

1 UNLAWFUL ACTIVITIES AMENDMENTS

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Rebecca Chavez-Houck**

5 Senate Sponsor: Todd Weiler

6 Cosponsors:	James A. Dunnigan	Mike K. McKell
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13 **LONG TITLE**

14 **General Description:**

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

17 **Highlighted Provisions:**

18 This bill:

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

26 **Money Appropriated in this Bill:**

27 None

28 **Other Special Clauses:**

29 None

30 **Utah Code Sections Affected:**

31 AMENDS:

32 **76-8-501**, as last amended by Laws of Utah 1997, Chapter 324

33 **76-8-503**, as last amended by Laws of Utah 1997, Chapter 324

34 **76-8-510.5**, as last amended by Laws of Utah 2007, Chapter 110

35 **76-10-1602**, as last amended by Laws of Utah 2012, Chapters 112 and 347

36 ENACTS:

37 **36-12-9.5**, Utah Code Annotated 1953



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

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

41 **36-12-9.5. Obstructing a legislative proceeding.**

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

44 (a) the Legislature, or a house, committee, subcommittee, or task force of the
45 Legislature; or

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

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

50 (a) provides a person with a weapon;

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

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

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

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

- 57 (i) the Legislature, or a house, committee, subcommittee, or task force of the
- 58 Legislature; or
- 59 (ii) an employee or independent contractor of an entity described in Subsection
- 60 (2)(e)(i);
- 61 (f) harbors or conceals a person;
- 62 (g) provides a person with transportation, disguise, or other means of avoiding
- 63 discovery or service of process;
- 64 (h) warns any person of impending discovery or service of process;
- 65 (i) conceals an item, information, document, or thing that is not privileged after a
- 66 legislative subpoena is issued for the item, information, document, or thing; or
- 67 (j) provides false information regarding a witness or a material aspect of the legislative
- 68 proceeding.
- 69 (3) Subsection (2) does not include:
- 70 (a) false or inconsistent material statements, as described in Section [76-8-502](#);
- 71 (b) tampering with a witness or soliciting or receiving a bribe, as described in Section
- 72 [76-8-508](#);
- 73 (c) retaliation against a witness, victim, or informant, as described in Section
- 74 [76-8-508.3](#); or
- 75 (d) extortion or bribery to dismiss a criminal proceeding, as described in Section
- 76 [76-8-509](#).

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

78 **76-8-501. Definitions.**

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

80 [~~(2)~~] (1) "Material" means capable of affecting the course or outcome of [the

81 proceeding. A statement is not material if it is retracted in the course of the official proceeding

82 in which it was made before it became manifest that the falsification was or would be exposed

83 and before it substantially affected the proceeding.] an official proceeding, unless the person

84 who made the statement or provided the information retracts the statement or information

85 before the earlier of:

86 (a) the end of the official proceeding in which the statement was made or the
87 information was provided;

88 (b) when it becomes manifest that the false or misleading nature of the statement or
89 information has been or will be exposed; or

90 (c) when the statement or information substantially affects the proceeding.

91 ~~[(+)]~~ (2) "Official proceeding" means:

92 (a) any proceeding before:

93 (i) a legislative, judicial, administrative, or other governmental body or official
94 authorized by law to take evidence under oath or affirmation~~[-, including];~~

95 (ii) a notary; or ~~[other]~~

96 (iii) a person ~~[taking]~~ that takes evidence in connection with ~~[any of these~~
97 ~~proceedings.]~~ a proceeding described in Subsection (2)(a)(i);

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

100 (c) an investigation or audit conducted by:

101 (i) the Legislature, or a house, committee, subcommittee, or task force of the
102 Legislature; or

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

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

106 **76-8-503. False or inconsistent statements.**

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

109 ~~[(+)]~~ (a) ~~[he]~~ the person makes a false statement under oath or affirmation or swears or
110 affirms the truth of the statement previously made and ~~[he]~~ the person does not believe the
111 statement to be true if:

112 (i) the falsification occurs in an official proceeding, or is made with a purpose to

113 mislead a public servant in performing [~~his~~] the public servant's official functions; or
 114 (ii) the statement is one [~~which~~] that is authorized by law to be sworn or affirmed
 115 before a notary or other person authorized to administer oaths; or

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

119 (2) Subsection (1) does not include obstructing a legislative proceeding, as described in
 120 Section 36-12-9.5.

121 [~~(2)~~] (3) A person is not guilty under this section if the person retracts the falsification
 122 [~~is retracted~~] before it becomes manifest that the falsification [~~was or would~~] has been or will
 123 be exposed.

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

125 **76-8-510.5. Tampering with evidence -- Definitions -- Elements -- Penalties.**

126 (1) As used in this section [~~:(a) "Official proceeding" includes any civil or~~
 127 ~~administrative action, trial, examination under oath, administrative proceeding, or other civil or~~
 128 ~~administrative adjudicative process. (b) "Thing", "thing or item" includes any document,~~
 129 record book, paper, file, electronic compilation, or other evidence.

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

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

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

140 (3) Subsection (2) does not apply to any offense that amounts to a violation of Section

141 76-8-306.

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

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

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

147 **76-10-1602. Definitions.**

148 As used in this part:

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

152 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
153 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
154 have the same or similar purposes, results, participants, victims, or methods of commission, or
155 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
156 demonstrate continuing unlawful conduct and be related either to each other or to the
157 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
158 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
159 activity as defined by this part shall have occurred within five years of the commission of the
160 next preceding act alleged as part of the pattern.

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

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

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

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

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

176 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
177 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

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

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

182 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
183 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
184 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
185 Clandestine Drug Lab Act;

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

188 (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah
189 Procurement Code;

190 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

191 (k) a threat of terrorism, Section 76-5-107.3;

192 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;

193 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;

194 (n) human trafficking, human smuggling, or aggravated human trafficking, Sections
195 76-5-308, 76-5-309, and 76-5-310;

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

- 197 (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 198 (q) causing a catastrophe, Section 76-6-105;
- 199 (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 200 (s) burglary of a vehicle, Section 76-6-204;
- 201 (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 202 (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 203 (v) theft, Section 76-6-404;
- 204 (w) theft by deception, Section 76-6-405;
- 205 (x) theft by extortion, Section 76-6-406;
- 206 (y) receiving stolen property, Section 76-6-408;
- 207 (z) theft of services, Section 76-6-409;
- 208 (aa) forgery, Section 76-6-501;
- 209 (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and
- 210 76-6-506.6;
- 211 (cc) deceptive business practices, Section 76-6-507;
- 212 (dd) bribery or receiving bribe by person in the business of selection, appraisal, or
- 213 criticism of goods, Section 76-6-508;
- 214 (ee) bribery of a labor official, Section 76-6-509;
- 215 (ff) defrauding creditors, Section 76-6-511;
- 216 (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 217 (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- 218 (ii) bribery or threat to influence contest, Section 76-6-514;
- 219 (jj) making a false credit report, Section 76-6-517;
- 220 (kk) criminal simulation, Section 76-6-518;
- 221 (ll) criminal usury, Section 76-6-520;
- 222 (mm) fraudulent insurance act, Section 76-6-521;
- 223 (nn) retail theft, Section 76-6-602;
- 224 (oo) computer crimes, Section 76-6-703;

- 225 (pp) identity fraud, Section [76-6-1102](#);
- 226 (qq) mortgage fraud, Section [76-6-1203](#);
- 227 (rr) sale of a child, Section [76-7-203](#);
- 228 (ss) bribery to influence official or political actions, Section [76-8-103](#);
- 229 (tt) threats to influence official or political action, Section [76-8-104](#);
- 230 (uu) receiving bribe or bribery by public servant, Section [76-8-105](#);
- 231 (vv) receiving bribe or bribery for endorsement of person as public servant, Section
- 232 [76-8-106](#);
- 233 (ww) official misconduct, Sections [76-8-201](#) and [76-8-202](#);
- 234 (xx) obstruction of justice, Section [76-8-306](#);
- 235 (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section [76-8-308](#);
- 236 (zz) false or inconsistent material statements, Section [76-8-502](#);
- 237 (aaa) false or inconsistent statements, Section [76-8-503](#);
- 238 (bbb) written false statements, Section [76-8-504](#);
- 239 (ccc) tampering with a witness or soliciting or receiving a bribe, Section [76-8-508](#);
- 240 (ddd) retaliation against a witness, victim, or informant, Section [76-8-508.3](#);
- 241 (eee) extortion or bribery to dismiss criminal proceeding, Section [76-8-509](#);
- 242 (fff) tampering with evidence, Section [76-8-510.5](#);
- 243 (ggg) falsification or alteration of government record, Section [76-8-511](#), if the record is
- 244 a record described in Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure
- 245 and Regulation Act;
- 246 [~~(fff)~~] (hhh) public assistance fraud in violation of Section [76-8-1203](#), [76-8-1204](#), or
- 247 [76-8-1205](#);
- 248 [~~(ggg)~~] (iii) unemployment insurance fraud, Section [76-8-1301](#);
- 249 [~~(hhh)~~] (jjj) intentionally or knowingly causing one animal to fight with another,
- 250 Subsection [76-9-301](#)(2)(d) or (e), or Section [76-9-301.1](#);
- 251 [~~(iii)~~] (kkk) possession, use, or removal of explosives, chemical, or incendiary devices
- 252 or parts, Section [76-10-306](#);

253 [~~(jjj)~~] (lll) delivery to common carrier, mailing, or placement on premises of an
254 incendiary device, Section [76-10-307](#);
255 [~~(kkk)~~] (mmm) possession of a deadly weapon with intent to assault, Section
256 [76-10-507](#);
257 [~~(HH)~~] (nnn) unlawful marking of pistol or revolver, Section [76-10-521](#);
258 [~~(mmm)~~] (ooo) alteration of number or mark on pistol or revolver, Section [76-10-522](#);
259 [~~(mm)~~] (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section
260 [76-10-1002](#);
261 [~~(ooo)~~] (qqq) selling goods under counterfeited trademark, trade name, or trade
262 devices, Section [76-10-1003](#);
263 [~~(ppp)~~] (rrr) sales in containers bearing registered trademark of substituted articles,
264 Section [76-10-1004](#);
265 [~~(qqq)~~] (sss) selling or dealing with article bearing registered trademark or service
266 mark with intent to defraud, Section [76-10-1006](#);
267 [~~(rrr)~~] (ttt) gambling, Section [76-10-1102](#);
268 [~~(sss)~~] (uuu) gambling fraud, Section [76-10-1103](#);
269 [~~(ttt)~~] (vvv) gambling promotion, Section [76-10-1104](#);
270 [~~(uuu)~~] (www) possessing a gambling device or record, Section [76-10-1105](#);
271 [~~(vvv)~~] (xxx) confidence game, Section [76-10-1109](#);
272 [~~(www)~~] (yyy) distributing pornographic material, Section [76-10-1204](#);
273 [~~(xxx)~~] (zzz) inducing acceptance of pornographic material, Section [76-10-1205](#);
274 [~~(yyy)~~] (aaaa) dealing in harmful material to a minor, Section [76-10-1206](#);
275 [~~(zzz)~~] (bbbb) distribution of pornographic films, Section [76-10-1222](#);
276 [~~(aaaa)~~] (cccc) indecent public displays, Section [76-10-1228](#);
277 [~~(bbbb)~~] (dddd) prostitution, Section [76-10-1302](#);
278 [~~(cccc)~~] (eeee) aiding prostitution, Section [76-10-1304](#);
279 [~~(ddd)~~] (ffff) exploiting prostitution, Section [76-10-1305](#);
280 [~~(cccc)~~] (gggg) aggravated exploitation of prostitution, Section [76-10-1306](#);

281 [~~(fff)~~] (hhh) communications fraud, Section [76-10-1801](#);

282 [~~(ggg)~~] (iii) any act prohibited by the criminal provisions of Part 19, Money

283 Laundering and Currency Transaction Reporting Act;

284 [~~(hhh)~~] (jjj) vehicle compartment for contraband, Section [76-10-2801](#);

285 [~~(iii)~~] (kkk) any act prohibited by the criminal provisions of the laws governing

286 taxation in this state; and

287 [~~(jjj)~~] (lll) any act illegal under the laws of the United States and enumerated in 18

288 U.S.C. Sec. 1961 (1)(B), (C), and (D).