease;

(b) does not intend to pay for the lease at the time the ~~[person]~~ actor makes the bid described in Subsection (2)(a); and

(c) does not pay the lessor in full for the lease as required by the lease agreement.

(3) ~~[The offense of obstruction of the leasing of real property for natural resource or agricultural production]~~ A violation of Subsection (2) is:

(a) a third degree felony; and

(b) subject to a minimum fine of not less than \$7,500.

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

(5) The forfeiture of property under this section, 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.

Section ~~{99}~~101. Section **76-6-524** is amended to read:

### **76-6-524. Falsifying information for preconstruction lien purposes.**

(1) [A person who knowingly falsifies] ~~{(1)}~~ Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits falsifying information for the purpose of obtaining priority of a preconstruction lien if the actor knowingly falsifies information for the purpose of obtaining priority of a preconstruction lien under Title 38, Chapter 1a, Preconstruction and Construction Liens[; is guilty of a class B misdemeanor].

(3) A violation of Subsection (2) is a class B misdemeanor.

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

(5) The forfeiture of property under this section, 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.

Section ~~{100}~~102. Section **76-6-601** is amended to read:

### **76-6-601. Definitions.**

As used in this [chapter] part:

(1) "Merchandise" means any personal property displayed, held, or offered for sale by a merchant.

(2) "Merchant" means an owner or operator of any retail mercantile establishment where merchandise is displayed, held, or offered for sale and includes the merchant's employees, servants, or agents.

(3) "Minor" means any unmarried person under 18 years of age.

(4) "Peace officer" has the same meaning as provided in Title 53, Chapter 13, Peace Officer Classifications.

(5) "Premises of a retail mercantile establishment" includes, but is not limited to, the

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retail mercantile establishment; any common use areas in shopping centers and all parking lots or areas set aside for the benefit of those patrons of the retail mercantile establishment.

(6) "Retail mercantile establishment" means any place where merchandise is displayed, held, or offered for sale to the public.

(7) "Retail value" means the merchant's stated or advertised price of the merchandise.

(8) "Shopping cart" means those push carts of the types which are commonly provided by grocery stores, drug stores, or other mercantile establishments, or markets for the use of the public in transporting commodities in stores and markets from the store to a place outside the store.

(9) "Under-ring" means to cause the cash register or other sales recording device to reflect less than the retail value of the merchandise.

Section ~~{101}~~ 103. Section **76-6-602** is amended to read:

### **76-6-602. Retail theft.**

~~[A person commits the offense of retail theft when he knowingly]~~ ~~{}~~

(1) Terms defined in Sections 76-1-101.5 and 76-6-601 apply to this section.

(2) An actor commits retail theft if the actor knowingly:

~~{1}~~ (a) [Takes] ~~{(a)}~~ takes possession of, conceals, carries away, transfers or causes to be carried away or transferred, any merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment with the intention of:

(i) retaining [such] the merchandise; or [with the intention of]

(ii) depriving the merchant permanently of the possession, use or benefit of such merchandise without paying the retail value of [such] the merchandise; [or]

~~{2}~~ (b) (i) [Alters,] ~~{(b) (i)}~~ alters transfers, or removes any label, price tag, marking, indicia of value, or any other markings which aid in determining value of any merchandise displayed, held, stored, or offered for sale, in a retail mercantile establishment; and

(ii) attempts to purchase [such] the merchandise described in Subsection (2)(b)(i) personally or in consort with another at less than the retail value with the intention of depriving the merchant of the retail value of [such] the merchandise; [or]

~~{3}~~ (c) [Transfers] ~~{(c)}~~ transfers any merchandise displayed, held, stored, or offered for sale in a retail mercantile establishment from the container in or on which [such] the merchandise is displayed to any other container with the intention of depriving the merchant of

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the retail value of ~~[such]~~ the merchandise; ~~[or]~~

~~[(4)]~~ (d) ~~[Under-rings]~~ ~~[(d)]~~ under-rings with the intention of depriving the merchant of the retail value of the merchandise; or

~~[(5)]~~ (e) ~~[Removes]~~ ~~[(e)]~~ removes a shopping cart from the premises of a retail mercantile establishment with the intent of depriving the merchant of the possession, use, or benefit of ~~[such]~~ the shopping cart.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the:

(i) value of the merchandise or shopping cart is or exceeds \$5,000;

(ii) merchandise stolen is a firearm or an operable motor vehicle; or

(b) a third degree felony if:

(i) the value of the merchandise is or exceeds \$1,500 but is less than \$5,000;

(ii) the merchandise is a catalytic converter as defined under Section 76-6-1402;

(iii) the value of the merchandise or shopping cart 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

(iv) (A) the value of merchandise or shopping cart is or exceeds \$500 but is less than \$1,500;

(B) the theft occurs in a retail mercantile establishment or on the premises of a retail mercantile establishment 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 retail mercantile establishment or premises of a retail mercantile establishment pursuant to Subsection 78B-3-108(4); or

(v) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(C), if the prior offense was committed

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within 10 years before the date of the current conviction or the date of the offense upon which the current conviction is based;

(c) a class A misdemeanor if:

(i) the value of the merchandise or shopping cart stolen is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of merchandise or shopping cart is less than \$500;

(B) the theft occurs in a retail mercantile establishment or premises of a retail mercantile establishment 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 retail mercantile establishment or premises of a retail mercantile establishment pursuant to Subsection 78B-3-108(4); or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(iii)(A) through (3)(b)(iii)(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) a class B misdemeanor if the value of the merchandise or shopping cart stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

Section ~~{102}~~104. Section **76-6-608** is amended to read:

**76-6-608. Theft detection shielding devices prohibited.**

~~{1}~~(1) ~~[A person may not]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-601 apply to this section.

(2) An actor commits the unlawful shielding of a theft detection device if the actor knowingly:

(a) [~~make or possess~~] ~~makes or possesses~~ any container or device used for, intended for use for, or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor, with the intent to commit a theft of merchandise;

(b) [~~sell, offer to sell, advertise, give, transport, or otherwise transfer~~] ~~sells, offers to sell, advertises, gives, transports, or otherwise transfers~~ to another any container or device intended for use for or represented as having the purpose of shielding merchandise from any electronic or magnetic theft alarm sensor;

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(c) [~~possess~~] possesses any tool or instrument designed to remove any theft detection device from any merchandise, with the intent to use the tool or instrument to remove any theft detection device from any merchandise without the permission of the merchant or the person owning or in possession of the merchandise; or

(d) intentionally [~~remove~~] removes a theft detection device from merchandise prior to purchase and without the permission of the merchant.

~~[(2)]~~ (3) (a) A violation of Subsection ~~[(1)]~~ ~~[(2)]~~ (a), (b), or (c) is a class A misdemeanor.

(b) A violation of Subsection ~~[(1)]~~ ~~[(d)]~~ (2)(d) is a:

(i) class B misdemeanor if the value of the merchandise from which the theft detection device is removed is less than \$500; or

(ii) class A misdemeanor if the value of the merchandise from which the theft detection device is removed is or exceeds \$500.

~~[(3)]~~ (4) A violation of Subsection ~~[(1)]~~ (2) is a separate offense from any offense listed in [~~Title 76, Chapter 6, [(1)] Part 4, Theft~~] Part 4, Theft, or Part 6, Retail Theft.

~~[(4)]~~ (5) Criminal prosecutions under this section do not affect any person's right of civil action for redress for damages suffered as a result of any violation of this section.

Section ~~[(103)]~~ 105. Section **76-6-703** is amended to read:

**76-6-703. Unlawful computer technology access or action or denial of service attack.**

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

(1) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

(2) An actor commits unlawful computer technology access or action or denial of service attack if the actor:

(a) without authorization, or in excess of the [~~person's~~] actor's authorization, [~~access or attempt~~] accesses or ~~[(attempt)]~~ attempts to access computer technology if the access or attempt to access 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

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(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] actor is authorized to access, knowingly [~~take {} takes~~] or [~~{} attempt~~] takes or attempts 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~~] engages in a denial of service attack.

~~[(2) A person who violates Subsection (1) is guilty of:]~~

(3) A violation of Subsection (2) is:

(a) a class B misdemeanor [~~when~~] if:

(i) 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) the information obtained is not confidential;

(b) a class A misdemeanor [~~when~~] if 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) a third degree felony [~~when~~] if:

(i) 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;

(ii) the property or benefit obtained or sought to be obtained is a license or entitlement;

(iii) the damage is to the license or entitlement of another person;

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~~(iv) the information obtained is confidential or identifying information; or~~

~~(v) in gaining access the actor breaches or breaks through a security system; or~~

~~(d) a second degree felony [when] if 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 \$5,000[ ~~or~~].~~

~~[(e) a third degree felony when:]~~

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

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

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

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

~~[(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~~

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~~disseminated is a minor.]~~

~~[(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 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).]~~

~~[(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) (4) (a) It is an affirmative defense [to Subsection (1), (2), or (3) that a person] {~~  
~~———} {(4) (a) It is an affirmative defense } that the actor obtained access or attempted to obtain access:~~

~~[(a)] (i) 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] actor is authorized or entitled to protect, and the access attempted or obtained was no greater than reasonably necessary for that purpose; or~~

~~[(b)] (ii) pursuant to a search warrant or a lawful exception to the requirement to obtain a search warrant.~~

~~(b) In accordance with 47 U.S.C. 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.~~

~~(c) 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.~~

~~[(8)] (5) (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:~~

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(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 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 ~~{104}~~106. Section **76-6-703.1** is enacted to read:

### **76-6-703.1. Unlawful disclosure of personal information.**

(1) (a) As used in this section, "electronic communication harassment" means an offense under Section 76-9-201.

(b) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

(2) An actor commits unlawful disclosure of personal information if:

(a) with intent that electronic communication harassment occur, the actor discloses or disseminates another person's identifying information with the expectation that others will further disseminate or use the person's identifying information; and

(b) the disclosure or dissemination of the other person's identifying information results in electronic communication harassment.

(3) (a) If the person whose identifying information is disseminated is an adult, a

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violation of Subsection (2) is:

- (i) a class B misdemeanor on the first offense;
- (ii) a class A misdemeanor on the second offense; or
- (iii) a third degree felony on a third or subsequent offense.

(b) If the person whose identifying information is disseminated is a minor, a violation of Subsection (2) is:

- (i) a class A misdemeanor on the first offense; or
- (ii) a third degree felony on the second or subsequent offense.

(4) (a) This section does not apply to an actor 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.

(b) In accordance with 47 U.S.C. 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.

(c) 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.

(5) (a) An interactive computer service is not guilty of violating this section if an actor violates this section using the interactive computer service and the interactive computer service did not knowingly assist the actor 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 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.

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Section ~~{105}~~107. Section **76-6-703.3** is enacted to read:

### **76-6-703.3. Unlawful use of technology to defraud.**

(1) (a) As used in this section, "sensitive personal identifying information" means the same as that term is defined in Section 76-10-1801.

(b) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

(2) An actor commits unlawful use of technology to defraud if the actor uses or knowingly allows another person to use a 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, a service, or other thing of value by a false pretense, promise, or representation.

(3) A violation of Subsection (2) is:

(a) a class B misdemeanor if the value of the money, property, service, or thing obtained or sought to be obtained is less than \$500;

(b) a class A misdemeanor if the value of the money, property, service, or thing obtained or sought to be obtained is or exceeds \$500 but is less than \$1,500;

(c) a third degree felony if the value of the money, property, service, or thing obtained or sought to be obtained is or exceeds \$1,500 but is less than \$5,000; or

(d) a second degree felony if:

(i) the value of the money, property, service, or thing obtained or sought to be obtained is or exceeds \$5,000; or

(ii) the object or purpose of the artifice or scheme to defraud is the obtaining of sensitive personal identifying information, regardless of the value.

(4) (a) In accordance with 47 U.S.C. 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.

(b) 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.

(5) (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.

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(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 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.

Section ~~{106}~~108. Section **76-6-703.5** is enacted to read:

### **76-6-703.5. Interference or interruption of critical infrastructure.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

(2) An actor commits interference or interruption of critical infrastructure if the actor intentionally or knowingly, and without lawful authorization, interferes with or interrupts critical infrastructure.

(3) A violation of Subsection (2) is a third degree felony.

(4) (a) In accordance with 47 U.S.C. 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.

(b) 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.

(5) (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,

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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 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.

Section ~~{107}~~109. Section **76-6-703.7** is enacted to read:

### **76-6-703.7. Unlawful computer access.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-702 apply to this section.

(2) An actor commits unlawful computer access if:

(a) the actor intentionally or knowingly, and without authorization, gains or attempts to gain access to a computer, computer network, computer property, or computer system; and

(b) the circumstances of the violation of Subsection (2)(a) do not constitute an offense under Section 76-6-703, 76-6-703.1, 76-6-703.3, or 76-6-703.5.

(3) A violation of Subsection (2) is a class B misdemeanor.

(4) (a) Notwithstanding Subsection (2), 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 this section 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.

(b) It is an affirmative defense to a violation under this section that the actor obtained access or attempted to obtain access:

(i) 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 actor is authorized or entitled to protect, and the access attempted or obtained was no greater than reasonably necessary for that purpose; or

(ii) pursuant to a search warrant or a lawful exception to the requirement to obtain a search warrant.

(c) In accordance with 47 U.S.C. 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

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service for content provided by another person.

(d) 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.

(5) (a) An interactive computer service is not guilty of violating this section if an actor violates this section using the interactive computer service and the interactive computer service did not knowingly assist the actor 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 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.

Section ~~{108}~~110. Section **76-6-705** is amended to read:

### **76-6-705. Reporting violations.**

(1) Each person who has reason to believe that [~~the provisions~~] a provision of Section 76-6-703 [~~are being or have~~], 76-6-703.1, 76-6-703.3, 76-6-703.5, or 76-6-703.7 is being or has been violated shall report the suspected violation to:

(a) the attorney general, or county attorney, or, if within a prosecution district, the district attorney of the county or prosecution district in which part or all of the [~~violations~~] violation occurred; or

(b) a state or local law enforcement agency.

(2) Subsection (1) does not apply to the extent that the person is prohibited from reporting by a statutory or common law privilege.

Section ~~{109}~~111. Section **76-6-801** is amended to read:

**76-6-801.**~~{Library}~~ Library theft.

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(1) (a) [A person is guilty of the crime of library theft when he]†

† {(1) (a)} As used in this section:

(i) "Library" means:

(A) a public library;

(B) a library of an educational or historical society;

(C) a museum; or

(D) a repository of public records.

(ii) "Library materials" means a book, plate, picture, photograph, engraving, painting, drawing, map, newspaper, magazine, pamphlet, broadside, manuscript, document, letter, public record, microfilm, sound recording, audiovisual materials in any format, electronic data processing records, artifacts, or other documentary, written or printed materials regardless of physical form or characteristics, belonging to, on loan to, or otherwise in the custody of a library.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits library theft if the actor:

(a) willfully, for the purpose of converting to personal use, and depriving the owner, conceals on [his] the actor's person or among [his] the actor's belongings library materials while on the premises of the library; or

(b) willfully and without authority removes library materials from the library building with the intention of converting them to [his] the actor's own use.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the value of the library materials is or exceeds \$5,000;

(b) a third degree felony if:

(i) the value of the library materials is or exceeds \$1,500 but is less than \$5,000;

(ii) the value of the library materials 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);

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(iii) (A) the value of the library materials 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 library prohibiting the offender from entering the property if the library has complied with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

(iv) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class A misdemeanor if:

(i) the value of the library materials stolen is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of the library materials 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 library if the library has complied with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class B misdemeanor if the value of the library materials stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

(4) (a) An actor who willfully conceals library materials on the actor's person or among the actor's belongings while on the premises of the library or in the library's immediate vicinity is prima facie presumed to have concealed library materials with the intention of converting the library materials to the actor's own use.

(b) If library materials are found concealed upon the actor's person or among the actor's belongings, or electronic security devices are activated by the actor's presence, it is prima facie evidence of willful concealment.

Section ~~{110}~~112. Section **76-6-803** is amended to read:

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### 76-6-803. Mutilation or damaging of library material.

(1)(a) [A person is guilty of the crime of library theft when he] ~~[(1)(a)]~~ As used in this section:

(i) "Library" means the same as that term is defined in Section 76-6-801.

(ii) "Library materials" means the same as that term is defined in Section 76-6-801.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor is guilty of mutilation or damage of library materials if the actor intentionally or recklessly writes upon, injures, defaces, tears, cuts, mutilates, destroys, or otherwise damages library materials.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the value of the library materials is or exceeds \$5,000;

(b) a third degree felony if:

(i) the value of the library materials is or exceeds \$1,500 but is less than \$5,000;

(ii) the value of the library materials 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(ii)(A) or (B);

(iii) (A) the value of the library materials 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 library if the library has complied with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

(iv) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class A misdemeanor if:

(i) the value of the library materials stolen is or exceeds \$500 but is less than \$1,500;

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(ii) (A) the value of the library materials 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 library if the library has complied with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class B misdemeanor if the value of the library materials stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

Section ~~{111}~~113. Section **76-6-803.30** is amended to read:

### **76-6-803.30. Failure to return library material -- Written notice.**

~~{1}~~(1) (a) [A person is guilty of library theft when] {1} (a) }As used in this section:

(i) "Library" means the same as that term is defined in Section 76-6-801.

(ii) "Library materials" means the same as that term is defined in Section 76-6-801.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) (a) An actor is guilty of failure to return library materials if the actor, having possession or having been in possession of library materials~~[, he]~~:

~~{a}~~(i) fails to return the materials within 30 days after receiving written notice demanding return of the materials; or

~~{b}~~(ii) if the materials are lost or destroyed, fails to pay the replacement value of the materials within 30 days after being notified.

~~{2}~~(b) Written notice is considered received upon the sworn affidavit of the person delivering the notice with a statement as to the date, place, and manner of delivery, or upon proof that the notice was mailed postage prepaid, via the United States Postal Service, to the current address listed for the person in the library records.

(3) A violation of Subsection (2) is:

(a) a second degree felony if the value of the library materials is or exceeds \$5,000;

(b) a third degree felony if:

(i) the value of the library materials is or exceeds \$1,500 but is less than \$5,000;

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(ii) the value of the library materials 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 Part 5, Fraud; or

(C) any attempt to commit any offense under Subsection (3)(b)(iii)(A) or (B);

(iii) (A) the value of the library materials 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 library if the library has complied with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

(iv) the actor has been previously convicted of a felony violation of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class A misdemeanor if:

(i) the value of the library materials stolen is or exceeds \$500 but is less than \$1,500;

(ii) (A) the value of the library materials 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 library if the library has complied with the provisions of Subsection 78B-3-108(4) governing notice by a merchant; or

(iii) the actor has been twice before convicted of any of the offenses listed in Subsections (3)(b)(ii)(A) through (3)(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) a class B misdemeanor if the value of the library material stolen is less than \$500 and the theft is not an offense under Subsection (3)(c).

Section ~~{112}~~114. Section **76-6-803.60** is amended to read:

**76-6-803.60. Detention of theft suspect by library employee -- Purposes.**

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~~§~~(1) (a) As used in this section:

(i) "Library" means the same as that term is defined in Section 76-6-801.

(ii) "Library materials" means the same as that term is defined in Section 76-6-801.

(b) Terms defined in Section 76-1-101.5 apply to this section.

~~§(1)~~(2) Any employee of the library who has probable cause to believe that a person has committed library theft may detain the person, on or off the premises of a library, in a reasonable manner and for a reasonable length of time for all or any of the following purposes:

(a) to make reasonable inquiry as to whether the person has in his possession concealed library materials;

(b) to request identification;

(c) to verify identification;

(d) to make a reasonable request of the person to place or keep in full view any library materials the individual may have removed, or which the employee has reason to believe he may have removed, from its place of display or elsewhere, whether for examination, or for any other reasonable purpose;

(e) to inform a peace officer of the detention of the person and surrender that person to the custody of a peace officer; or

(f) in the case of a minor, to inform a peace officer, the parents, guardian, or other private person interested in the welfare of the minor as soon as possible of this detention and to surrender custody of the minor to this person.

~~[(2)]~~ (3) An employee may make a detention under this section off the library premises only if the detention is pursuant to an immediate pursuit of the person.

Section ~~§(1)~~115. Section **76-6-803.90** is amended to read:

**76-6-803.90. Liability -- Defense -- Probable cause -- Reasonableness.**

(1) (a) As used in this section, "library" means the same as that term is defined in Section 76-6-801.

(b) Terms defined in Section 76-1-101.5 apply to this section.

(2) In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights brought by any person detained by an employee of the library, it is a defense to the action that the employee of the library detaining the person had probable cause to believe that the person had committed ~~§~~library theft~~§~~an

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~~offense under this part~~ and that the employee acted reasonably under all circumstances.

Section ~~{114}~~116. Section 76-6-902 is amended to read:

### **76-6-902. Antiquities alteration, removal, injury, or destruction.**

~~{1}~~(1) ~~It is unlawful for any person to intentionally alter, remove, injure, or destroy antiquities]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-901 apply to this section.

(2) An actor commits antiquities alteration, removal, injury, or destruction if the actor:

(a) intentionally alters, removes, injures, or destroys antiquities from state lands or private lands without the landowner's consent[-]; or

~~{(2) It is unlawful to intentionally reproduce, rework, or forge any antiquities or make any object, whether copies or not, or falsely label, describe, identify, or offer for sale or exchange any object with the intent to represent the object as original and genuine, nor may any person offer any object for sale or exchange that was collected or excavated in violation of this chapter.}~~

~~—————}~~(b) counsels, procures, solicits, or employs another person to violate Subsection (2)(a).

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B misdemeanor.

(b) A violation of Subsection (2) is a third degree felony if:

(i) the violation is the actor's second or subsequent violation of this section, Section 76-6-902.1, or Section 76-6-902.2; or

(ii) the amount at issue, as calculated under Subsection (3)(c), exceeds \$500.

(c) The amount described in Subsection (3)(b)(ii) is calculated by adding together:

(i) the commercial or archaeological value of the antiquities involved in the violation;  
and

(ii) the cost of the restoration and repair of the antiquities involved in the violation.

(d) An actor shall surrender to the landowner all articles and material discovered, collected, excavated, or offered for sale or exchange in violation of this section.

~~[(2) It is unlawful to intentionally reproduce, rework, or forge any antiquities or make any object, whether copies or not, or falsely label, describe, identify, or offer for sale or exchange any object with the intent to represent the object as original and genuine, nor may any person offer any object for sale or exchange that was collected or excavated in violation of this~~

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chapter.]

Section ~~{115}~~117. Section **76-6-902.1** is enacted to read:

### **76-6-902.1. Unlawful creation, labeling, or sale of reproduction of antiquities.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-901 apply to this section.

(2) An actor commits unlawful reproduction, labeling, or sale of reproduction of antiquities if the actor:

(a) with the intent to represent one or more objects as original and genuine antiquities, intentionally:

(i) reproduces, reworks, or forges antiquities; or

(ii) (A) makes an object, whether as a copy or not; or

(B) falsely labels, describes, identifies, or offers for sale or exchange an object; or

(b) counsels, procures, solicits, or employs another person to violate Subsection (2)(a).

(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B misdemeanor.

(b) A violation of Subsection (2) is a third degree felony if:

(i) the violation is the actor's second or subsequent violation of this section, Section 76-6-902, or Section 76-6-902.2; or

(ii) the amount at issue, as calculated under Subsection (3)(c), exceeds \$500.

(c) The amount described in Subsection (3)(b)(ii) is calculated by adding together:

(i) the commercial or archaeological value of the antiquities involved in the violation; and

(ii) the cost of the restoration and repair of the antiquities involved in the violation.

(d) An actor shall surrender to the landowner all articles and material discovered, collected, excavated, or offered for sale or exchange in violation of this section.

Section ~~{116}~~118. Section **76-6-902.2** is enacted to read:

### **76-6-902.2. Unlawful sale or exchange of antiquities.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-901 apply to this section.

(2) An actor commits unlawful sale or exchange of antiquities if the actor:

(a) offers for sale or exchange an object that was collected or excavated in violation of Section 76-6-902; or

(b) counsels, procures, solicits, or employs another person to violate Subsection (2)(a).

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(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B misdemeanor.

(b) A violation of Subsection (2) is a third degree felony if:

(i) the violation is the actor's second or subsequent violation of this section, Section 76-6-902, or Section 76-6-902.1; or

(ii) the amount at issue, as calculated under Subsection (3)(c), exceeds \$500.

(c) The amount described in Subsection (3)(b)(ii) is calculated by adding together:

(i) the commercial or archaeological value of the antiquities involved in the violation;  
and

(ii) the cost of the restoration and repair of the antiquities involved in the violation.

(d) An actor shall surrender to the landowner all articles and material discovered, collected, excavated, or offered for sale or exchange in violation of this section.

Section ~~{117}~~119. Section **76-6-1001** is amended to read:

### **76-6-1001. Definitions.**

As used in this part:

(1) "Common mail carrier" means a person engaged in or transacting the business of collecting, transporting, or delivering mail, other than the United States Postal Service.

(2) "Key" means any instrument used by the postal service and postal customer, and which is designed to operate the lock on a mail receptacle.

(3) "Mail" means any letter, card, parcel, or other material, along with its contents, that:

(a) has postage affixed by the postal customer or postal service;

(b) has been accepted for delivery by the postal service;

(c) the postal customer leaves for collection by the postal service; or

(d) the postal service delivers to the postal customer.

(4) "Mail receptacle" means a mail box, post office box, rural box, or any place or area intended or used by postal customers or a postal service for the collection or delivery of mail.

(5) "Personal identifying information" means the same as that term is defined in Section ~~[76-6-1102]~~ 76-6-1101.

(6) "Postage" means a postal service stamp, permit imprint, meter strip, or other indication of either prepayment for postal service provided or authorization by the postal service for collection and delivery of mail.

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(7) "Postal service" means the United States Postal Service or a private common mail carrier.

Section ~~{118}~~120. Section 76-6-1002 is amended to read:

### 76-6-1002. Damage to mail receptacle.

~~{1}~~(1) ~~[A person commits the crime of]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-1001 apply to this section.

(2) An actor commits damage to a mail receptacle if the [person] actor knowingly damages the condition of a mail receptacle, including:

- (a) taking, concealing, damaging, or destroying a key; or
- (b) breaking open, tearing down, taking, damaging, or destroying a mail receptacle.

~~{(2)}~~1(3) (a) [In determining the degree of an offense committed under Subsection (1), the penalty levels in Subsection 76-6-106(3)(b) apply.]~~{~~

~~}~~ ~~{(3)(a)}~~ A violation of Subsection (2) is a:

(i) second degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$5,000 in value;

(ii) third degree felony if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$1,500 but is less than \$5,000 in value;

(iii) class A misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss equal to or in excess of \$500 but is less than \$1,500 in value; and

(iv) class B misdemeanor if the actor's conduct causes or is intended to cause pecuniary loss less than \$500 in value.

(b) If the act committed amounts to an offense subject to a greater penalty, ~~[this subsection]~~ Subsection (3)(a) does not prohibit prosecution and sentencing for the more serious offense.

(4) The following presumptions and defenses shall be applicable to this section:

(a) possession of property recently stolen, when no satisfactory explanation of such possession is made, is prima facie evidence that the person in possession stole the property;

(b) it is no defense under this part that the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe, provided an interest in property for purposes of this Subsection (4)(b) shall not include a security interest for the repayment of a debt or obligation; and

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(c) it is a defense under this section that the actor:

(i) acted under an honest claim of right to the property or service involved;

(ii) acted in the honest belief that the actor had the right to obtain or exercise control over the property or service as the actor did; or

(iii) obtained or exercised control over the property or service honestly believing that the owner, if present, would have consented.

Section ~~{119}~~ 121. Section **76-6-1003** is amended to read:

### **76-6-1003. Mail theft.**

~~{1}~~ (1) ~~[A person commits the crime of]~~ ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-1001 apply to this section.

(2) An actor commits mail theft if the [person] actor:

(a) knowingly, and with the intent to deprive another:

(i) takes, destroys, hides, or embezzles mail; or

(ii) obtains any mail by fraud or deception; or

(b) buys, receives, conceals, or possesses mail and knows or reasonably should have known that the mail was unlawfully taken or obtained.

~~{2}~~ (3) ~~[Mail theft]~~ ~~{(3)}~~ A violation of Subsection (2) is:

(a) a third degree felony;

(b) a class A misdemeanor, if the mail has no monetary value and does not include the name of an individual; or

(c) a second degree felony, if the mail contains the personal identifying information of 10 or more individuals.

(4) The following presumptions and defenses shall be applicable to this section:

(a) possession of property recently stolen, when no satisfactory explanation of such possession is made, is prima facie evidence that the person in possession stole the property;

(b) it is no defense under this section that the actor has an interest in the property or service stolen if another person also has an interest that the actor is not entitled to infringe, provided an interest in property for purposes of this Subsection (4)(b) shall not include a security interest for the repayment of a debt or obligation; and

(c) it is a defense under this section that:

(i) the actor acted under an honest claim of right to the property or service involved;

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(ii) the actor acted in the honest belief that the actor had the right to obtain or exercise control over the property or service as the actor did;

(iii) the actor obtained or exercised control over the property or service honestly believing that the owner, if present, would have consented;

(iv) the actor was unaware that the mail belonged to another person;

(v) the actor reasonably believed the actor was entitled to the mail or had a right to acquire or dispose of the mail as the actor did; or

(vi) the mail belonged to the actor's spouse, unless the parties were either legally separated or living in separate residences at the time of the alleged mail theft.

Section ~~{120}~~122. Section **76-6-1101** is repealed and reenacted to read:

~~{~~76-6-1101.~~{~~ **Definitions.**

(1) As used in this part:

(a) "Personal identifying information" may include:

(i) name;

(ii) birth date;

(iii) address;

(iv) telephone number;

(v) driver license number;

(vi) social security number;

(vii) place of employment;

(viii) employee identification numbers or other personal identification numbers;

(ix) mother's maiden name;

(x) electronic identification numbers;

(xi) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions

Act;

(xii) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506, 76-6-506.2, 76-6-506.3, and 76-6-506.6; or

(xiii) a photograph or any other realistic likeness.

(b) "Restitution" means the same as that term is defined in Section 77-38b-102.

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Section ~~{121}~~123. Section 76-6-1102 is amended to read:

### 76-6-1102. Identity fraud.

~~[(1) As used in this part:]~~

~~[(a) "Personal identifying information" may include:]~~

~~[(i) name;]~~

~~[(ii) birth date;]~~

~~[(iii) address;]~~

~~[(iv) telephone number;]~~

~~[(v) drivers license number;]~~

~~[(vi) Social Security number;]~~

~~[(vii) place of employment;]~~

~~[(viii) employee identification numbers or other personal identification numbers;]~~

~~[(ix) mother's maiden name;]~~

~~[(x) electronic identification numbers;]~~

~~[(xi) electronic signatures under Title 46, Chapter 4, Uniform Electronic Transactions Act;]~~

~~[(xii) any other numbers or information that can be used to access a person's financial resources or medical information, except for numbers or information that can be prosecuted as financial transaction card offenses under Sections 76-6-506 through 76-6-506.6; or]~~

~~[(xiii) a photograph or any other realistic likeness.]~~

~~[(b) "Restitution" means the same as that term is defined in Section 77-38b-102.]~~

(1) Terms defined in Sections 76-1-101.5 and 76-6-1101 apply to this section.

(2) [(a) A person is guilty of identity fraud when that person] An actor commits identity fraud if the actor knowingly or intentionally uses, or attempts to use, the personal identifying information of another person, whether that person is alive or deceased, with fraudulent intent, including to obtain, or attempt to obtain, credit, goods, services, employment, any other thing of value, or medical information.

~~[(b) It is not a defense to a violation of Subsection (2)(a) that the person did not know that the personal information belonged to another person.]~~

(3) [Identity fraud] A violation of Subsection (2) is:

(a) except as provided in Subsection (3)(b)(ii), a third degree felony if the value of the

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credit, goods, services, employment, or any other thing of value is less than \$5,000; or

(b) a second degree felony if:

(i) the value of the credit, goods, services, employment, or any other thing of value is or exceeds \$5,000; or

(ii) the use described in Subsection ~~[(2)-(b)]~~ (2) of personal identifying information results, directly or indirectly, in bodily injury to another person.

(4) (a) It is not a defense to a violation of Subsection (2) that the actor did not know that the personal information belonged to another person.

(b) Multiple violations of Subsection (2) may be aggregated into a single offense, and the degree of the offense is determined by the total value of all credit, goods, services, or any other thing of value used, or attempted to be used, through the multiple violations.

~~[(5) (a) [When] [(5) (a) ]~~ If a defendant is convicted of a violation of this section, the court shall order the defendant to pay restitution in accordance with Title 77, Chapter 38b, Crime Victims Restitution Act.

~~[(6) (b) ]~~ Restitution under Subsection (5)(a) may include:

~~[(a) (i) ]~~ payment for any costs incurred, including attorney fees, lost wages, and replacement of checks; and

~~[(b) (ii) ]~~ the value of the victim's time incurred due to the offense:

~~[(i) (A) ]~~ in clearing the victim's credit history or credit rating;

~~[(ii) (B) ]~~ in any civil or administrative proceedings necessary to satisfy or resolve any debt, lien, or other obligation of the victim or imputed to the victim and arising from the offense; and

~~[(iii) (C) ]~~ in attempting to remedy any other intended or actual harm to the victim incurred as a result of the offense.

Section ~~[(122) ]~~ 124. Section **76-6-1105** is amended to read:

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

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

~~[(a) (i) [(i) [(i) ] (A) ]~~ "Identifying document" means:

~~[(A) (I) ]~~ a government issued document commonly used for identification;

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

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

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identifying information as defined in [~~Subsections 76-6-1102(1)(a)(ii) through (xiii)~~]  
Subsection 76-6-1101(1)(a).

~~[(ii)]~~ (B) "Identifying document" includes:

~~[(A)]~~ (I) a counterfeit identifying document; or

~~[(B)]~~ (II) a document containing personal identifying information of a deceased individual.

~~[(b)]~~ (ii) "Possess" means to have physical control or electronic access.

(b) Terms defined in Sections 76-1-101.5 and 76-6-1101 apply to this section.

(2) (a) Under circumstances that do not constitute a violation of Section ~~{76-6-502 or~~  
~~{76-6-1102 {}}~~ or Section 76-6-502, an individual is guilty of a class A misdemeanor if the  
individual] 76-6-502 or 76-6-1102, an actor commits unlawful possession of another's  
identification documents if the actor:

(i) obtains or possesses an identifying document:

(A) with knowledge that the [~~individual~~] actor 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) Under circumstances that do not constitute a violation of Section ~~{76-6-502 or~~  
~~{76-6-1102, an {}}~~ individual is guilty of a third degree felony if the individual] 76-6-502 or  
76-6-1102, an actor commits unlawful possession of another's identification documents if the  
actor:

(i) obtains or possesses identifying documents of more than two, but fewer than 100,  
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 more

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than two, but fewer than 100, individuals:

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

(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 ~~{76-6-502 or 76-6-1102, an {f} individual is guilty of a second degree felony if the individual}~~ 76-6-502 or 76-6-1102, an actor commits unlawful possession of another's identification documents if the actor:

(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.

(3) A violation of:

(a) Subsection (2)(a) is a class A misdemeanor;

(b) Subsection (2)(b) is a third degree felony; or

(c) Subsection (2)(c) is a second degree felony.

Section ~~{123}~~125. Section **76-6-1203** is amended to read:

**76-6-1203. Mortgage fraud.**

(1) [A person commits the offense of] ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-1202 apply to this section.

(2) An actor commits mortgage fraud if the [person] actor does any of the following with the intent to defraud:

[{+}] (a) knowingly makes any material misstatement, misrepresentation, or omission during the mortgage lending process, intending that it be relied upon by a mortgage lender,

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borrower, or any other party to the mortgage lending process;

~~[(2)]~~ (b) knowingly uses or facilitates the use of any material misstatement, misrepresentation, or omission, during the mortgage lending process, intending that it be relied upon by a mortgage lender, borrower, or any other party to the mortgage lending process;

~~[(3)]~~ (c) files or causes to be filed with any county recorder in Utah any document that the ~~[person]~~ actor knows contains a material misstatement, misrepresentation, or omission; or

~~[(4)]~~ (d) receives any proceeds or any compensation in connection with a mortgage loan that the ~~[person]~~ actor knows resulted from a violation of this section.

(3) (a) Notwithstanding any other administrative, civil, or criminal penalties, a violation of Subsection (2) is a:

(i) class A misdemeanor if the value is or exceeds \$500 but is less than \$1,500;

(ii) third degree felony if the value is or exceeds \$1,500 but is less than \$5,000;

(iii) second degree felony if the value is or exceeds \$5,000; and

(iv) second degree felony if 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) The determination of the degree of any offense under Subsection (3)(a) is measured by the total value of all property, money, or things obtained or sought to be obtained by a violation of Subsection (2), except as provided in Subsection (3)(a)(iv).

(4) Each residential or commercial property transaction offense under this section constitutes a separate violation.

Section ~~{124}~~ 126. Section 76-6-1303 is amended to read:

**76-6-1303. Possession, sale, or use of automated sales suppression device unlawful.**

~~{1}~~ (1) [It is a third degree felony to] ~~{(1)}~~ Terms defined in Sections 76-1-101.5 and 76-6-1302 apply to this section.

(2) An actor commits possession, sale, or use of an automated sales suppression device if the actor willfully or knowingly [sell, purchase, install, transfer, use, or possess] sells, purchases, installs, transfers, uses, or possesses in this state any automated sales suppression device or phantomware with the intent to defraud[, except that any second or subsequent violation of this Subsection (1) is a second degree felony].

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(3) (a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a third degree felony.

(b) A second or subsequent violation of Subsection (2)(b) is a second degree felony.

~~(2)~~ (c) Notwithstanding Section 76-3-301, any person convicted of violating Subsection ~~(1)~~ (2) may be fined not more than twice the amount of the applicable taxes that would otherwise be due, but for the use of the automated sales suppression device or phantomware.

~~(3)~~ (d) Any person convicted of a violation of Subsection ~~(1)~~ (2):

~~(a)~~ (i) is liable for all applicable taxes, penalties under Section 59-1-401, and interest under Section 59-1-402 that would otherwise be due, but for the use of the automated sales suppression device or phantomware to evade the payment of taxes; and

~~(b)~~ (ii) shall disgorge all profits associated with the sale or use of an automated sales suppression device or phantomware.

(4) An automated sales suppression device and any device containing an automated sales suppression device is contraband and subject to forfeiture under Title 24, Forfeiture and Disposition of Property Act.

Section ~~(125)~~ 127. Section **76-6-1403** is amended to read:

**76-6-1403. Requirements for ~~(record)~~ records of sale or ~~(purchase)~~ purchases.**

(1) Every dealer shall:

(a) require the information under Subsection (2) for each transaction of regulated metal, except under Subsection 76-6-1406(4); and

(b) maintain for each purchase of regulated metal the information required by this part in a written or electronic log, in the English language.

(2) The dealer shall require the following information of the seller and shall record the information as required under Subsection (1) for each purchase of regulated metal:

(a) a complete description of the regulated metal, including weight and metallic description, in accordance with scrap metal recycling industry standards;

(b) the full name and residence of each person selling the regulated metal;

(c) the vehicle type and license plate number, if applicable, of the vehicle transporting the regulated metal to the dealer;

(d) the price per pound and the amount paid for each type of regulated metal purchased

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by the dealer;

(e) the date, time, and place of the purchase;

(f) the type and the identifying number of the identification provided in Subsection

(2)(g);

(g) a form of identification that is a valid United States federal or state-issued photo ID, which includes a driver license, a United States passport, a United States passport card, or a United States military identification card;

(h) the seller's signature on a certificate stating that [~~he~~] the seller has the legal right to sell the scrap metal or junk; and

(i) a digital photograph or still video of the seller, taken at the time of the sale, or a clearly legible photocopy of the seller's identification.

(3) No entry in the log may be erased, deleted, mutilated, or changed.

(4) The log and entries shall be open to inspection by the following officials having jurisdiction over the area in which the dealer does business during regular business hours:

(a) the county sheriff or deputies;

(b) any law enforcement agency; and

(c) any constable or other state, municipal, or county official in the county in which the dealer does business.

(5) A dealer shall make these records available for inspection by any law enforcement agency, upon request, at the dealer's place of business during the dealer's regular business hours.

(6) Log entries made under this section shall be maintained for not less than three years from date of entry.

(7) (a) The dealer may maintain the information required by Subsection (2) for repeat sellers who use the same vehicle to bring regulated metal for each transaction in a relational database that allows the dealer to enter an initial record of the seller's information and then relate subsequent transaction records to that initial information, except under Subsection (7)(b).

(b) The dealer shall obtain regarding each transaction with repeat sellers:

(i) a photograph of the seller; and

(ii) a signature from the seller.

(8) A dealer who violates this section is subject to the penalties described in Section

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76-6-1403.1.

Section ~~{126}~~128. Section **76-6-1403.1** is enacted to read:

**76-6-1403.1. Unlawful conduct with respect to record of sale or purchase.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-1402 apply to this section.

(2) A dealer commits unlawful conduct with respect to record of sale or purchase if the dealer violates a requirement under Section 76-6-1403.

(3) (a) (i) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class C misdemeanor.

(ii) A dealer who is convicted of a class C misdemeanor under this section is subject to a mandatory fine of no less than \$750.

(b) (i) A violation of Subsection (2) is a class A misdemeanor if the dealer previously has been convicted of a violation of this section or Section 76-6-1404.1, 76-6-1405.1, 76-6-1406.1, or 76-6-1409.1.

(ii) A dealer who is convicted of a class A misdemeanor under this section is subject to a mandatory fine of no less than \$2,500.

(4) (a) This section does not impair the authority of a county or municipality in this state to license, tax, and regulate any junk dealer or metal dealer, except that local regulations may not be any less stringent than the provisions in Section 76-6-1403 or this section.

(b) This section does not impair the authority of a county or municipality to revoke or deny a business license or permit required by that county or municipality regulating the authority to sell, purchase, or possess metal, including the revocation or denial of a business license or permit based on a violation of Section 76-6-1403 or this section.

(c) This section does not prohibit the charging of a seller or dealer with any other criminal offense related to the obtaining, possession, or selling of stolen regulated metals.

Section ~~{127}~~129. Section **76-6-1404** is amended to read:

**76-6-1404. Required notice to sellers of identification requirements.**

(1) A dealer shall at all times maintain in a prominent place at the dealer's place of business, in open view to a seller of regulated metal, a clearly legible notice in not less than two-inch high lettering that contains the following language: "A PERSON ATTEMPTING TO SELL ANY REGULATED METAL MUST PROVIDE IDENTIFICATION AS REQUIRED BY STATE LAW."

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(2) A dealer who violates this section is subject to the penalties described in Section 76-6-1404.1.

Section ~~{128}~~130. Section **76-6-1404.1** is enacted to read:

**76-6-1404.1. Unlawful failure to maintain required notice to sellers.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-1402 apply to this section.

(2) A dealer commits unlawful failure to maintain required notice to sellers if the dealer violates a requirement under Section 76-6-1404.

(3) (a) (i) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class C misdemeanor.

(ii) A dealer who is convicted of a class C misdemeanor under this section is subject to a mandatory fine of no less than \$750.

(b) (i) A violation of Subsection (2) is a class A misdemeanor if the dealer previously has been convicted of a violation of this section or Section 76-6-1403.1, 76-6-1405.1, 76-6-1406.1, or 76-6-1409.1.

(ii) A dealer who is convicted of a class A misdemeanor under this section is subject to a mandatory fine of no less than \$2,500.

(4) (a) This section does not impair the authority of a county or municipality in this state to license, tax, and regulate any junk dealer or metal dealer, except that local regulations may not be any less stringent than the provisions in Section 76-6-1404 or this section.

(b) This section does not impair the authority of a county or municipality to revoke or deny a business license or permit required by that county or municipality regulating the authority to sell, purchase, or possess metal, including the revocation or denial of a business license or permit based on a violation of Section 76-6-1404 or this section.

(c) This section does not prohibit the charging of a seller or dealer with any other criminal offense related to the obtaining, possession, or selling of stolen regulated metals.

Section ~~{129}~~131. Section **76-6-1405** is amended to read:

**76-6-1405. Qualifications to sell to dealer.**

(1) A dealer may not purchase regulated metal from a person younger than 18 years [of age] old.

(2) If the person is unable to comply with all the identification requirements of Subsection 76-6-1403(2), the dealer may not conduct a transaction of regulated metal with that

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person.

(3) A dealer who violates this section is subject to the penalties described in Section 76-6-1405.1.

Section ~~{130}~~132. Section **76-6-1405.1** is enacted to read:

**76-6-1405.1. Unlawful failure to comply with qualifications to sell to dealer.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-1402 apply to this section.

(2) A dealer commits unlawful failure to comply with qualifications to sell to dealer if the dealer violates a requirement under Section 76-6-1405.

(3) (a) (i) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class C misdemeanor.

(ii) A dealer who is convicted of a class C misdemeanor under this section is subject to a mandatory fine of no less than \$750.

(b) (i) A violation of Subsection (2) is a class A misdemeanor if the dealer previously has been convicted of a violation of this section or Section 76-6-1403.1, 76-6-1404.1, 76-6-1406.1, or 76-6-1409.1.

(ii) A dealer who is convicted of a class A misdemeanor under this section is subject to a mandatory fine of no less than \$2,500.

(4) (a) This section does not impair the authority of a county or municipality in this state to license, tax, and regulate any junk dealer or metal dealer, except that local regulations may not be any less stringent than the provisions in Section 76-6-1405 or this section.

(b) This section does not impair the authority of a county or municipality to revoke or deny a business license or permit required by that county or municipality regulating the authority to sell, purchase, or possess metal, including the revocation or denial of a business license or permit based on a violation of Section 76-6-1405 or this section.

(c) This section does not prohibit the charging of a seller or dealer with any other criminal offense related to the obtaining, possession, or selling of stolen regulated metals.

Section ~~{131}~~133. Section **76-6-1406** is amended to read:

**76-6-1406. Restrictions on the purchase of regulated metal -- Exemption.**

(1) A dealer may conduct purchase transactions involving regulated metal only between the hours of 6 a.m. and 7 p.m.

(2) Except when the dealer pays a government entity by check for regulated metal, the

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dealer may not purchase any of the following regulated metal without obtaining and keeping on file reasonable documentation that the seller is an employee, agent, or contractor of a governmental entity who is authorized to sell the item of regulated metal property on behalf of the governmental entity:

- (a) a manhole cover or sewer grate;
- (b) an electric light pole; or
- (c) a guard rail.

(3) (a) A dealer may not purchase suspect metal without obtaining the information under Subsection (3)(b) identifying the owner of the suspect metal.

(b) The owner of the suspect metal shall provide in writing:

- (i) the owner's telephone number;
- (ii) the owner's business or residential address, which may not be a post box;
- (iii) a copy of the owner's driver license; and
- (iv) a signed statement that the person is the lawful owner of the suspect metal and

authorizes the seller, identified by name, to sell the suspect metal.

(c) The dealer shall keep the identifying information provided in Subsection (3)(b) on file for not less than one year.

(4) Transactions with businesses that have an established account with the dealer are exempt from the requirements of Subsections (2) and (3) if the business holds a valid business license, and:

(a) (i) the dealer has on file a statement from the business identifying those employees authorized to sell all metals to the dealer; and

(ii) the dealer conducts regulated metal transactions only with those identified employees of the business and records the name of the employee when recording the transaction;

(b) the dealer has on file reasonable documentation from the business that any person verified as representing the business as an employee, and whom the dealer has verified is an employee, may sell regulated metal; or

(c) the dealer makes payment for regulated metal purchased from a person by issuing a check to the business employing the seller.

(5) If a dealer is a catalytic converter purchaser as defined in Section 13-32a-102, the

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dealer shall comply with the requirements in Title 13, Chapter 32a, Pawnshop, Secondhand Merchandise, and Catalytic Converter Transaction Information Act.

(6) A dealer who violates this section is subject to the penalties described in Section 76-6-1406.1.

Section ~~{132}~~134. Section **76-6-1406.1** is enacted to read:

**76-6-1406.1. Unlawful failure to follow restrictions on the purchase of regulated metal.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-1402 apply to this section.

(2) A dealer commits unlawful failure to follow restrictions on the purchase of regulated metal if the dealer violates a requirement under Section 76-6-1406.

(3) (a) (i) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class C misdemeanor.

(ii) A dealer who is convicted of a class C misdemeanor under this section is subject to a mandatory fine of no less than \$750.

(b) (i) A violation of Subsection (2) is a class A misdemeanor if the dealer previously has been convicted of a violation of this section or Section 76-6-1403.1, 76-6-1404.1, 76-6-1405.1, or 76-6-1409.1.

(ii) A dealer who is convicted of a class A misdemeanor under this section is subject to a mandatory fine of no less than \$2,500.

(4) (a) This section does not impair the authority of a county or municipality in this state to license, tax, and regulate any junk dealer or metal dealer, except that local regulations may not be any less stringent than the provisions in Section 76-6-1406 or this section.

(b) This section does not impair the authority of a county or municipality to revoke or deny a business license or permit required by that county or municipality regulating the authority to sell, purchase, or possess metal, including the revocation or denial of a business license or permit based on a violation of Section 76-6-1406 or this section.

(c) This section does not prohibit the charging of a seller or dealer with any other criminal offense related to the obtaining, possession, or selling of stolen regulated metals.

Section ~~{133}~~135. Section **76-6-1408** is amended to read:

**76-6-1408. Falsification of seller's statement to dealer.**

~~{1}~~(1) (a) Any seller who, in providing any information as required by this part in

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~~selling, offering, or attempting to sell regulated metal]~~ ~~[(1)]~~ Terms defined in Sections 76-1-101.5 and 76-6-1402 apply to this section.

(2) An actor commits falsification of seller's statement to dealer if the actor:

(a) sells, offers to sell, or attempts to sell regulated metal; and

(b) in providing information required by Section 76-6-1403, 76-6-1405, or

76-6-1406~~[(1)]~~

~~]~~ willfully makes a false statement or provides any untrue information~~[- is guilty of a class B misdemeanor]~~.

~~[(b) Any seller who is convicted of a class B misdemeanor under this section is subject to a mandatory fine of no less than \$1,000.]~~

~~[(2)]~~ (3) (a) (i) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class B misdemeanor.

(ii) An actor who is convicted of a class B misdemeanor under this section is subject to a mandatory fine of no less than \$1,000.

~~[(2)(a)]~~ ~~[(3)]~~ (b) (i) A violation of Subsection [(1) that occurs after the defendant] (2) is a class A misdemeanor if the actor previously has been convicted of a violation of [Subsection (1) is a class A misdemeanor] this section.

~~[(b)]~~ (ii) [Any seller] ~~[(ii)]~~ An actor who is convicted of a class A misdemeanor under this section is subject to a mandatory fine of no less than \$2,500.

Section ~~[(134)]~~ 136. Section **76-6-1409** is amended to read:

**76-6-1409. Hold on stolen regulated metal property -- Hold notice.**

(1) (a) If a law enforcement agency has reasonable cause to believe that items of regulated metal in the possession of a dealer are stolen, the law enforcement agency may issue a written hold notice.

(b) The hold notice described in Subsection (1)(a) shall:

~~[(a)]~~ (i) identify those items of regulated metal alleged to be stolen and subject to hold; and

~~[(b)]~~ (ii) inform the dealer of the restrictions imposed on the regulated metal property under Subsection (2).

(2) For 60 days after the date of receiving a hold notice, a dealer may not process or remove from the dealer's place of business any regulated metal identified in the hold notice,

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unless the property is released earlier by the law enforcement agency or by order of a court of competent jurisdiction.

(3) On the expiration of the hold notice period, the hold is automatically released, and the dealer may dispose of the regulated metal, unless otherwise directed by a court of competent jurisdiction.

(4) A dealer who violates this section is subject to the penalties described in Section 76-6-1409.1.

Section ~~{135}~~137. Section **76-6-1409.1** is enacted to read:

### **76-6-1409.1. Unlawful violation of regulated metal hold requirement.**

(1) Terms defined in Sections 76-1-101.5 and 76-6-1402 apply to this section.

(2) A dealer commits unlawful violation of regulated metal hold requirement if the dealer violates a requirement under Section 76-6-1409.

(3) (a) (i) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class C misdemeanor.

(ii) A dealer who is convicted of a class C misdemeanor under this section is subject to a mandatory fine of no less than \$750.

(b) (i) A violation of Subsection (2) is a class A misdemeanor if the dealer previously has been convicted of a violation of this section or Section 76-6-1403.1, 76-6-1404.1, 76-6-1405.1, or 76-6-1406.1.

(ii) A dealer who is convicted of a class A misdemeanor under this section is subject to a mandatory fine of no less than \$2,500.

(4) (a) This section does not impair the authority of a county or municipality in this state to license, tax, and regulate any junk dealer or metal dealer, except that local regulations may not be any less stringent than the provisions in Section 76-6-1409 or this section.

(b) This section does not impair the authority of a county or municipality to revoke or deny a business license or permit required by that county or municipality regulating the authority to sell, purchase, or possess metal, including the revocation or denial of a business license or permit based on a violation of Section 76-6-1409 or this section.

(c) This section does not prohibit the charging of a seller or dealer with any other criminal offense related to the obtaining, possession, or selling of stolen regulated metals.

Section ~~{136}~~138. Section **76-6a-101**, which is renumbered from Section 76-6a-2 is

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renumbered and amended to read:

~~[76-6a-2].~~ **76-6a-101. Definitions.**

As used in this chapter:

(1) (a) ~~(i)~~ "Compensation" means money, money bonuses, overrides, prizes, or other real or personal property, tangible or intangible.

~~[(b)]~~ ~~(ii)~~ "Compensation" does not include payment based on the sale of goods or services to anyone purchasing the goods or services for actual personal use or consumption.

~~[(2)]~~ ~~(b)~~ "Consideration" does not include:

~~(i)~~ payment for sales demonstration equipment ~~[and]~~ or materials furnished at cost for use in making sales and not for resale~~[-];~~ or

~~(ii)~~ time or effort spent in selling or recruiting activities.

~~[(3)]~~ ~~(c)~~ "Person" includes a business trust, estate, trust, joint venture, or any other legal or commercial entity.

~~[(4)]~~ ~~(d)~~ "Pyramid scheme" means any sales device or plan under which a person gives consideration to another person in exchange for compensation or the right to receive compensation ~~[which]~~ that is derived primarily from the introduction of other persons into the sales device or plan rather than from the sale of goods, services, or other property.

(2) Terms defined in Section 76-1-101.5 apply to this part.

Section ~~{137}~~ 139. Section **76-6a-102** is enacted to read:

**76-6a-102. Conducting pyramid scheme -- Violation as deceptive consumer sales practice -- Prosecution of civil violation.**

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits the offense of conducting a pyramid scheme if the actor knowingly organizes, establishes, promotes, or administers a pyramid scheme.

(3) A violation of Subsection (2) is a third degree felony.

(4) It is not a defense to an action brought under this section that:

(a) the sales device or plan limits the number of persons who may be introduced into the sales device or plan;

(b) the sales device or plan includes additional conditions affecting eligibility for introduction into the sales device or plan or when compensation may be received from the sales device or plan; or

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(c) a person receives property or services in addition to the compensation or right to receive compensation in connection with a pyramid scheme.

(5) The appropriate county attorney or district attorney has primary responsibility for investigating and prosecuting a criminal violation of this section.

(6) (a) A violation under this section constitutes a violation of Section 13-11-4.

(b) A criminal conviction under this section is prima facie evidence of a violation of Section 13-11-4.

(c) In addition to prosecution under this section, a violation of this section shall be civilly investigated and prosecuted as prescribed by Title 13, Chapter 11, Utah Consumer Sales Practices Act.

Section ~~{138}~~140. Section 76-6a-103 is enacted to read:

**76-6a-103. Participating in pyramid scheme -- Violation as deceptive consumer sales practice -- Prosecution of civil violation.**

(1) Terms defined in Section 76-1-101.5 apply to this section.

(2) An actor commits the offense of participating in a pyramid scheme if the actor participates in a pyramid scheme only by receiving compensation for the introduction of another person into the pyramid scheme rather than from the sale of goods, services, or other property.

(3) A violation of Subsection (2) is a class B misdemeanor.

(4) It is not a defense to an action brought under this section that:

(a) the sales device or plan limits the number of persons who may be introduced into the sales device or plan;

(b) the sales device or plan includes additional conditions affecting eligibility for introduction into the sales device or plan or when compensation may be received from the sales device or plan; or

(c) a person receives property or services in addition to the compensation or right to receive compensation in connection with a pyramid scheme.

(5) The appropriate county attorney or district attorney has primary responsibility for investigating and prosecuting a criminal violation of this section.

(6) (a) A violation under this section constitutes a violation of Section 13-11-4.

(b) A criminal conviction under this section is prima facie evidence of a violation of

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### Section 13-11-4.

(c) In addition to prosecution under this section, a violation of this section shall be civilly investigated and prosecuted as prescribed by Title 13, Chapter 11, Utah Consumer Sales Practices Act.

Section ~~{139}~~141. Section **76-6a-104**, which is renumbered from Section 76-6a-6 is renumbered and amended to read:

~~[76-6a-6].~~ **76-6a-104. Rights of person giving consideration in pyramid~~{in}~~ scheme.**

(1) (a) Any person giving consideration in connection with a pyramid scheme may, notwithstanding any agreement to the contrary, declare ~~[his]~~ the person's giving of consideration and the related sale or contract for sale void, and may bring a court action to recover the consideration.

(b) In ~~[the action]~~ an action brought under Subsection (1)(a), the court shall, in addition to any judgment awarded to the plaintiff, require the defendant to pay to the plaintiff interest as provided in Section 15-1-4, reasonable attorneys' fees, and the costs of the action reduced by any compensation paid by the defendant to the plaintiff in connection with the pyramid scheme.

(2) (a) The rights, remedies, and penalties provided in this chapter are independent of and supplemental to each other and to any other right, remedy or penalty available in law or equity.

(b) Nothing contained in this chapter shall be construed to diminish or abrogate any other right, remedy or penalty.

Section ~~{140}~~142. Section **76-9-201** is amended to read:

**76-9-201. Electronic communication harassment -- Definitions -- Penalties.**

(1) As used in this section:

(a) "Adult" means an individual 18 years ~~[of age]~~ old or older.

(b) "Electronic communication" means a communication by electronic, electro-mechanical, or electro-optical communication device for the transmission and reception of audio, image, or text but does not include broadcast transmissions or similar communications that are not targeted at a specific individual.

(c) "Electronic communication device" includes a telephone, a facsimile machine, electronic mail, a pager, a computer, or another device or medium that can be used to

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communicate electronically.

(d) "Minor" means an individual who is younger than 18 years [~~of age~~] old.

(e) "Personal identifying information" means the same as that term is defined in Section [~~76-6-1102~~] 76-6-1101.

(2) Except to the extent the person's conduct constitutes an offense under Section 76-9-203, a person is guilty of electronic communication harassment and subject to prosecution in the jurisdiction where the communication originated or was received if with intent to intimidate, abuse, threaten, harass, frighten, or disrupt the electronic communications of another, the person:

(a) (i) makes repeated contact by means of electronic communications, regardless of whether a conversation ensues; or

(ii) after the recipient has requested or informed the person not to contact the recipient, and the person repeatedly or continuously:

(A) contacts the electronic communication device of the recipient; or

(B) causes an electronic communication device of the recipient to ring or to receive other notification of attempted contact by means of electronic communication;

(b) makes contact by means of electronic communication and insults, taunts, or challenges the recipient of the communication or any person at the receiving location in a manner likely to provoke a violent or disorderly response;

(c) makes contact by means of electronic communication and threatens to inflict injury, physical harm, or damage to any person or the property of any person; or

(d) causes disruption, jamming, or overload of an electronic communication system through excessive message traffic or other means utilizing an electronic communication device.

(3) A person is guilty of electronic communication harassment if the person:

(a) electronically publishes, posts, or otherwise discloses personal identifying information of another individual in a public online site or forum with the intent to abuse, threaten, or disrupt the other individual's electronic communication and without the other individual's permission; or

(b) sends a communication by electronic mail, instant message, or other similar means, if:

(i) the communication references personal identifying information of another

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individual; ~~and~~

(ii) the person sends the communication:

(A) without the individual's consent; and

(B) with the intent to cause a recipient of the communication to reasonably believe that the individual authorized or sent the communication; and

(iii) with the intent to:

(A) cause an individual physical, emotional, or economic injury or damage; or

(B) defraud an individual.

(4) (a) Electronic communication harassment is a class B misdemeanor.

(b) A second or subsequent offense of electronic communication harassment is a class A misdemeanor.

(5) (a) Except as provided under Subsection (5)(b), criminal prosecution under this section does not affect an individual's right to bring a civil action for damages suffered as a result of the commission of an offense under this section.

(b) This section does not create a civil cause of action based on electronic communications made for legitimate business purposes.

Section ~~{141}~~ 143. Section **76-10-204** is amended to read:

### **76-10-204. Damaging bridge, dam, canal, or other water-related structure.**

(1) A person is guilty of a third degree felony who intentionally, knowingly, or recklessly commits an offense under Subsection (2) that does not amount to a violation of Subsection ~~[76-6-106(2){f}(b){f(a)}(ii)]~~ 76-6-106(2)(a)(ii).

(2) Offenses referred to in Subsection (1) are when a person:

(a) cuts, breaks, damages, or destroys any bridge, dam, canal, flume, aqueduct, levee, embankment, reservoir, or other structure erected to create hydraulic power, to drain or reclaim any swamp and overflowed or marsh land, to conduct water for mining, manufacturing, reclamation, or agricultural purposes, or for the supply of the inhabitants of any city or town;

(b) makes or causes to be made any aperture in any dam, canal, flume, aqueduct, reservoir, embankment, levee, or structure with intent to injure or destroy it; or

(c) draws up, cuts, or injures any piles fixed in the ground and used for securing any lake or river bank or walls or any dock, quay, jetty, or lock.

Section ~~{142}~~ 144. Section **76-10-1302** is amended to read:

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### 76-10-1302. Prostitution.

(1) An actor, except for a child under Section 76-10-1315, is guilty of prostitution if the actor engages in sexual activity with another individual for a fee, or the functional equivalent of a fee.

(2) (a) Except as provided in Subsection (2)(b) and Section 76-10-1309, a violation of Subsection (1) is a class B misdemeanor.

(b) Except as provided in Section 76-10-1309, an actor who is convicted a second time, and on all subsequent convictions, of a subsequent offense of prostitution under this section or under a local ordinance adopted under Section 76-10-1307, is guilty of a class A misdemeanor.

(3) A prosecutor may not prosecute an actor for a violation of Subsection (1) if the actor engages in a violation of Subsection (1) at or near the time the actor witnesses or is a victim of any of the following offenses, or an attempt to commit any of the following offenses, and the actor reports the offense or attempt to law enforcement in good faith:

(a) assault, Section 76-5-102;

(b) aggravated assault, Section 76-5-103;

(c) mayhem, Section 76-5-105;

(d) aggravated murder, murder, manslaughter, negligent homicide, child abuse homicide, or homicide by assault under Chapter 5, Part 2, Criminal Homicide;

(e) kidnapping, child kidnapping, aggravated kidnapping, human trafficking or aggravated human trafficking, human smuggling or aggravated human smuggling, or human trafficking of a child under Chapter 5, Part 3, Kidnapping, Trafficking, and Smuggling;

(f) rape, Section 76-5-402;

(g) rape of a child, Section 76-5-402.1;

(h) object rape, Section 76-5-402.2;

(i) object rape of a child, Section 76-5-402.3;

(j) forcible sodomy, Section 76-5-403;

(k) sodomy on a child, Section 76-5-403.1;

(l) forcible sexual abuse, Section 76-5-404;

(m) sexual abuse of a child, Section 76-5-404.1, or aggravated sexual abuse of a child, Section 76-5-404.3;

(n) aggravated sexual assault, Section 76-5-405;

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- (o) sexual exploitation of a minor, Section 76-5b-201;
- (p) aggravated sexual exploitation of a minor, Section 76-5b-201.1;
- (q) sexual exploitation of a vulnerable adult, Section 76-5b-202;
- (r) aggravated burglary or burglary of a dwelling under Chapter 6, Part 2, Burglary and Criminal Trespass;
- (s) aggravated robbery or robbery under Chapter 6, Part 3, Robbery; or
- (t) theft by extortion under Section 76-6-406 under the circumstances described in Subsection [76-6-406(2)(a) or (b)] 76-6-406(1)(a)(i) or (ii).

Section ~~{143}~~145. Section 76-10-1602 is amended to read:

### **76-10-1602. Definitions.**

As used in this part:

(1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.

(2) "Pattern of unlawful activity" means engaging in conduct which constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.

(3) "Person" includes any individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.

(4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:

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(a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;

(b) any act prohibited by the criminal provisions of Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;

(c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources Code of Utah, or Section 23-20-4;

(d) false claims for medical benefits, kickbacks, and any other act prohibited by Title 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

(e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal Offenses and Procedure Act;

(f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;

(g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;

(h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;

(i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah Procurement Code;

(j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

(k) a threat of terrorism, Section 76-5-107.3;

(l) a criminal homicide offense, as described in Section 76-5-201;

(m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

(n) human trafficking, human trafficking of a child, human smuggling, or aggravated human trafficking, Sections 76-5-308, 76-5-308.1, 76-5-308.3, 76-5-308.5, 76-5-309, and 76-5-310;

(o) sexual exploitation of a minor or aggravated sexual exploitation of a minor, Sections 76-5b-201 and 76-5b-201.1;

(p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

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- (q) causing a catastrophe, Section 76-6-105;
- (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- (s) burglary of a vehicle, Section 76-6-204;
- (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- (v) theft, Section 76-6-404;
- (w) theft by deception, Section 76-6-405;
- (x) theft by extortion, Section 76-6-406;
- (y) receiving stolen property, Section 76-6-408;
- (z) theft of services, Section 76-6-409;
- (aa) forgery, Section 76-6-501;
- (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, [~~76-6-506.5,~~] and 76-6-506.6;
- (cc) deceptive business practices, Section 76-6-507;
- (dd) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
- (ee) bribery of a labor official, Section 76-6-509;
- (ff) defrauding creditors, Section 76-6-511;
- (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- (ii) bribery or threat to influence contest, Section 76-6-514;
- (jj) making a false credit report, Section 76-6-517;
- (kk) criminal simulation, Section 76-6-518;
- (ll) criminal usury, Section 76-6-520;
- (mm) [~~fraudulent insurance act~~] insurance fraud, Section 76-6-521;
- (nn) retail theft, Section 76-6-602;
- (oo) computer crimes, Section 76-6-703;
- (pp) identity fraud, Section 76-6-1102;
- (qq) mortgage fraud, Section 76-6-1203;
- (rr) sale of a child, Section 76-7-203;
- (ss) bribery to influence official or political actions, Section 76-8-103;

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- (tt) threats to influence official or political action, Section 76-8-104;
- (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- (vv) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;
- (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- (xx) obstruction of justice, Section 76-8-306;
- (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- (zz) false or inconsistent material statements, Section 76-8-502;
- (aaa) false or inconsistent statements, Section 76-8-503;
- (bbb) written false statements, Section 76-8-504;
- (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (fff) tampering with evidence, Section 76-8-510.5;
- (ggg) falsification or alteration of government record, Section 76-8-511, if the record is a record described in Title 20A, Election Code, Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act[, or Title 36, Chapter 11a, Local Government and Board of Education Lobbyist Disclosure and Regulation Act];
- (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- (iii) unemployment insurance fraud, Section 76-8-1301;
- (jjj) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;
- (lll) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;
- (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;
- (nnn) unlawful marking of pistol or revolver, Section 76-10-521;
- (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;
- (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section

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76-10-1002;

(qqq) selling goods under counterfeited trademark, trade name, or trade devices,  
Section 76-10-1003;

(rrr) sales in containers bearing registered trademark of substituted articles, Section  
76-10-1004;

(sss) selling or dealing with article bearing registered trademark or service mark with  
intent to defraud, Section 76-10-1006;

(ttt) gambling, Section 76-10-1102;

(uuu) gambling fraud, Section 76-10-1103;

(vvv) gambling promotion, Section 76-10-1104;

(www) possessing a gambling device or record, Section 76-10-1105;

(xxx) confidence game, Section 76-10-1109;

(yyy) distributing pornographic material, Section 76-10-1204;

(zzz) inducing acceptance of pornographic material, Section 76-10-1205;

(aaaa) dealing in harmful material to a minor, Section 76-10-1206;

(bbbb) distribution of pornographic films, Section 76-10-1222;

(cccc) indecent public displays, Section 76-10-1228;

(dddd) prostitution, Section 76-10-1302;

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

(ffff) exploiting prostitution, Section 76-10-1305;

(gggg) aggravated exploitation of prostitution, Section 76-10-1306;

(hhhh) communications fraud, Section 76-10-1801;

(iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and  
Currency Transaction Reporting Act;

(jjjj) vehicle compartment for contraband, Section 76-10-2801;

(kkkk) any act prohibited by the criminal provisions of the laws governing taxation in  
this state; and

(llll) any act illegal under the laws of the United States and enumerated in 18 U.S.C.  
Sec. 1961(1)(B), (C), and (D).

Section ~~{144}~~ 146. Section **77-18-105** is amended to read:

**77-18-105. Pleas held in abeyance -- Suspension of a sentence -- Probation --**

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### **Supervision -- Terms and conditions of probation -- Time periods for probation -- Bench supervision for payments on criminal accounts receivable.**

(1) If a defendant enters a plea of guilty or no contest in conjunction with a plea in abeyance agreement, the court may hold the plea in abeyance:

- (a) in accordance with Chapter 2a, Pleas in Abeyance; and
- (b) under the terms of the plea in abeyance agreement.

(2) If a defendant is convicted, the court:

(a) shall impose a sentence in accordance with Section 76-3-201; and

(b) subject to Subsection (5), may suspend the execution of the sentence and place the defendant:

(i) on probation under the supervision of the department;

(ii) on probation under the supervision of an agency of a local government or a private organization; or

(iii) on court probation under the jurisdiction of the sentencing court.

(3) (a) The legal custody of all probationers under the supervision of the department is with the department.

(b) The legal custody of all probationers under the jurisdiction of the sentencing court is vested as ordered by the court.

(c) The court has continuing jurisdiction over all probationers.

(4) (a) Court probation may include an administrative level of services, including notification to the sentencing court of scheduled periodic reviews of the probationer's compliance with conditions.

(b) Supervised probation services provided by the department, an agency of a local government, or a private organization shall specifically address the defendant's risk of reoffending as identified by a screening or an assessment.

(5) (a) Before ordering supervised probation, the court shall consider the supervision costs to the defendant for each entity that can supervise the defendant.

(b) (i) A court may order an agency of a local government to supervise the probation for an individual convicted of any crime if:

(A) the agency has the capacity to supervise the individual; and

(B) the individual's supervision needs will be met by the agency.

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(ii) A court may only order:

(A) the department to supervise the probation for an individual convicted of a class A misdemeanor or any felony; or

(B) a private organization to supervise the probation for an individual convicted of a class A, B, or C misdemeanor or an infraction.

(c) A court may not order a specific private organization to supervise an individual unless there is only one private organization that can provide the specific supervision services required to meet the individual's supervision needs.

(6) (a) If a defendant is placed on probation, the court may order the defendant as a condition of the defendant's probation:

(i) to provide for the support of persons for whose support the defendant is legally liable;

(ii) to participate in available treatment programs, including any treatment program in which the defendant is currently participating if the program is acceptable to the court;

(iii) be voluntarily admitted to the custody of the Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital in accordance with Section 77-18-106;

(iv) if the defendant is on probation for a felony offense, to serve a period of time as an initial condition of probation that does not exceed one year in a county jail designated by the department, after considering any recommendation by the court as to which jail the court finds most appropriate;

(v) to serve a term of home confinement in accordance with Section 77-18-107;

(vi) to participate in compensatory service programs, including the compensatory service program described in Section ~~[76-6-107.1]~~ 76-3-410;

(vii) to pay for the costs of investigation, probation, or treatment services;

(viii) to pay restitution to a victim with interest in accordance with Chapter 38b, Crime Victims Restitution Act; or

(ix) to comply with other terms and conditions the court considers appropriate to ensure public safety or increase a defendant's likelihood of success on probation.

(b) (i) Notwithstanding Subsection (6)(a)(iv), the court may modify the probation of a defendant to include a period of time that is served in a county jail immediately before the termination of probation as long as that period of time does not exceed one year.

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(ii) If a defendant is ordered to serve time in a county jail as a sanction for a probation violation, the one-year limitation described in Subsection (6)(a)(iv) or (6)(b)(i) does not apply to the period of time that the court orders the defendant to serve in a county jail under this Subsection (6)(b)(ii).

(7) (a) Except as provided in Subsection (7)(b), probation of an individual placed on probation after December 31, 2018:

(i) may not exceed the individual's maximum sentence;

(ii) shall be for a period of time that is in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law; and

(iii) shall be terminated in accordance with the supervision length guidelines established by the Utah Sentencing Commission under Section 63M-7-404, to the extent the guidelines are consistent with the requirements of the law.

(b) Probation of an individual placed on probation after December 31, 2018, whose maximum sentence is one year or less, may not exceed 36 months.

(c) Probation of an individual placed on probation on or after October 1, 2015, but before January 1, 2019, may be terminated at any time at the discretion of the court or upon completion without violation of 36 months probation in felony or class A misdemeanor cases, 12 months in cases of class B or C misdemeanors or infractions, or as allowed in accordance with Section 64-13-21 regarding earned credits.

(d) This Subsection (7) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

(8) (a) Notwithstanding Subsection (7), if there is an unpaid balance of the criminal accounts receivable for the defendant upon termination of the probation period for the defendant under Subsection (7), the court may require the defendant to continue to make payments towards the criminal accounts receivable in accordance with the payment schedule established by the court under Section 77-32b-103.

(b) A court may not require the defendant to make payments as described in Subsection (8)(a) beyond the expiration of the defendant's sentence.

(c) If the court requires a defendant to continue to pay in accordance with the payment schedule for the criminal accounts receivable under this Subsection (8) and the defendant

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defaults on the criminal accounts receivable, the court shall proceed with an order for a civil judgment of restitution and a civil accounts receivable for the defendant as described in Section 77-18-114.

(d) (i) Upon a motion from the prosecuting attorney, the victim, or upon the court's own motion, the court may require a defendant to show cause as to why the defendant's failure to pay in accordance with the payment schedule should not be treated as contempt of court.

(ii) A court may hold a defendant in contempt for failure to make payments for a criminal accounts receivable in accordance with Title 78B, Chapter 6, Part 3, Contempt.

(e) This Subsection (8) does not apply to the probation of an individual convicted of an offense for criminal nonsupport under Section 76-7-201.

(9) When making any decision regarding probation, the court shall consider information provided by the Department of Corrections regarding a defendant's individual case action plan, including any progress the defendant has made in satisfying the case action plan's completion requirements.

Section ~~{145}~~147. Section **77-23a-8** is amended to read:

### **77-23a-8. Court order to authorize or approve interception -- Procedure.**

(1) The attorney general of the state, any assistant attorney general specially designated by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy district attorney specially designated by the county attorney or by the district attorney, may authorize an application to a judge of competent jurisdiction for an order for an interception of wire, electronic, or oral communications by any law enforcement agency of the state, the federal government or of any political subdivision of the state that is responsible for investigating the type of offense for which the application is made.

(2) The judge may grant the order in conformity with the required procedures when the interception sought may provide or has provided evidence of the commission of:

(a) any act:

(i) prohibited by the criminal provisions of:

(A) Title 58, Chapter 37, Utah Controlled Substances Act;

(B) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

(C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

(ii) punishable by a term of imprisonment of more than one year;

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(b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act, and punishable by a term of imprisonment of more than one year;

(c) an offense:

(i) of:

(A) attempt, Section 76-4-101;

(B) conspiracy, Section 76-4-201;

(C) solicitation, Section 76-4-203; and

(ii) punishable by a term of imprisonment of more than one year;

(d) a threat of terrorism offense punishable by a maximum term of imprisonment of more than one year, Section 76-5-107.3;

(e) (i) aggravated murder, Section 76-5-202;

(ii) murder, Section 76-5-203; or

(iii) manslaughter, Section 76-5-205;

(f) (i) kidnapping, Section 76-5-301;

(ii) child kidnapping, Section 76-5-301.1;

(iii) aggravated kidnapping, Section 76-5-302;

(iv) human trafficking, Section 76-5-308, 76-5-308.1, or 76-5-308.5, or human smuggling, Section 76-5-308.3; or

(v) aggravated human trafficking, Section 76-5-310, or aggravated human smuggling, Section 76-5-310.1;

(g) (i) arson, Section 76-6-102; or

(ii) aggravated arson, Section 76-6-103;

(h) (i) burglary, Section 76-6-202; or

(ii) aggravated burglary, Section 76-6-203;

(i) (i) robbery, Section 76-6-301; or

(ii) aggravated robbery, Section 76-6-302;

(j) an offense:

(i) of:

(A) theft, Section 76-6-404;

(B) theft by deception, Section 76-6-405; or

(C) theft by extortion, Section 76-6-406; and

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- (ii) punishable by a maximum term of imprisonment of more than one year;
- (k) an offense of receiving stolen property that is punishable by a maximum term of imprisonment of more than one year, Section 76-6-408;
- (l) a financial card transaction offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-506.2, 76-6-506.3, 76-6-506.5, or 76-6-506.6;
- (m) bribery of a labor official, Section 76-6-509;
- (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- (o) a criminal simulation offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-518;
- (p) criminal usury, Section 76-6-520;
- (q) [~~a fraudulent insurance act offense~~] insurance fraud punishable by a maximum term of imprisonment of more than one year, Section 76-6-521;
- (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by a maximum term of imprisonment of more than one year, Section 76-6-703;
- (s) bribery to influence official or political actions, Section 76-8-103;
- (t) misusing public money or public property, Section 76-8-402;
- (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (y) obstruction of justice, Section 76-8-306;
- (z) destruction of property to interfere with preparation for defense or war, Section 76-8-802;
- (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
- (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
- (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
- (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- (ee) riot punishable by a maximum term of imprisonment of more than one year, Section 76-9-101;
- (ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a maximum term of imprisonment of more than one year, Section 76-9-301.1;

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(gg) possession, use, or removal of an explosive, chemical, or incendiary device and parts, Section 76-10-306;

(hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary device, Section 76-10-307;

(ii) exploiting prostitution, Section 76-10-1305;

(jj) aggravated exploitation of prostitution, Section 76-10-1306;

(kk) bus hijacking or assault with intent to commit hijacking, Section 76-10-1504;

(ll) discharging firearms and hurling missiles, Section 76-10-1505;

(mm) violations of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act, and the offenses listed under the definition of unlawful activity in the act, including the offenses not punishable by a maximum term of imprisonment of more than one year when those offenses are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;

(nn) communications fraud, Section 76-10-1801;

(oo) money laundering, Sections 76-10-1903 and 76-10-1904; or

(pp) reporting by a person engaged in a trade or business when the offense is punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

Section ~~{146}~~148. Section 77-36-1.1 is amended to read:

**77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence offenses.**

(1) As used in this section:

(a) (i) "Convicted" means a conviction by plea or verdict of a crime or offense.

(ii) "Convicted" includes:

(A) a plea of guilty or guilty and mentally ill;

(B) a plea of no contest; and

(C) the acceptance by the court of a plea in abeyance under Title 77, Chapter 2a, Pleas in Abeyance, regardless of whether the charge is subsequently reduced or dismissed in accordance with the plea in abeyance agreement.

(iii) "Convicted" does not include an adjudication in juvenile court.

~~[(b) "Criminal mischief offense" means commission or attempt to commit an offense under Section 76-6-106 by one cohabitant against another.]~~

~~[(c)]~~ (b) "Offense against the person" means commission or attempt to commit an

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offense under Title 76, Chapter 5, Part 1, Assault and Related Offenses, Part 2, Criminal Homicide, Part 3, Kidnapping, Trafficking, and Smuggling, Part 4, Sexual Offenses, or Part 7, Genital Mutilation, by one cohabitant against another.

(c) "Property damage offense" means the commission or attempt to commit an offense under Section 76-6-106.1 by one cohabitant against another.

(d) "Qualifying domestic violence offense" means:

(i) a domestic violence offense in Utah; or

(ii) an offense in any other state, or in any district, possession, or territory of the United States, that would be a domestic violence offense under Utah law.

(2) An individual who is convicted of a domestic violence offense is guilty of a class B misdemeanor if:

(a) the domestic violence offense described in this Subsection (2) is designated by law as a class C misdemeanor; and

(b) the individual commits or is convicted of the domestic violence offense described in this Subsection (2):

(i) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(ii) within five years after the day on which the individual is convicted of a criminal mischief offense.

(3) An individual who is convicted of a domestic violence offense is guilty of a class A misdemeanor if:

(a) the domestic violence offense described in this Subsection (3) is designated by law as a class B misdemeanor; and

(b) the individual commits or is convicted of the domestic violence offense described in this Subsection (3):

(i) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(ii) within five years after the day on which the individual is convicted of a criminal mischief offense.

(4) An individual who is convicted of a domestic violence offense is guilty of a third degree felony if:

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(a) the domestic violence offense described in this Subsection (4) is designated by law as a class B misdemeanor offense against the person and the individual:

(i) (A) commits or is convicted of the domestic violence offense described in this Subsection (4) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; and

(B) is convicted of another qualifying domestic violence offense that is not a criminal mischief offense after the day on which the individual is convicted of the qualifying domestic violence offense described in Subsection (4)(a)(i)(A) and before the day on which the individual is convicted of the domestic violence offense described in this Subsection (4);

(ii) (A) commits or is convicted of the domestic violence offense described in this Subsection (4) within five years after the day on which the individual is convicted of a criminal mischief offense; and

(B) is convicted of another criminal mischief offense after the day on which the individual is convicted of the criminal mischief offense described in Subsection (4)(a)(ii)(A) and before the day on which the individual is convicted of the domestic violence offense described in this Subsection (4); or

(iii) commits or is convicted of the domestic violence offense described in this Subsection (4) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense and within five years after the day on which the individual is convicted of a criminal mischief offense; and

(b) (i) the domestic violence offense described in this Subsection (4) is designated by law as a class A misdemeanor; and

(ii) the individual commits or is convicted of the domestic violence offense described in this Subsection (4):

(A) within 10 years after the day on which the individual is convicted of a qualifying domestic violence offense that is not a criminal mischief offense; or

(B) within five years after the day on which the individual is convicted of a criminal mischief offense.

Section ~~{147}~~149. Section 77-42-105 is amended to read:

### **77-42-105. Registerable offenses.**

A person shall be required to register with the Office of the Attorney General for a

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conviction of any of the following offenses as a second degree felony:

- (1) Section 61-1-1 or Section 61-1-2, securities fraud;
- (2) Section 76-6-405, theft by deception;
- (3) Section 76-6-513, unlawful dealing of property by fiduciary;
- (4) Section 76-6-521, [~~fraudulent~~] insurance fraud;
- (5) Section 76-6-1203, mortgage fraud;
- (6) Section 76-10-1801, communications fraud;
- (7) Section 76-10-1903, money laundering; and
- (8) Section 76-10-1603, pattern of unlawful activity, if at least one of the unlawful

activities used to establish the pattern of unlawful activity is an offense listed in Subsections (1) through (7).

Section ~~{148}~~150. Section **78B-3-108** is amended to read:

**78B-3-108. Shoplifting -- Merchant's rights -- Civil liability for shoplifting by adult or minor -- Criminal conviction not a prerequisite for civil liability -- Written notice required for penalty demand.**

- (1) As used in this section:
  - (a) "Merchandise" has the same meaning as provided in Section 76-6-601.
  - (b) "Merchant" has the same meaning as provided in Section 76-6-601.
  - (c) "Minor" has the same meaning as provided in Section 76-6-601.
  - (d) "Premises" has the same meaning as "retail mercantile establishment" found in

Section 76-6-601.

(2) (a) A merchant may request an individual on the merchant's premises to place or keep in full view any merchandise the individual may have removed, or which the merchant has reason to believe the individual may have removed, from its place of display or elsewhere, whether for examination, purchase, or for any other reasonable purpose.

(b) The merchant may not be criminally or civilly liable for having made the request.

(3) (a) A merchant who has reason to believe that an individual has committed any of the offenses listed in Subsection [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii)(A), (B), or (C) and that the merchant can recover the merchandise by taking the individual into custody and detaining the individual may, for the purpose of attempting to recover the merchandise or for the purpose of informing a peace officer of the circumstances of the detention, take the individual into

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custody and detain the individual in a reasonable manner and for a reasonable length of time.

(b) Neither the merchant nor the merchant's employee may be criminally or civilly liable for false arrest, false imprisonment, slander, or unlawful detention or for any other type of claim or action unless the custody and detention are unreasonable under all the circumstances.

(4) (a) A merchant may prohibit an individual who has committed any of the offenses listed in Subsection [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii) from reentering the premises on which the individual has committed the offense.

(b) The merchant shall give written notice of this prohibition to the individual under Subsection (4)(a). The notice may be served by:

(i) delivering a copy to the individual personally;

(ii) sending a copy through registered or certified mail addressed to the individual at the individual's residence or usual place of business;

(iii) leaving a copy with an individual of suitable age and discretion at either location under Subsection (4)(b)(ii) and mailing a copy to the individual at the individual's residence or place of business if the individual is absent from the residence or usual place of business; or

(iv) affixing a copy in a conspicuous place at the individual's residence or place of business.

(c) The individual serving the notice may authenticate service with the individual's signature, the method of service, and legibly documenting the date and time of service.

(5) An adult who commits any of the offenses listed in Subsection [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii)(A), (B), or (C) is also liable in a civil action for:

(a) actual damages;

(b) a penalty to the merchant in the amount of the retail price of the merchandise not to exceed \$1,000; and

(c) an additional penalty as determined by the court of not less than \$100 nor more than \$500, plus court costs and reasonable attorney fees.

(6) A minor who commits any of the offenses listed in Subsection [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii)(A), (B), or (C) and the minor's parents or legal guardian are jointly and severally liable in a civil action to the merchant for:

(a) actual damages;

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(b) a penalty to be remitted to the merchant in the amount of the retail price of the merchandise not to exceed \$500 plus an additional penalty as determined by the court of not less than \$50 nor more than \$500; and

(c) court costs and reasonable attorney fees.

(7) A parent or guardian is not liable for damages under this section if the parent or guardian made a reasonable effort to restrain the wrongful taking and reported it to the merchant involved or to the law enforcement agency having primary jurisdiction once the parent or guardian knew of the minor's unlawful act. A report is not required under this section if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the merchant involved.

(8) A conviction in a criminal action for any of the offenses listed in Subsection [~~76-6-412(1)(b)~~] 76-6-404(3)(b)(iii)(A), (B), or (C) is not a condition precedent to a civil action authorized under Subsection (5) or (6).

(9) (a) A merchant demanding payment of a penalty under Subsection (5) or (6) shall give written notice to the individual or individuals from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

(b) This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of the penalty described in Subsection (5) or (6).

(10) The provision of Section 78B-8-201 requiring that compensatory or general damages be awarded in order to award punitive damages does not prohibit an award of a penalty under Subsection (5) or (6) whether or not restitution has been paid to the merchant either prior to or as part of a civil action.

Section ~~{149}~~151. 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, an individual who has been convicted and sentenced for a criminal offense may file an action in the district court of original jurisdiction for postconviction relief to vacate or modify the conviction or sentence upon the following grounds:

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(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 postconviction proceeding, and the evidence could not have been discovered through the 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;

(f) the petitioner can prove that:

(i) biological evidence, as that term is defined in Section 53-20-101, relevant to the petitioner's conviction was not preserved in accordance with Title 53, Chapter 20, Forensic Biological Evidence Preservation;

(ii) (A) the biological evidence described in Subsection (1)(f)(i) was not tested previously; or

(B) if the biological evidence described in Subsection (1)(f)(i) was tested previously, there is a material change in circumstance, including a scientific or technological advance, that would make it plausible that a test of the biological evidence described in Subsection (1)(f)(i) would produce a favorable test result for the petitioner; and

(iii) a favorable result described in Subsection (1)(f)(ii), which is presumed for

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purposes of the petitioner's action under this section, when viewed with all the other evidence, demonstrates a reasonable probability of a more favorable outcome at trial for the petitioner;

(g) 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; or

(h) 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~~] any offense in Title 76, Chapter 6, Part 6, ~~retail theft~~ 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 in light of the facts proved in the postconviction proceeding, viewed with the evidence and facts introduced at trial or during sentencing:

(a) the petitioner establishes that there would be a reasonable likelihood of a more favorable outcome; or

(b) if the petitioner challenges the conviction or the sentence on grounds that the prosecutor knowingly failed to correct false testimony at trial or at sentencing, the petitioner establishes that the false testimony, in any reasonable likelihood, could have affected the

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judgment of the fact finder.

(3) (a) The court may not grant relief from a conviction based on a claim that the petitioner is innocent of the crime for which convicted except as provided in Part 3, Postconviction Testing of DNA, or Part 4, Postconviction Determination of Factual Innocence.

(b) 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.

Section ~~{150}~~152. Section **80-6-610** is amended to read:

### **80-6-610. Property damage caused by a minor -- Liability of parent or guardian.**

(1) A parent or guardian with legal custody of a minor is liable for damages sustained to property not to exceed \$2,000 when:

(a) the minor intentionally damages, defaces, destroys, or takes the property of another;

(b) the minor recklessly or willfully shoots or propels a missile, or other object at or against a motor vehicle, bus, airplane, boat, locomotive, train, railway car, or caboose, whether moving or standing; or

(c) the minor intentionally and unlawfully tampers with the property of another and thereby recklessly endangers human life or recklessly causes or threatens a substantial interruption or impairment of any public utility service.

(2) A parent or guardian with legal custody of a minor is liable for damages sustained to property not to exceed \$5,000 when the minor is adjudicated for an offense under Subsection (1):

(a) for the benefit of, at the direction of, or in association with any criminal street gang as defined in Section 76-9-802; or

(b) to gain recognition, acceptance, membership, or increased status with a criminal street gang.

(3) A juvenile court may make an order for restitution under Subsection (1) or (2) to be paid by the minor's parent or guardian if the minor is adjudicated for an offense.

(4) As used in this section, property damage described under Subsection (1)(a) or (c), or Subsection (2), includes graffiti, as defined in Section ~~[76-6-107]~~ 76-6-101.

(5) A court may waive part or all of the liability for damages under this section by the

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minor's parent or guardian if, after the minor is adjudicated, the court finds, upon the record:

- (a) good cause; or
- (b) the parent or guardian:
  - (i) made a reasonable effort to restrain the wrongful conduct; and
  - (ii) reported the conduct to the property owner involved or the law enforcement agency

having primary jurisdiction after the parent or guardian knew of the minor's unlawful act.

(6) A report is not required under Subsection (5)(b) from a parent or guardian if the minor was arrested or apprehended by a peace officer or by anyone acting on behalf of the property owner involved.

(7) A conviction for criminal mischief under Section 76-6-106, ~~§§~~property damage or destruction under Section 76-6-106.1, criminal trespass under Section 76-6-206, or an adjudication under Section 80-6-701 is not a condition precedent to a civil action authorized under Subsection (1) or (2).

(8) A parent or guardian is not liable under Subsection (1) or (2) if the parent or guardian made a reasonable effort to supervise and direct the minor, or, in the event the parent or guardian knew in advance of the possible taking, injury, or destruction by the minor, made a reasonable effort to restrain the minor.

Section ~~{151}~~153. Section **80-6-709** is amended to read:

**80-6-709. Payment of fines, fees, restitution, or other costs -- Community or compensatory service -- Property damage -- Unpaid balances.**

(1) (a) If a minor is adjudicated for an offense under Section 80-6-701, the juvenile court may order a minor to:

- (i) pay a fine, fee, or other cost;
- (ii) pay restitution in accordance with Section 80-6-710; or
- (iii) complete community or compensatory service hours.

(b) (i) If the juvenile court orders the minor to pay restitution under Subsection (1)(a), a juvenile probation officer may permit the minor to complete a work program in lieu of paying part or all of the restitution by the juvenile court.

(ii) If the juvenile court orders the minor to complete community or compensatory service hours, a juvenile probation officer may permit the minor to complete a work program to help the minor complete the community or compensatory service hours.

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(c) The juvenile court may, through a juvenile probation officer, encourage the development of nonresidential employment or a work program to enable a minor to fulfill the minor's obligations under Subsection (1)(a).

(d) Notwithstanding this section, a juvenile court may not place a minor on a ranch, forestry camp, or other residential work program for care or work.

(2) If the juvenile court orders a minor to pay a fine, fee, restitution, or other cost, or to complete community or compensatory service hours, the juvenile court shall consider the dispositions collectively to ensure that an order:

(a) is reasonable;

(b) prioritizes restitution; and

(c) except for restitution as provided in Subsection 80-6-710(5)(c), takes into account the minor's ability to pay the fine, fee, or other cost within the presumptive period under Section 80-6-712 or Section 80-6-802 if the minor is ordered to secure care.

(3) (a) If the juvenile court orders a minor to pay a fine, fee, or other cost, or complete community or compensatory service hours, the cumulative order shall be limited per criminal episode as follows:

(i) for a minor under 16 years old at the time of adjudication, the juvenile court may impose up to \$190 or up to 24 hours of community or compensatory service; and

(ii) for a minor 16 years old or older at the time of adjudication, the juvenile court may impose up to \$280 or up to 36 hours of community or compensatory service.

(b) The cumulative order under Subsection (3)(a) does not include restitution.

(4) (a) If the juvenile court converts a fine, fee, or restitution amount to compensatory service hours, the rate of conversion shall be no less than the minimum wage.

(b) If the juvenile court orders a minor to complete community service, the presumptive service order shall include between five and 10 hours of service.

(c) If a minor completes an approved substance use disorder prevention or treatment program or other court-ordered condition, the minor may be credited with compensatory service hours for the completion of the program or condition by the juvenile court.

(5) (a) If a minor commits an offense involving the use of graffiti under Section 76-6-106, 76-6-106.1, or 76-6-206, the juvenile court may order the minor to clean up graffiti created by the minor or any other individual at a time and place within the jurisdiction of the

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juvenile court.

(b) The minor may complete the order of the juvenile court under Subsection (5)(a) in the presence and under the direct supervision of the minor's parent, guardian, or custodian.

(c) The minor's parent, guardian, or custodian shall report completion of the order to the juvenile court.

(d) The juvenile court may also require the minor to perform other alternative forms of restitution or repair to the damaged property in accordance with Section 80-6-710.

(6) (a) Except as provided in Subsection (6)(b), the juvenile court may issue orders necessary for the collection of restitution and fines ordered under this section, including garnishments, wage withholdings, and executions.

(b) The juvenile court may not issue an order under Subsection (6)(a) if the juvenile court orders a disposition that changes custody of a minor, including detention, secure care, or any other secure or nonsecure residential placement.

(7) Any information necessary to collect unpaid fines, fees, assessments, or restitution may be forwarded to employers, financial institutions, law enforcement, constables, the Office of Recovery Services, or other agencies for purposes of enforcing an order under this section.

(8) (a) If, before the entry of any order terminating the juvenile court's continuing jurisdiction over a minor's case, there remains an unpaid balance for any fine, fee, or restitution ordered by the juvenile court, the juvenile court shall:

(i) record all pertinent information for the unpaid balance in the minor's file; and

(ii) if there is an unpaid amount of restitution, record the amount of unpaid restitution as a civil judgment and list the victim, or the estate of the victim, as the judgment creditor in the civil judgment.

(b) The juvenile court may not transfer responsibility to collect unpaid fines, fees, surcharges, and restitution for a minor's case to the Office of State Debt Collection created in Section 63A-3-502.

Section ~~{152}~~154. **Repealer.**

This bill repeals:

Section **76-6-412, Theft -- Classification of offenses -- Action for treble damages.**

Section **76-6-506.5, Financial transaction card offenses -- Classification -- Multiple violations.**

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Section 76-6-606, **Penalty.**

Section 76-6-701, **Computer Crimes Act -- Short title.**

Section 76-6-802, **Presumption of intent.**

Section 76-6-804, **"Book or other library materials" defined.**

Section 76-6-805, **Penalty.**

Section 76-6-903, **Penalties.**

Section 76-6-1004, **Presumptions and defenses.**

Section 76-6-1201, **Title.**

Section 76-6-1204, **Classification of offense.**

Section 76-6-1301, **Title.**

Section 76-6-1401, **Title.**

Section 76-6-1407, **Violation by dealer -- Penalty -- Local regulation not less stringent.**

Section 76-6a-1, **Short title.**

Section 76-6a-3, **Schemes prohibited -- Violation as deceptive consumer sales practice -- Prosecution of civil violations.**

Section 76-6a-4, **Operation as felony -- Participation as misdemeanor -- Investigation -- Prosecution.**

Section 76-6a-5, **Plan provisions not constituting defenses.**