

1 **UNLAWFUL ACTIVITIES AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: James A. Dunnigan**

5 Senate Sponsor: _____

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions of the Utah Criminal Code and the Election Code in
10 relation to unlawful activity.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ enacts the class A misdemeanor offense of obstructing a legislative proceeding;
- 14 ▶ defines "official proceeding" for Title 76, Chapter 8, Part 5, Offenses Against the
15 Administration of Government;
- 16 ▶ amends the offense of a pattern of unlawful activity to include, as unlawful
17 activities, tampering with evidence or the falsification or alteration of certain
18 government records; and
- 19 ▶ makes technical changes.

20 **Money Appropriated in this Bill:**

21 None

22 **Other Special Clauses:**

23 None

24 **Utah Code Sections Affected:**

25 AMENDS:

26 **76-8-501**, as last amended by Laws of Utah 1997, Chapter 324

27 **76-8-503**, as last amended by Laws of Utah 1997, Chapter 324



28 76-8-510.5, as last amended by Laws of Utah 2007, Chapter 110

29 76-10-1602, as last amended by Laws of Utah 2012, Chapters 112 and 347

30 ENACTS:

31 36-12-9.5, Utah Code Annotated 1953



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

34 Section 1. Section 36-12-9.5 is enacted to read:

35 **36-12-9.5. Obstructing a legislative proceeding.**

36 (1) As used in this section, "legislative proceeding" means an investigation or audit
37 conducted by:

38 (a) the Legislature, or a house, committee, subcommittee, or task force of the
39 Legislature; or

40 (b) an employee or independent contractor of an entity described in Subsection (1)(a),
41 at or under the direction of an entity described in Subsection (1)(a).

42 (2) Except as described in Subsection (3), a person is guilty of a class A misdemeanor
43 if the person, with intent to hinder, delay, or prevent a legislative proceeding:

44 (a) provides a person with a weapon;

45 (b) prevents a person, by force, intimidation, or deception, from performing any act
46 that might aid the legislative proceeding;

47 (c) alters, destroys, conceals, or removes any item or other thing;

48 (d) makes, presents, or uses an item, document, or thing known by the person to be
49 false;

50 (e) makes a false material statement, not under oath, to:

51 (i) the Legislature, or a house, committee, subcommittee, or task force of the
52 Legislature; or

53 (ii) an employee or independent contractor of an entity described in Subsection
54 (2)(e)(i);

55 (f) harbors or conceals a person;

56 (g) provides a person with transportation, disguise, or other means of avoiding
57 discovery or service of process;

58 (h) warns any person of impending discovery or service of process;

- 59 (i) conceals an item, information, document, or thing that is not privileged after a
 60 legislative subpoena is issued for the item, information, document, or thing; or
 61 (j) provides false information regarding a witness or a material aspect of the legislative
 62 proceeding.
 63 (3) Subsection (2) does not include:
 64 (a) false or inconsistent material statements, as described in Section 76-8-502;
 65 (b) tampering with a witness or soliciting or receiving a bribe, as described in Section
 66 76-8-508;
 67 (c) retaliation against a witness, victim, or informant, as described in Section
 68 76-8-508.3; or
 69 (d) extortion or bribery to dismiss a criminal proceeding, as described in Section
 70 76-8-509.

71 Section 2. Section **76-8-501** is amended to read:

72 **76-8-501. Definitions.**

73 [~~For the purposes of~~] As used in this part:

- 74 ~~[(2)]~~ (1) "Material" means capable of affecting the course or outcome of [the
 75 proceeding. A statement is not material if it is retracted in the course of the official proceeding
 76 in which it was made before it became manifest that the falsification was or would be exposed
 77 and before it substantially affected the proceeding.] an official proceeding, unless the person
 78 who made the statement or provided the information retracts the statement or information
 79 before the earlier of:
 80 (a) the end of the official proceeding in which the statement was made or the
 81 information was provided;
 82 (b) when it becomes manifest that the false or misleading nature of the statement or
 83 information has been or will be exposed; or
 84 (c) when the statement or information substantially affects the proceeding.
 85 ~~[(1)]~~ (2) "Official proceeding" means:
 86 (a) any proceeding before;
 87 (i) a legislative, judicial, administrative, or other governmental body or official
 88 authorized by law to take evidence under oath or affirmation[~~, including~~];
 89 (ii) a notary; or [other]

90 (iii) a person [taking] that takes evidence in connection with [any of these
 91 proceedings:] a proceeding described in Subsection (2)(a)(i);

92 (b) any civil or administrative action, trial, examination under oath, administrative
 93 proceeding, or other civil or administrative adjudicative process; or

94 (c) an investigation or audit conducted by:

95 (i) the Legislature, or a house, committee, subcommittee, or task force of the
 96 Legislature; or

97 (ii) an employee or independent contractor of an entity described in Subsection
 98 (1)(c)(i), at or under the direction of an entity described in Subsection (2)(c)(i).

99 Section 3. Section **76-8-503** is amended to read:

100 **76-8-503. False or inconsistent statements.**

101 ~~[A]~~ (1) Except as provided in Subsection (2), a person is guilty of a class B
 102 misdemeanor if:

103 ~~[(1)]~~ (a) ~~[he]~~ the person makes a false statement under oath or affirmation or swears or
 104 affirms the truth of the statement previously made and ~~[he]~~ the person does not believe the
 105 statement to be true if:

106 (i) the falsification occurs in an official proceeding, or is made with a purpose to
 107 mislead a public servant in performing ~~[his]~~ the public servant's official functions; or

108 (ii) the statement is one ~~[which]~~ that is authorized by law to be sworn or affirmed
 109 before a notary or other person authorized to administer oaths; or

110 (b) ~~[he]~~ the person makes inconsistent statements under oath or affirmation, both
 111 within the period of limitations, one of which is false and not believed by ~~[him]~~ the person to
 112 be true.

113 (2) Subsection (1) does not include obstructing a legislative proceeding, as described in
 114 Section [36-12-9.5](#).

115 ~~[(2)]~~ (3) A person is not guilty under this section if the person retracts the falsification
 116 ~~[is retracted]~~ before it becomes manifest that the falsification ~~[was or would]~~ has been or will
 117 be exposed.

118 Section 4. Section **76-8-510.5** is amended to read:

119 **76-8-510.5. Tampering with evidence -- Definitions -- Elements -- Penalties.**

120 (1) As used in this section~~[-(a) "Official proceeding" includes any civil or~~

121 ~~administrative action, trial, examination under oath, administrative proceeding, or other civil or~~
122 ~~administrative adjudicative process. (b) "Thing], "thing or item" includes any document,~~
123 record book, paper, file, electronic compilation, or other evidence.

124 (2) A person is guilty of tampering with evidence if, believing that an official
125 proceeding or investigation is pending or about to be instituted, or with the intent to prevent an
126 official proceeding or investigation or to prevent the production of any thing or item which
127 reasonably would be anticipated to be evidence in the official proceeding or investigation, the
128 person knowingly or intentionally:

129 (a) alters, destroys, conceals, or removes any thing or item with the purpose of
130 impairing the veracity or availability of the thing or item in the proceeding or investigation; or

131 (b) makes, presents, or uses any thing or item which the person knows to be false with
132 the purpose of deceiving a public servant or any other party who is or may be engaged in the
133 proceeding or investigation.

134 (3) Subsection (2) does not apply to any offense that amounts to a violation of Section
135 [76-8-306](#).

136 (4) (a) Tampering with evidence is a third degree felony if the offense is committed in
137 conjunction with an official proceeding.

138 (b) Any violation of this section except under Subsection (4)(a) is a class A
139 misdemeanor.

140 Section 5. Section **76-10-1602** is amended to read:

141 **76-10-1602. Definitions.**

142 As used in this part:

143 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
144 business trust, association, or other legal entity, and any union or group of individuals
145 associated in fact although not a legal entity, and includes illicit as well as licit entities.

146 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
147 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
148 have the same or similar purposes, results, participants, victims, or methods of commission, or
149 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
150 demonstrate continuing unlawful conduct and be related either to each other or to the
151 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have

152 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
153 activity as defined by this part shall have occurred within five years of the commission of the
154 next preceding act alleged as part of the pattern.

155 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
156 interest in property, including state, county, and local governmental entities.

157 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
158 command, encourage, or intentionally aid another person to engage in conduct which would
159 constitute any offense described by the following crimes or categories of crimes, or to attempt
160 or conspire to engage in an act which would constitute any of those offenses, regardless of
161 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
162 or a felony:

163 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
164 Recording Practices Act;

165 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality
166 Code, Sections 19-1-101 through 19-7-109;

167 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary
168 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Wildlife Resources
169 Code of Utah, or Section 23-20-4;

170 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
171 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

172 (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal
173 Offenses and Procedure Act;

174 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
175 Land Sales Practices Act;

176 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
177 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
178 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
179 Clandestine Drug Lab Act;

180 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
181 Securities Act;

182 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah

- 183 Procurement Code;
- 184 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 185 (k) a threat of terrorism, Section 76-5-107.3;
- 186 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 187 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 188 (n) human trafficking, human smuggling, or aggravated human trafficking, Sections
- 189 76-5-308, 76-5-309, and 76-5-310;
- 190 (o) sexual exploitation of a minor, Section 76-5b-201;
- 191 (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 192 (q) causing a catastrophe, Section 76-6-105;
- 193 (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 194 (s) burglary of a vehicle, Section 76-6-204;
- 195 (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 196 (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 197 (v) theft, Section 76-6-404;
- 198 (w) theft by deception, Section 76-6-405;
- 199 (x) theft by extortion, Section 76-6-406;
- 200 (y) receiving stolen property, Section 76-6-408;
- 201 (z) theft of services, Section 76-6-409;
- 202 (aa) forgery, Section 76-6-501;
- 203 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
- 204 76-6-506.6;
- 205 (cc) deceptive business practices, Section 76-6-507;
- 206 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
- 207 criticism of goods, Section 76-6-508;
- 208 (ee) bribery of a labor official, Section 76-6-509;
- 209 (ff) defrauding creditors, Section 76-6-511;
- 210 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 211 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 212 (ii) bribery or threat to influence contest, Section 76-6-514;
- 213 (jj) making a false credit report, Section 76-6-517;

- 214 (kk) criminal simulation, Section 76-6-518;
- 215 (ll) criminal usury, Section 76-6-520;
- 216 (mm) fraudulent insurance act, Section 76-6-521;
- 217 (nn) retail theft, Section 76-6-602;
- 218 (oo) computer crimes, Section 76-6-703;
- 219 (pp) identity fraud, Section 76-6-1102;
- 220 (qq) mortgage fraud, Section 76-6-1203;
- 221 (rr) sale of a child, Section 76-7-203;
- 222 (ss) bribery to influence official or political actions, Section 76-8-103;
- 223 (tt) threats to influence official or political action, Section 76-8-104;
- 224 (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- 225 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 226 76-8-106;
- 227 (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- 228 (xx) obstruction of justice, Section 76-8-306;
- 229 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 230 (zz) false or inconsistent material statements, Section 76-8-502;
- 231 (aaa) false or inconsistent statements, Section 76-8-503;
- 232 (bbb) written false statements, Section 76-8-504;
- 233 (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 234 (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 235 (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 236 (fff) tampering with evidence, Section 76-8-510.5;
- 237 (ggg) falsification or alteration of government record, Section 76-8-511, if the record is
- 238 a record described in Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure
- 239 and Regulation Act;
- 240 [~~(fff)~~] (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 241 76-8-1205;
- 242 [~~(ggg)~~] (iii) unemployment insurance fraud, Section 76-8-1301;
- 243 [~~(hhh)~~] (jjj) intentionally or knowingly causing one animal to fight with another,
- 244 Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;

245 [~~(iii)~~] (kkk) possession, use, or removal of explosives, chemical, or incendiary devices
246 or parts, Section [76-10-306](#);

247 [~~(jjj)~~] (lll) delivery to common carrier, mailing, or placement on premises of an
248 incendiary device, Section [76-10-307](#);

249 [~~(kkk)~~] (mmm) possession of a deadly weapon with intent to assault, Section
250 [76-10-507](#);

251 [~~(HH)~~] (nnn) unlawful marking of pistol or revolver, Section [76-10-521](#);

252 [~~(mmm)~~] (ooo) alteration of number or mark on pistol or revolver, Section [76-10-522](#);

253 [~~(mm)~~] (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
254 [76-10-1002](#);

255 [~~(ooo)~~] (qqq) selling goods under counterfeited trademark, trade name, or trade
256 devices, Section [76-10-1003](#);

257 [~~(ppp)~~] (rrr) sales in containers bearing registered trademark of substituted articles,
258 Section [76-10-1004](#);

259 [~~(qqq)~~] (sss) selling or dealing with article bearing registered trademark or service
260 mark with intent to defraud, Section [76-10-1006](#);

261 [~~(rrr)~~] (ttt) gambling, Section [76-10-1102](#);

262 [~~(sss)~~] (uuu) gambling fraud, Section [76-10-1103](#);

263 [~~(ttt)~~] (vvv) gambling promotion, Section [76-10-1104](#);

264 [~~(uuu)~~] (www) possessing a gambling device or record, Section [76-10-1105](#);

265 [~~(vvv)~~] (xxx) confidence game, Section [76-10-1109](#);

266 [~~(www)~~] (yyy) distributing pornographic material, Section [76-10-1204](#);

267 [~~(xxx)~~] (zzz) inducing acceptance of pornographic material, Section [76-10-1205](#);

268 [~~(yyy)~~] (aaaa) dealing in harmful material to a minor, Section [76-10-1206](#);

269 [~~(zzz)~~] (bbbb) distribution of pornographic films, Section [76-10-1222](#);

270 [~~(aaaa)~~] (cccc) indecent public displays, Section [76-10-1228](#);

271 [~~(bbbb)~~] (dddd) prostitution, Section [76-10-1302](#);

272 [~~(cccc)~~] (eeee) aiding prostitution, Section [76-10-1304](#);

273 [~~(dddd)~~] (ffff) exploiting prostitution, Section [76-10-1305](#);

274 [~~(cccc)~~] (gggg) aggravated exploitation of prostitution, Section [76-10-1306](#);

275 [~~(ffff)~~] (hhhh) communications fraud, Section [76-10-1801](#);

276 [~~(gggg)~~] (iiii) any act prohibited by the criminal provisions of Part 19, Money
277 Laundering and Currency Transaction Reporting Act;
278 [~~(hhhh)~~] (jjjj) vehicle compartment for contraband, Section [76-10-2801](#);
279 [~~(iiii)~~] (kkkk) any act prohibited by the criminal provisions of the laws governing
280 taxation in this state; and
281 [~~(jjjj)~~] (llll) any act illegal under the laws of the United States and enumerated in 18
282 U.S.C. Sec. 1961 (1)(B), (C), and (D).

Legislative Review Note
as of 2-21-14 3:25 PM

Office of Legislative Research and General Counsel