

1 **OFFENSES AGAINST THE ADMINISTRATION OF**
2 **GOVERNMENT AMENDMENTS**

3 2019 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Craig Hall**

6 Senate Sponsor: Todd Weiler

8 **LONG TITLE**

9 **General Description:**

10 This bill amends provisions relating to offenses against the administration of
11 government.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ defines terms in the Utah Criminal Code in relation to public entities;
- 15 ▶ modifies the crime of misusing public money;
- 16 ▶ makes it a crime to misuse public property;
- 17 ▶ describes the type of personal use of public property that is permitted; and
- 18 ▶ makes technical and conforming changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 This bill provides a special effective date.

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **11-57-104**, as enacted by Laws of Utah 2017, Chapter 354

26 **53B-7-106**, as enacted by Laws of Utah 2017, Chapter 354

27 **63A-3-110**, as last amended by Laws of Utah 2018, Chapter 25

28 **76-1-601**, as last amended by Laws of Utah 2007, Chapter 339

29 **76-5-413**, as last amended by Laws of Utah 2018, Chapter 192

30 **76-6-513**, as last amended by Laws of Utah 2010, Chapter 193
 31 **76-8-101**, as last amended by Laws of Utah 1993, Chapter 42
 32 **76-8-402**, as last amended by Laws of Utah 2017, Chapter 354
 33 **76-8-404**, as last amended by Laws of Utah 1999, Chapter 106
 34 **77-23a-8**, as last amended by Laws of Utah 2016, Chapter 399

35 REPEALS:

36 **76-8-401**, as last amended by Laws of Utah 2012, Chapter 369



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

39 Section 1. Section **11-57-104** is amended to read:

40 **11-57-104. Relation to other actions -- Prohibition on disbursing funds and**
 41 **accessing accounts.**

42 (1) Nothing in this chapter:

43 (a) immunizes a political subdivision officer or employee from or precludes any
 44 criminal prosecution or civil or employment action for an unlawful personal use expenditure;
 45 or

46 (b) limits or supersedes the authority of a political subdivision to set compensation in
 47 accordance with Section **10-3-818**.

48 (2) A political subdivision officer or employee who [~~has been~~] is convicted of misusing
 49 public money or public property under Section **76-8-402** may not disburse public funds or
 50 access public accounts.

51 Section 2. Section **53B-7-106** is amended to read:

52 **53B-7-106. Personal use expenditures for officers and employees of institutions of**
 53 **higher education.**

54 (1) As used in this section:

55 (a) "Employee" means a person who is not an elected or appointed officer and who is
 56 employed on a full- or part-time basis by an institution of higher education.

57 (b) "Institution of higher education" means an institution that is part of the state system

58 of higher education as described in Section [53B-1-102](#).

59 (c) "Officer" means a person who is elected or appointed to an office or position within
60 an institution of higher education.

61 (d) (i) "Personal use expenditure" means an expenditure made without the authority of
62 law that:

63 (A) is not directly related to the performance of an activity as an officer or employee of
64 an institution of higher education;

65 (B) primarily furthers a personal interest of an officer or employee of an institution of
66 higher education or the family, a friend, or an associate of an officer or employee of an
67 institution of higher education; and

68 (C) would constitute taxable income under federal law.

69 (ii) "Personal use expenditure" does not include:

70 (A) a de minimis or incidental expenditure; or

71 (B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to
72 travel to and from the officer or employee's official duties, including a minimal allowance for a
73 detour as provided by the institution of higher education.

74 (e) "Public funds" means the same as that term is defined in Section [51-7-3](#).

75 (2) An officer or employee of an institution of higher education may not:

76 (a) use public funds for a personal use expenditure; or

77 (b) incur indebtedness or liability on behalf of, or payable by, an institution of higher
78 education for a personal use expenditure.

79 (3) If the institution of higher education determines that an officer or employee of an
80 institution of higher education has intentionally made a personal use expenditure in violation of
81 Subsection (2), the institution of higher education shall:

82 (a) require the officer or employee to deposit the amount of the personal use
83 expenditure into the fund or account from which:

84 (i) the personal use expenditure was disbursed; or

85 (ii) payment for the indebtedness or liability for a personal use expenditure was

86 disbursed;

87 (b) require the officer or employee to remit an administrative penalty in an amount
88 equal to 50% of the personal use expenditure to the institution of higher education; and

89 (c) deposit the money received under Subsection (3)(b) into the operating fund of the
90 institution of higher education.

91 (4) (a) Any officer or employee of an institution of higher education who has been
92 found by the institution of higher education to have made a personal use expenditure in
93 violation of Subsection (2) may appeal the finding of the institution of higher education.

94 (b) The institution of higher education shall establish an appeal process for an appeal
95 made under Subsection (4)(a).

96 (5) (a) Subject to Subsection (5)(b), an institution of higher education may withhold all
97 or a portion of the wages of an officer or employee of the institution of higher education who
98 has violated Subsection (2) until the requirements of Subsection (3) have been met.

99 (b) If the officer or employee has requested an appeal under Subsection (4), the
100 institution of higher education may only withhold the wages of the officer or employee after the
101 appeal process has confirmed that the officer or employee violated Subsection (2).

102 (6) Nothing in this chapter immunizes an officer or employee of an institution of higher
103 education from or precludes any criminal prosecution or civil or employment action for an
104 unlawful personal use expenditure.

105 (7) An officer or employee of an institution of higher education who [~~has been~~] is
106 convicted of misusing public money or public property under Section 76-8-402 may not
107 disburse public funds or access public accounts.

108 Section 3. Section **63A-3-110** is amended to read:

109 **63A-3-110. Personal use expenditures for state officers and employees.**

110 (1) As used in this section:

111 (a) "Employee" means a person who is not an elected or appointed officer and who is
112 employed on a full- or part-time basis by a governmental entity.

113 (b) "Governmental entity" means:

114 (i) an executive branch agency of the state, the offices of the governor, lieutenant
115 governor, state auditor, attorney general, and state treasurer, the State Board of Education, and
116 the State Board of Regents;

117 (ii) the Office of the Legislative Auditor General, the Office of the Legislative Fiscal
118 Analyst, the Office of Legislative Research and General Counsel, the Legislature, and
119 legislative committees;

120 (iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar
121 administrative units in the judicial branch;

122 (iv) independent state entities created under Title 63H, Independent State Entities; or

123 (v) the Utah Science Technology and Research Governing Authority created under
124 Section [63M-2-301](#).

125 (c) "Officer" means a person who is elected or appointed to an office or position within
126 a governmental entity.

127 (d) (i) "Personal use expenditure" means an expenditure made without the authority of
128 law that:

129 (A) is not directly related to the performance of an activity as a state officer or
130 employee;

131 (B) primarily furthers a personal interest of a state officer or employee or a state
132 officer's or employee's family, friend, or associate; and

133 (C) would constitute taxable income under federal law.

134 (ii) "Personal use expenditure" does not include:

135 (A) a de minimis or incidental expenditure; or

136 (B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to
137 travel to and from the officer or employee's official duties, including a minimal allowance for a
138 detour as provided by the state.

139 (e) "Public funds" means the same as that term is defined in Section [51-7-3](#).

140 (2) A state officer or employee may not:

141 (a) use public funds for a personal use expenditure; or

142 (b) incur indebtedness or liability on behalf of, or payable by, a governmental entity for
143 a personal use expenditure.

144 (3) If the Division of Finance or the responsible governmental entity determines that a
145 state officer or employee has intentionally made a personal use expenditure in violation of
146 Subsection (2), the governmental entity shall:

147 (a) require the state officer or employee to deposit the amount of the personal use
148 expenditure into the fund or account from which:

149 (i) the personal use expenditure was disbursed; or

150 (ii) payment for the indebtedness or liability for a personal use expenditure was
151 disbursed;

152 (b) require the state officer or employee to remit an administrative penalty in an
153 amount equal to 50% of the personal use expenditure to the Division of Finance; and

154 (c) deposit the money received under Subsection (3)(b) into the General Fund.

155 (4) (a) Any state officer or employee who has been found by a governmental entity to
156 have made a personal use expenditure in violation of Subsection (2) may appeal the finding of
157 the governmental entity.

158 (b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the
159 Division of Finance shall make rules regarding an appeal process for an appeal made under
160 Subsection (4)(a), including the designation of an appeal authority.

161 (5) (a) Subject to Subsection (5)(b), the Division of Finance may withhold all or a
162 portion of the wages of a state officer or employee who has violated Subsection (2) until the
163 requirements of Subsection (3) have been met.

164 (b) If the state officer or employee has requested an appeal under Subsection (4), the
165 Division of Finance may only withhold the wages of the officer or employee after the appeal
166 authority described in Subsection (4)(b) has confirmed that the officer or employee violated
167 Subsection (2).

168 (6) Nothing in this chapter immunizes a state officer or employee from or precludes
169 any criminal prosecution or civil or employment action for an unlawful personal use

170 expenditure.

171 (7) A state officer or employee who ~~[has been]~~ is convicted of misusing public money
172 or public property under Section 76-8-402 may not disburse public funds or access public
173 accounts.

174 Section 4. Section 76-1-601 is amended to read:

175 **76-1-601. Definitions.**

176 Unless otherwise provided, ~~[the following terms apply to]~~ as used in this title:

177 (1) "Act" means a voluntary bodily movement and includes speech.

178 (2) "Actor" means a person whose criminal responsibility is in issue in a criminal
179 action.

180 (3) "Bodily injury" means physical pain, illness, or any impairment of physical
181 condition.

182 (4) "Conduct" means an act or omission.

183 (5) "Dangerous weapon" means:

184 (a) any item capable of causing death or serious bodily injury; or

185 (b) a facsimile or representation of the item, if:

186 (i) the actor's use or apparent intended use of the item leads the victim to reasonably
187 believe the item is likely to cause death or serious bodily injury; or

188 (ii) the actor represents to the victim verbally or in any other manner that he is in
189 control of such an item.

190 (6) "Grievous sexual offense" means:

191 (a) rape, Section 76-5-402;

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

193 (c) object rape, Section 76-5-402.2;

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

195 (e) forcible sodomy, Subsection 76-5-403(2);

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

197 (g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);

- 198 (h) aggravated sexual assault, Section [76-5-405](#);
- 199 (i) any felony attempt to commit an offense described in Subsections (6)(a) through
- 200 (h); or
- 201 (j) an offense in another state, territory, or district of the United States that, if
- 202 committed in Utah, would constitute an offense described in Subsections (6)(a) through (i).
- 203 (7) "Offense" means a violation of any penal statute of this state.
- 204 (8) "Omission" means a failure to act when there is a legal duty to act and the actor is
- 205 capable of acting.
- 206 (9) "Person" means an individual, public or private corporation, government,
- 207 partnership, or unincorporated association.
- 208 (10) "Possess" means to have physical possession of or to exercise dominion or control
- 209 over tangible property.
- 210 (11) "Public entity" means:
- 211 (a) the state, or an agency, bureau, office, department, division, board, commission,
- 212 institution, laboratory, or other instrumentality of the state;
- 213 (b) a political subdivision of the state, including a county, municipality, interlocal
- 214 entity, local district, special service district, school district, or school board;
- 215 (c) an agency, bureau, office, department, division, board, commission, institution,
- 216 laboratory, or other instrumentality of a political subdivision of the state; or
- 217 (d) another entity that:
- 218 (i) performs a public function; and
- 219 (ii) is authorized to hold, spend, transfer, disburse, use, or receive public money.
- 220 (12) (a) "Public money" or "public funds" means money, funds, or accounts, regardless
- 221 of the source from which they are derived, that:
- 222 (i) are owned, held, or administered by an entity described in Subsections (11)(a)
- 223 through (c); or
- 224 (ii) are in the possession of an entity described in Subsection (11)(d)(i) for the purpose
- 225 of performing a public function.

226 (b) "Public money" or "public funds" includes money, funds, or accounts described in
227 Subsection (12)(a) after the money, funds, or accounts are transferred by a public entity to an
228 independent contractor of the public entity.

229 (c) "Public money" or "public funds" remains public money or public funds while in
230 the possession of an independent contractor of a public entity for the purpose of providing a
231 program or service for, or on behalf of, the public entity.

232 (13) "Public officer" means:

233 (a) an elected official of a public entity;

234 (b) an individual appointed to, or serving an unexpired term of, an elected official of a
235 public entity;

236 (c) a judge of a court of record or not of record, including justice court judges; or

237 (d) a member of the Board of Pardons and Parole.

238 (14) (a) "Public servant" means:

239 (i) a public officer;

240 (ii) an appointed official, employee, consultant, or independent contractor of a public
241 entity; or

242 (iii) a person hired or paid by a public entity to perform a government function.

243 (b) Public servant includes a person described in Subsection (14)(a) upon the person's
244 election, appointment, contracting, or other selection, regardless of whether the person has
245 begun to officially occupy the position of a public servant.

246 ~~[(11)]~~ (15) "Serious bodily injury" means bodily injury that creates or causes serious
247 permanent disfigurement, protracted loss or impairment of the function of any bodily member
248 or organ, or creates a substantial risk of death.

249 ~~[(12)]~~ (16) "Substantial bodily injury" means bodily injury, not amounting to serious
250 bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or
251 temporary loss or impairment of the function of any bodily member or organ.

252 ~~[(13)]~~ (17) "Writing" or "written" includes any handwriting, typewriting, printing,
253 electronic storage or transmission, or any other method of recording information or fixing

254 information in a form capable of being preserved.

255 Section 5. Section **76-5-413** is amended to read:

256 **76-5-413. Custodial sexual relations or misconduct with youth receiving state**
257 **services -- Definitions -- Penalties -- Defenses.**

258 (1) As used in this section:

259 (a) "Actor" means:

260 (i) an individual employed by the Department of Human Services, as created in Section
261 [62A-1-102](#), or an employee of a private provider or contractor; or

262 (ii) an individual employed by the juvenile court of the state, or an employee of a
263 private provider or contractor.

264 (b) "Department" means the Department of Human Services created in Section
265 [62A-1-102](#).

266 (c) "Juvenile court" means the juvenile court of the state created in Section [78A-6-102](#).

267 (d) "Private provider or contractor" means any individual or entity that contracts with
268 the:

269 (i) department to provide services or functions that are part of the operation of the
270 department; or

271 (ii) juvenile court to provide services or functions that are part of the operation of the
272 juvenile court.

273 (e) "Youth receiving state services" means an individual:

274 (i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

275 (A) in the custody of the department under Subsection [78A-6-117\(2\)\(c\)](#); or

276 (B) receiving services from any division of the department if any portion of the costs of
277 these services is covered by public money [~~as defined in Section [76-8-401](#)~~]; or

278 (ii) younger than 21 years of age who is:

279 (A) in the custody of the Division of Juvenile Justice Services, or the Division of Child
280 and Family Services; or

281 (B) under the jurisdiction of the juvenile court.

282 (2) (a) An actor commits custodial sexual relations with a youth receiving state
283 services if the actor commits any of the acts under Subsection (3):

284 (i) under circumstances not amounting to commission of, or an attempt to commit, an
285 offense under Subsection (6); and

286 (ii) (A) the actor knows that the individual is a youth receiving state services; or

287 (B) a reasonable person in the actor's position should have known under the
288 circumstances that the individual was a youth receiving state services.

289 (b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving
290 state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second
291 degree felony.

292 (c) If the act committed under this Subsection (2) amounts to an offense subject to a
293 greater penalty under another provision of state law than is provided under this Subsection (2),
294 this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

295 (3) Acts referred to in Subsection (2)(a) are:

296 (a) having sexual intercourse with a youth receiving state services;

297 (b) engaging in any sexual act with a youth receiving state services involving the
298 genitals of one individual and the mouth or anus of another individual, regardless of the sex of
299 either participant; or

300 (c) causing the penetration, however slight, of the genital or anal opening of a youth
301 receiving state services by any foreign object, substance, instrument, or device, including a part
302 of the human body, with the intent to cause substantial emotional or bodily pain to any
303 individual, regardless of the sex of any participant or with the intent to arouse or gratify the
304 sexual desire of any individual, regardless of the sex of any participant.

305 (4) (a) An actor commits custodial sexual misconduct with a youth receiving state
306 services if the actor commits any of the acts under Subsection (5):

307 (i) under circumstances not amounting to commission of, or an attempt to commit, an
308 offense under Subsection (6); and

309 (ii) (A) the actor knows that the individual is a youth receiving state services; or

310 (B) a reasonable person in the actor's position should have known under the
311 circumstances that the individual was a youth receiving state services.

312 (b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth
313 receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a
314 third degree felony.

315 (c) If the act committed under this Subsection (4) amounts to an offense subject to a
316 greater penalty under another provision of state law than is provided under this Subsection (4),
317 this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

318 (5) Acts referred to in Subsection (4)(a) are the following acts when committed with
319 the intent to cause substantial emotional or bodily pain to any individual or with the intent to
320 arouse or gratify the sexual desire of any individual, regardless of the sex of any participant:

321 (a) touching the anus, buttocks, pubic area, or any part of the genitals of a youth
322 receiving state services;

323 (b) touching the breast of a female youth receiving state services; or

324 (c) otherwise taking indecent liberties with a youth receiving state services.

325 (6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

326 (a) Section 76-5-401, unlawful sexual activity with a minor;

327 (b) Section 76-5-402, rape;

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

329 (d) Section 76-5-402.2, object rape;

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

331 (f) Section 76-5-403, forcible sodomy;

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

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

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

335 (j) Section 76-5-405, aggravated sexual assault.

336 (7) (a) It is not a defense to the commission of the offense of custodial sexual relations
337 with a youth receiving state services under Subsection (2) or custodial sexual misconduct with

338 a youth receiving state services under Subsection (4), or an attempt to commit either of these
 339 offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

340 (i) mistakenly believed the youth receiving state services to be 18 years of age or older
 341 at the time of the alleged offense; or

342 (ii) was unaware of the true age of the youth receiving state services.

343 (b) Consent of the youth receiving state services is not a defense to any violation or
 344 attempted violation of Subsection (2) or (4).

345 (8) It is a defense that the commission by the actor of an act under Subsection (2) or (4)
 346 is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

347 Section 6. Section 76-6-513 is amended to read:

348 **76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.**

349 (1) As used in this section:

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

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

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

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

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

357 [~~(f) "Public money" is as defined in Section 76-8-401.~~]

358 (2) A person is guilty of unlawfully dealing with property by a fiduciary if the person
 359 deals with property that has been entrusted to him as a fiduciary, or property of a governmental
 360 entity, public money, or of a financial institution, in a manner which the person knows is a
 361 violation of the person's duty and which involves substantial risk of loss or detriment to the
 362 owner or to a person for whose benefit the property was entrusted. A violation of this
 363 Subsection (2) is punishable under Section 76-6-412.

364 (3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if,
 365 without permission of the owner of the property or some other person with authority to give

366 permission, the person pledges as collateral for a personal loan, or as collateral for the benefit
367 of some party, other than the owner or the person for whose benefit the property was entrusted,
368 the property that has been entrusted to the fiduciary.

369 (b) An offense under Subsection (3)(a) is punishable as:

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

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

374 (iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less
375 than \$1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent
376 to commit theft, or unlawful dealing with property by a fiduciary; or

377 (iv) a class B misdemeanor if the value of the property is less than \$500.

378 Section 7. Section **76-8-101** is amended to read:

379 **76-8-101. Definitions.**

380 [~~For the purposes of~~] As used in this chapter:

381 (1) "Candidate for electoral office" means a person who [~~has filed~~] files as a candidate
382 for office under the laws of the state.

383 (2) "Party official" means [~~any~~] a person holding any post in a political party whether
384 by election, appointment, or otherwise.

385 (3) "Peace officer" means [~~any~~] an employee of a police or law enforcement agency
386 that is part of or administered by the state or any of its political subdivisions, and whose duties
387 consist primarily of the prevention and detection of crime and the enforcement of criminal
388 statutes or ordinances of this state or any of its political subdivisions.

389 (4) (a) "Pecuniary benefit" means any advantage in the form of money, property,
390 commercial interest, or anything else, the primary significance of which is economic gain.

391 (b) "Pecuniary benefit" does not include economic advantage applicable to the public
392 generally, such as tax reduction or increased prosperity generally.

393 [~~(5) (a) "Public servant" means any officer or employee of the state or any political~~

394 ~~subdivision of the state, including judges, legislators, consultants, and persons otherwise~~
395 ~~performing a governmental function.]~~

396 ~~[(b) A person is considered a public servant upon his election, appointment, or other~~
397 ~~designation as such, although he may not yet officially occupy that position.]~~

398 (5) (a) "Public property" means real or personal property that is owned, held, or
399 managed by a public entity.

400 (b) "Public property" includes real or personal property that is owned, held, or managed
401 by a public entity after the real or personal property is transferred by the public entity to an
402 independent contractor of the public entity.

403 (c) "Public property" remains public property while in the possession of an independent
404 contractor of a public entity for the purpose of providing a program or service for, or on behalf
405 of, the public entity.

406 Section 8. Section **76-8-402** is amended to read:

407 **76-8-402. Misusing public money or public property.**

408 ~~[(1) Every public officer of this state or a political subdivision, or of any county, city,~~
409 ~~town, precinct, or district of this state, and every other person charged, either by law or under~~
410 ~~contract, with the receipt, safekeeping, transfer, disbursement, or use of public money commits~~
411 ~~an offense if the officer or other charged person:]~~

412 (1) As used in this section, "authorized personal use" means:

413 (a) the use of public property, for a personal matter, by a public servant if:

414 (i) the public servant is authorized to use or possess the public property to fulfill the
415 public servant's duties as a public servant;

416 (ii) the primary purpose of the public servant using or possessing the public property is
417 to fulfill the public servant's duties as a public servant;

418 (iii) at the time the public servant uses the public property for a personal matter, a
419 written policy of the public servant's public entity is in effect that authorizes the public servant
420 to use or possess the public property for personal use in addition to the primary purpose of
421 fulfilling the public servant's duties as a public servant; and

422 (iv) the public servant uses and possesses the public property in a lawful manner and in
423 accordance with the policy described in Subsection (1)(a)(iii); or

424 (b) incidental use of public property for a personal matter by a public servant, if:

425 (i) the value provided to the public servant's public entity by the public servant's use or
426 possession of the public property for a public purpose substantially outweighs the personal
427 benefit received by the employee from the incidental use of the public property for a personal
428 matter; and

429 (ii) the incidental use of the public property for a personal matter is not prohibited by
430 law or by the public servant's public entity.

431 (2) It is unlawful for a public servant to:

432 (a) [~~appropriates the money or any portion of it to his~~] appropriate public money or
433 public property to the public servant's own use or benefit or to the use or benefit of another
434 without authority of law;

435 (b) [~~loans or transfers the money or any portion of it~~] loan or transfer public money or
436 public property without authority of law;

437 (c) [~~fails to keep the money in his~~] fail to keep public money or public property in the
438 public servant's possession until disbursed [~~or paid out~~] by authority of law;

439 (d) unlawfully [~~deposits the money or any portion in any~~] deposit public money in a
440 bank or with [~~any other~~] another person;

441 (e) knowingly [~~keeps any~~] keep a false account or [~~makes any false~~] make a false entry
442 or erasure in [~~any~~] an account of, or relating to [~~the~~], public money;

443 (f) fraudulently [~~alters, falsifies, conceals, destroys, or obliterates any such account~~]
444 alter, falsify, conceal, or destroy an account described in Subsection (2)(e);

445 (g) willfully [~~refuses or omits~~] refuse or omit to pay over, on demand, any public
446 money in [~~his hands~~] the public servant's custody or control, upon the presentation of a draft,
447 order, or warrant drawn upon [~~such money~~] the public money by competent authority;

448 (h) willfully [~~omits to transfer the~~] omit to transfer public money when the transfer is
449 required by law; or

450 (i) willfully [~~omits or refuses~~] omit or refuse to pay over, to any officer or person
451 authorized by law to receive [~~it, any money received by him~~] public money, public money
452 received by the public servant under any duty imposed [~~by law so to pay over the same~~] on the
453 public servant by law.

454 [~~(2)~~] (3) [~~A~~] Except as provided in Subsection (4), a violation of Subsection [~~(1)~~] (2) is
455 a felony of the third degree[~~, except it~~].

456 (4) A violation of Subsection (2) is a felony of the second degree if:

457 (a) the value of the public money or the value of the use of the public property exceeds
458 \$5,000;

459 (b) the amount of the false account exceeds \$5,000;

460 (c) the amount falsely entered exceeds \$5,000;

461 (d) the amount that is the difference between the original amount and the fraudulently
462 altered amount exceeds \$5,000; or

463 (e) the amount falsely erased, fraudulently concealed, destroyed, [~~obliterated~~], or
464 falsified in the account exceeds \$5,000.

465 [~~(3)~~] (5) In addition to the penalty described in Subsection [~~(2)~~] (3) or (4), a public
466 officer who violates Subsection [~~(1)~~] (2):

467 (a) is subject to the penalties described in Section 76-8-404; and

468 (b) may not disburse public funds or access public accounts.

469 (6) (a) A public servant is not guilty of a violation of this section for authorized
470 personal use of public property.

471 (b) Subsection (6)(a) does not apply if:

472 (i) the public servant's personal use of the public property does not constitute
473 authorized personal use at the time of the personal use; and

474 (ii) a public entity modifies or adopts a policy or law, or takes other action, to
475 retroactively authorize or approve the personal use of the public property by the public servant.

476 Section 9. Section 76-8-404 is amended to read:

477 **76-8-404. Making profit from or misusing public money or public property --**

478 **Disqualification from office -- Criminal penalty.**

479 A public officer, regardless of whether [~~or not~~] the public officer receives, safekeeps,
480 transfers, disburses, or has a fiduciary relationship with public money, who makes a profit from
481 or out of public money or public property, or who uses public money or public property in a
482 manner or for a purpose not authorized by law, is guilty of a felony as provided in Section
483 76-8-402 and [~~shall~~] is, in addition to the punishment provided by law, [~~be~~] disqualified [~~to~~
484 ~~hold~~] from holding public office.

485 Section 10. Section **77-23a-8** is amended to read:

486 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

487 (1) The attorney general of the state, any assistant attorney general specially designated
488 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy
489 district attorney specially designated by the county attorney or by the district attorney, may
490 authorize an application to a judge of competent jurisdiction for an order for an interception of
491 wire, electronic, or oral communications by any law enforcement agency of the state, the
492 federal government or of any political subdivision of the state that is responsible for
493 investigating the type of offense for which the application is made.

494 (2) The judge may grant the order in conformity with the required procedures when the
495 interception sought may provide or has provided evidence of the commission of:

496 (a) any act:

497 (i) prohibited by the criminal provisions of:

498 (A) Title 58, Chapter 37, Utah Controlled Substances Act;

499 (B) Title 58, Chapter 37c, Utah Controlled Substance Precursor Act; or

500 (C) Title 58, Chapter 37d, Clandestine Drug Lab Act; and

501 (ii) punishable by a term of imprisonment of more than one year;

502 (b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
503 Securities Act, and punishable by a term of imprisonment of more than one year;

504 (c) an offense:

505 (i) of:

- 506 (A) attempt, Section 76-4-101;
- 507 (B) conspiracy, Section 76-4-201;
- 508 (C) solicitation, Section 76-4-203; and
- 509 (ii) punishable by a term of imprisonment of more than one year;
- 510 (d) a threat of terrorism offense punishable by a maximum term of imprisonment of
- 511 more than one year, Section 76-5-107.3;
- 512 (e) (i) aggravated murder, Section 76-5-202;
- 513 (ii) murder, Section 76-5-203; or
- 514 (iii) manslaughter, Section 76-5-205;
- 515 (f) (i) kidnapping, Section 76-5-301;
- 516 (ii) child kidnapping, Section 76-5-301.1;
- 517 (iii) aggravated kidnapping, Section 76-5-302;
- 518 (iv) human trafficking or human smuggling, Section 76-5-308; or
- 519 (v) aggravated human trafficking or aggravated human smuggling, Section 76-5-310;
- 520 (g) (i) arson, Section 76-6-102; or
- 521 (ii) aggravated arson, Section 76-6-103;
- 522 (h) (i) burglary, Section 76-6-202; or
- 523 (ii) aggravated burglary, Section 76-6-203;
- 524 (i) (i) robbery, Section 76-6-301; or
- 525 (ii) aggravated robbery, Section 76-6-302;
- 526 (j) an offense:
- 527 (i) of:
- 528 (A) theft, Section 76-6-404;
- 529 (B) theft by deception, Section 76-6-405; or
- 530 (C) theft by extortion, Section 76-6-406; and
- 531 (ii) punishable by a maximum term of imprisonment of more than one year;
- 532 (k) an offense of receiving stolen property that is punishable by a maximum term of
- 533 imprisonment of more than one year, Section 76-6-408;

- 534 (l) a financial card transaction offense punishable by a maximum term of imprisonment
535 of more than one year, Section 76-6-506.2, 76-6-506.3, 76-6-506.5, or 76-6-506.6;
- 536 (m) bribery of a labor official, Section 76-6-509;
- 537 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 538 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
539 more than one year, Section 76-6-518;
- 540 (p) criminal usury, Section 76-6-520;
- 541 (q) a fraudulent insurance act offense punishable by a maximum term of imprisonment
542 of more than one year, Section 76-6-521;
- 543 (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by
544 a maximum term of imprisonment of more than one year, Section 76-6-703;
- 545 (s) bribery to influence official or political actions, Section 76-8-103;
- 546 (t) misusing public money or public property, Section 76-8-402;
- 547 (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 548 (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 549 (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- 550 (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 551 (y) obstruction of justice, Section 76-8-306;
- 552 (z) destruction of property to interfere with preparation for defense or war, Section
553 76-8-802;
- 554 (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
- 555 (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
- 556 (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 557 (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 558 (ee) riot punishable by a maximum term of imprisonment of more than one year,
559 Section 76-9-101;
- 560 (ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a
561 maximum term of imprisonment of more than one year, Section 76-9-301.1;

562 (gg) possession, use, or removal of an explosive, chemical, or incendiary device and
563 parts, Section 76-10-306;

564 (hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary
565 device, Section 76-10-307;

566 (ii) exploiting prostitution, Section 76-10-1305;

567 (jj) aggravated exploitation of prostitution, Section 76-10-1306;

568 (kk) bus hijacking or assault with intent to commit hijacking, Section 76-10-1504;

569 (ll) discharging firearms and hurling missiles, Section 76-10-1505;

570 (mm) violations of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act, and
571 the offenses listed under the definition of unlawful activity in the act, including the offenses not
572 punishable by a maximum term of imprisonment of more than one year when those offenses
573 are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;

574 (nn) communications fraud, Section 76-10-1801;

575 (oo) money laundering, Sections 76-10-1903 and 76-10-1904; or

576 (pp) reporting by a person engaged in a trade or business when the offense is
577 punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

578 Section 11. **Repealer.**

579 This bill repeals:

580 Section 76-8-401, "Public funds," "public money," and "public officer" defined.

581 Section 12. **Effective date.**

582 This bill takes effect on July 1, 2019.