

1 **PUBLIC OFFICE MISCONDUCT AMENDMENTS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Susan J. Koehn**

5 AN ACT RELATING TO THE CRIMINAL CODE; REMOVING CRIMINAL SANCTIONS
6 FOR A PUBLIC OFFICIAL'S FAILURE TO TAKE THE OATH OF OFFICE AND
7 EXECUTE THE BOND; AND PROVIDING A CIVIL REMEDY.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 AMENDS:

10 **76-8-203**, as last amended by Chapter 79, Laws of Utah 1996

11 ENACTS:

12 **76-8-204**, Utah Code Annotated 1953

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

14 Section 1. Section **76-8-203** is amended to read:

15 **76-8-203. Unofficial misconduct.**

16 (1) A person is guilty of unofficial misconduct if he ~~[exercises or attempts to exercise any~~
17 ~~of the functions of a public office when]:~~

18 ~~[(a) he has not taken and filed the required oath of office;]~~

19 ~~[(b) he has failed to execute and file the required bond;]~~

20 ~~[(c)]~~ (a) exercises or attempts to exercise any of the functions of a public office when he
21 has not been elected or appointed to that office;

22 ~~[(d) he]~~ (b) exercises any of the functions of his office after his term has expired and the
23 successor has been elected or appointed and has qualified, or after his office has been legally
24 removed; or

25 ~~[(e)]~~ (c) he knowingly withholds or retains from his successor in office or other person
26 entitled to the official seal or any records, papers, documents, or other writings appertaining or
27 belonging to his office or mutilates or destroys or takes away the same.

1 (2) Unofficial misconduct is a class B misdemeanor.

2 Section 2. Section **76-8-204** is enacted to read:

3 **76-8-204. Action regarding incomplete qualification for office.**

4 If any elected or appointed official has failed to take, and file, the required oath of office,
5 or has failed to execute and file the bond required for that office, a voter within that official's
6 district may:

7 (1) deliver to the official a written notice of the failure to fulfill the requirements; and

8 (2) if the official has not completed the requirements within 30 days after receipt of the
9 written notice required under Subsection (1), the voter may file a writ of mandamus against the
10 official.

Legislative Review Note

as of 1-23-98 3:32 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel