

**Representative Mike K. McKell** proposes the following substitute bill:

**WHITE COLLAR CRIME REGISTRY**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mike K. McKell**

Senate Sponsor: \_\_\_\_\_

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**LONG TITLE**

**General Description:**

This bill modifies the Utah Code of Criminal Procedure to include a registry for persons who commit specified white collar crimes.

**Highlighted Provisions:**

This bill:

- ▶ authorizes the Office of the Attorney General to develop, operate, and maintain the Utah White Collar Crime Offender Registry website;
- ▶ provides the manner and process by which the Office of the Attorney General disseminates information from the Utah White Collar Crime Offender Registry website to the public, including the type of information that will be provided;
- ▶ provides the offenses for which a person must be registered with the Utah White Collar Crime Offender Registry website;
- ▶ provides the duration for which offenders will be placed on the Utah White Collar Crime Offender Registry;
- ▶ provides rulemaking authority for the Office of the Attorney General to implement the Utah White Collar Crime Offender Registry; and
- ▶ provides the process and conditions under which a person may petition to have his or her name and information removed from the Utah White Collar Crime Offender



26 Registry.

27 **Money Appropriated in this Bill:**

28 None

29 **Other Special Clauses:**

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **76-8-504.6**, as last amended by Laws of Utah 2010, Chapter 283

34 ENACTS:

35 **77-42-101**, Utah Code Annotated 1953

36 **77-42-102**, Utah Code Annotated 1953

37 **77-42-103**, Utah Code Annotated 1953

38 **77-42-104**, Utah Code Annotated 1953

39 **77-42-105**, Utah Code Annotated 1953

40 **77-42-106**, Utah Code Annotated 1953

41 **77-42-107**, Utah Code Annotated 1953

42 **77-42-108**, Utah Code Annotated 1953



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

45 Section 1. Section **76-8-504.6** is amended to read:

46 **76-8-504.6. False or misleading information.**

47 (1) A person is guilty of a class B misdemeanor if the person, not under oath or  
48 affirmation, intentionally or knowingly provides false or misleading material information to:

49 (a) an officer of the court for the purpose of influencing a criminal proceeding; or

50 (b) the Bureau of Criminal Identification for the purpose of obtaining a certificate of  
51 eligibility for;

52 (ii) expungement[-]; or

53 (ii) removal of the person's name from the White Collar Crime Registry created in Title

54 77, Chapter 42, Utah White Collar Crime Offender Registry.

55 (2) For the purposes of this section "officer of the court" means:

56 (a) prosecutor;

- 57 (b) judge;
- 58 (c) court clerk;
- 59 (d) interpreter;
- 60 (e) presentence investigator;
- 61 (f) probation officer;
- 62 (g) parole officer; and
- 63 (h) any other person reasonably believed to be gathering information for a criminal
- 64 proceeding.

65 (3) This section does not apply under circumstances amounting to Section [76-8-306](#) or  
 66 any other provision of this code carrying a greater penalty.

67 Section 2. Section **77-42-101** is enacted to read:

68 **CHAPTER 42. UTAH WHITE COLLAR CRIME OFFENDER REGISTRY**

69 **77-42-101. Title.**

70 This chapter is known as the "Utah White Collar Crime Offender Registry."

71 Section 3. Section **77-42-102** is enacted to read:

72 **77-42-102. Definitions.**

73 As used in this chapter:

74 (1) "Attorney general" means the Utah attorney general or a deputy attorney general.

75 (2) "Bureau" means the Bureau of Criminal Identification of the Department of Public  
 76 Safety established in Section [53-10-201](#).

77 (3) "Business day" means a day on which state offices are open for regular business.

78 (4) "Certificate of eligibility" means a document issued by the Bureau of Criminal  
 79 Identification stating that the offender has met the requirements of Section [77-42-108](#).

80 (5) "Offender" means an individual required to register as provided in Section  
 81 [77-42-105](#).

82 (6) "Register" means to comply with the requirements of this chapter and rules of the  
 83 Office of the Attorney General made under this chapter.

84 Section 4. Section **77-42-103** is enacted to read:

85 **77-42-103. Duties.**

86 (1) The attorney general shall:

87 (a) develop and operate a system to collect, analyze, maintain, and disseminate

88 information on offenders; and

89 (b) make information listed in Section 77-42-104 available to the public.

90 (2) Any attorney general, county attorney, or district attorney shall, in the manner  
91 prescribed by the attorney general:

92 (a) inform the attorney general of a person who is convicted of any of the offenses  
93 listed in Section 77-42-105 within 45 business days; and

94 (b) forward a copy of the judgment and sentence to the attorney general within 60  
95 business days after the conviction of an individual of any of the offenses listed in Section  
96 77-42-105.

97 (3) The attorney general shall:

98 (a) provide the following additional information when available:

99 (i) the crimes for which the offender has been convicted;

100 (ii) a description of the offender's targets; and

101 (iii) any other relevant identifying information as determined by the attorney general;

102 (b) maintain the Utah White Collar Crime Offender Registry website; and

103 (c) ensure that information is entered into the offender registry in a timely manner.

104 Section 5. Section 77-42-104 is enacted to read:

105 **77-42-104. Utah White Collar Crime Offender Registry -- Attorney general to**  
106 **maintain.**

107 (1) The attorney general shall maintain the Utah White Collar Crime Offender Registry  
108 website on the Internet, which shall contain a disclaimer informing the public that:

109 (a) the information contained on the website is obtained from public records and the  
110 attorney general does not guarantee the website's accuracy or completeness;

111 (b) members of the public are not allowed to use the information to harass or threaten  
112 offenders or members of their families; and

113 (c) harassment, stalking, or making threats against offenders or their families is  
114 prohibited and may violate Utah criminal laws.

115 (2) The Utah White Collar Crime Offender Registry website shall be indexed by the  
116 surname of the offender.

117 (3) The attorney general shall construct the Utah White Collar Crime Offender Registry  
118 website so that before accessing registry information, users must indicate that they have read

119 and understand the disclaimer and agree to comply with the disclaimer's terms.

120 (4) Except as provided in Subsection (6), the Utah White Collar Crime Offender  
121 Registry website shall include the following registry information:

122 (a) all names and aliases by which the offender is or has been known, but not including  
123 any online or Internet identifiers;

124 (b) a physical description, including the offender's date of birth, height, weight, and eye  
125 and hair color;

126 (c) a recent photograph of the offender; and

127 (d) the crimes listed in Section [77-42-105](#) of which the offender has been convicted.

128 (5) The Office of the Attorney General and any individual or entity acting at the request  
129 or upon the direction of the attorney general are immune from civil liability for damages and  
130 will be presumed to have acted in good faith by reporting information.

131 (6) The attorney general shall redact the names, addresses, phone numbers, Social  
132 Security numbers, and other information that, if disclosed, specifically identifies individual  
133 victims.

134 Section 6. Section **77-42-105** is enacted to read:

135 **77-42-105. Registerable offenses.**

136 A person shall be required to register with the Office of the Attorney General for a  
137 conviction of any of the following offenses as a second degree felony:

138 (1) Section [61-1-1](#) or Section [61-1-2](#), securities fraud;

139 (2) Section [76-6-405](#), theft by deception;

140 (3) Section [76-6-513](#), unlawful dealing of property by fiduciary;

141 (4) Section [76-6-521](#), fraudulent insurance;

142 (5) Section [76-6-1203](#), mortgage fraud;

143 (6) Section [76-10-1603](#), pattern of unlawful activity;

144 (7) Section [76-10-1801](#), communications fraud; and

145 (8) Section [76-10-1903](#), money laundering.

146 Section 7. Section **77-42-106** is enacted to read:

147 **77-42-106. Registration of offenders -- Utah White Collar Crime Offender**  
148 **Registry.**

149 (1) An offender who has been convicted of any offense listed in Section [77-42-105](#)

150 shall be on the Utah White Collar Crime Offender Registry for:

151 (a) a period of 10 years for a first offense;

152 (b) a second period of 10 years for a second conviction under this section; and

153 (c) a lifetime period if convicted a third time under this section.

154 (2) An offender who has been convicted of any offense listed in Section [77-42-105](#)

155 after December 31, 2005, shall register with the attorney general to be included in the Utah

156 White Collar Crime Offender Registry.

157 Section 8. Section **77-42-107** is enacted to read:

158 **77-42-107. Department and agency requirements.**

159 (1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the

160 attorney general shall make rules necessary to implement this chapter, including:

161 (a) the method for dissemination of registry information; and

162 (b) instructions to the public regarding acceptable use of the information.

163 (2) Any information regarding the identity or location of a victim may be redacted by

164 the attorney general from information provided under Subsection [77-42-104\(6\)](#).

165 Section 9. Section **77-42-108** is enacted to read:

166 **77-42-108. Removal from the Utah White Collar Crime Offender Registry.**

167 (1) An offender may petition the court where the offender was convicted of the offense

168 for which registration with the Utah White Collar Crime Offender Registry is required, for an

169 order to remove the offender from the Utah White Collar Crime Offender Registry, if:

170 (a) five years have passed since the completion of the offender's sentence;

171 (b) the offender has successfully completed all treatment ordered by the court or the

172 Board of Pardons and Parole relating to the conviction;

173 (c) (i) the offender has not been convicted of any other crime, excluding traffic

174 offenses, as evidenced by a certificate of eligibility issued by the bureau; and

175 (ii) as used in this section, "traffic offense" does not include a violation of Title 41,

176 Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

177 (d) the offender has paid all restitution ordered by the court;

178 (e) notice has been delivered to the victims and the office that prosecuted the offender;

179 and

180 (f) the offender has not been found to be civilly liable in any case in which fraud,

181 misrepresentation, deceit, breach of fiduciary duty, or the misuse or misappropriation of funds  
182 is an element.

183 (2) (a) (i) An offender seeking removal from the White Collar Crime Offender Registry  
184 shall apply for a certificate of eligibility from the bureau.

185 (ii) An offender who intentionally or knowingly provides any false or misleading  
186 information to the bureau when applying for a certificate of eligibility is guilty of a class B  
187 misdemeanor and subject to prosecution under Section [76-8-504.6](#).

188 (iii) Regardless of whether the offender is prosecuted, the bureau may deny a certificate  
189 of eligibility to anyone providing false information on an application under this Subsection (2).

190 (b) (i) The bureau shall check the records of governmental agencies, including national  
191 criminal databases, to determine whether an offender is eligible to receive a certificate of  
192 eligibility under this section.

193 (ii) If the offender meets all of the criteria under Subsections (1)(a) through (d), the  
194 bureau shall issue a certificate of eligibility to the offender which shall be valid for a period of  
195 90 days from the date the certificate is issued.

196 (c) (i) The bureau shall charge an application fee for the certificate of eligibility in  
197 accordance with the process in Section [63J-1-504](#).

198 (ii) The fee shall be paid at the time the offender submits an application for a certificate  
199 of eligibility to the bureau.

200 (iii) If the bureau determines that the issuance of a certificate of eligibility is  
201 appropriate, the bureau shall issue to the offender a certificate of eligibility at no additional  
202 charge.

203 (d) Funds generated under this Subsection (2) shall be deposited in the General Fund as  
204 a dedicated credit by the department to cover the costs incurred in determining eligibility.

205 (3) The offender shall:

206 (a) file with the court the following information:

207 (i) the petition;

208 (ii) the original information;

209 (iii) the court docket; and

210 (iv) an affidavit certifying that the offender is in compliance with the provisions of  
211 Subsection (1); and

212 (b) deliver a copy of the petition to the office of the prosecutor.  
213 (4) (a) Upon receipt of a petition for removal from the Utah White Collar Crime  
214 Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class  
215 mail to the victims at the most recent addresses of record on file.  
216 (b) The notice shall:  
217 (i) include a copy of the petition for removal from the registry;  
218 (ii) state that the victim has a right to object to the removal of the offender from the  
219 registry; and  
220 (iii) provide instructions for filing an objection with the court.  
221 (5) The office of the prosecutor shall provide the following, if available, to the court  
222 within 30 days after receiving the petition:  
223 (a) a presentence report;  
224 (b) any evaluation done as part of sentencing; and  
225 (c) any other information the office of the prosecutor feels the court should consider.  
226 (6) The victim may respond to the petition by filing a recommendation or objection  
227 with the court within 45 days after the mailing of the petition to the victim.  
228 (7) The court shall:  
229 (a) review the petition and all documents submitted with the petition; and  
230 (b) hold a hearing if requested by the office of the prosecutor or the victim.  
231 (8) When considering a petition for removal from the registry, the court shall consider  
232 whether the offender has paid all restitution ordered by the court or the Board of Pardons and  
233 Parole.  
234 (9) If the court determines that it is not contrary to the interests of the public to do so,  
235 the court may grant the petition and order removal of the offender from the registry.  
236 (10) If the court grants the petition, the court shall forward a copy of the order directing  
237 removal of the offender from the registry to the attorney general and the office of the  
238 prosecutor.  
239 (11) The office of the prosecutor shall notify the victims of the court's decision in the  
240 same manner as the notification required in Subsection (3)(a).