

**TERRORISM AMENDMENTS**

2010 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Eric K. Hutchings**

Senate Sponsor: Daniel R. Liljenquist

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**LONG TITLE**

**General Description:**

This bill modifies the definition and use of the word terrorism in the Utah Code.

**Highlighted Provisions:**

This bill:

- ▶ changes the term cyber-terrorism to malicious cyber activity;
- ▶ changes the term commercial terrorism to commercial obstruction;
- ▶ changes the term disruptive terrorism to terrorism;
- ▶ moves references to the threat of terrorism into a new section apart from the misdemeanor offense of threat of violence; and
- ▶ defines terrorism as activities that:
  - involve acts dangerous to human life;
  - are a violation of the criminal laws of the United States or of this state; and
  - to a reasonable person, would appear to be intended to:
    - intimidate or coerce a civilian population;
    - influence the policy of a government by intimidation or coercion; or
    - affect the conduct of a government by mass destruction, assassination, or kidnapping.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

30 AMENDS:

- 31 **13-5a-102**, as enacted by Laws of Utah 2004, Chapter 372
- 32 **53-2-102**, as last amended by Laws of Utah 2008, Chapter 382
- 33 **63K-1-102**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 34 **63K-3-102**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 35 **63K-4-103**, as renumbered and amended by Laws of Utah 2008, Chapter 382
- 36 **76-3-203.5**, as last amended by Laws of Utah 2009, Chapter 153
- 37 **76-5-107**, as last amended by Laws of Utah 2002, Chapter 166
- 38 **76-6-206**, as last amended by Laws of Utah 2006, Chapter 210
- 39 **76-10-1602**, as last amended by Laws of Utah 2008, Chapters 292, 298, 370, and 382
- 40 **76-10-2402**, as last amended by Laws of Utah 2002, Chapter 31
- 41 **77-23a-8**, as last amended by Laws of Utah 2008, Chapter 268

42 ENACTS:

- 43 **76-5-107.3**, Utah Code Annotated 1953



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

46 Section 1. Section **13-5a-102** is amended to read:

47 **13-5a-102. Definitions.**

48 As used in this chapter:

49 (1) "Control" means:

- 50 (a) ownership of more than 5% of the voting shares or ownership interests of an entity;
- 51 (b) the power to vote more than 5% of the voting shares of an entity; or
- 52 (c) the ability to influence the management of an entity.

53 [~~(3)~~] (2) "Depository institution" is as defined in Section 7-1-103.

54 [~~(2) "Cyber-terrorism" means:]~~

55 (3) "Malicious cyber activity" means:

- 56 (a) the unlawful use of computing resources to intimidate or coerce others;
- 57 (b) accessing a computer without authorization or exceeding authorized access;

58 (c) willfully communicating, delivering, or causing the transmission of a program,  
59 information, code, or command without authorization or exceeding authorized access;

60 (d) intentionally or recklessly:

61 (i) intends to defraud or materially cause damage or disruption to any computing  
62 resources or to the owner of any computing resources; or

63 (ii) intends to materially cause damage or disruption to any computing resources  
64 indirectly through another party's computing resources.

65 (4) (a) Except as provided in Subsection (4)(b), "unfair competition" means an  
66 intentional business act or practice that:

67 (i) (A) is unlawful, unfair, or fraudulent; and

68 (B) leads to a material diminution in value of intellectual property; and

69 (ii) is one of the following:

70 (A) [~~cyber-terrorism~~] malicious cyber activity;

71 (B) infringement of a patent, trademark, or trade name;

72 (C) a software license violation; or

73 (D) predatory hiring practices.

74 (b) Notwithstanding Subsection (4)(a), "unfair competition" does not include the  
75 departure and hiring of an employee by a competitor.

76 Section 2. Section **53-2-102** is amended to read:

77 **53-2-102. Definitions.**

78 As used in this part:

79 (1) "Attack" means a nuclear, conventional, biological, or chemical warfare action  
80 against the United States of America or this state.

81 (2) "Director" means the division director appointed under Section 53-2-103.

82 (3) "Disaster" means a situation causing, or threatening to cause, widespread damage,  
83 social disruption, or injury or loss of life or property resulting from attack, internal  
84 disturbance, natural phenomena, or technological hazard.

85 (4) "Division" means the Division of Homeland Security created in Section 53-2-103.

86 (5) "Energy" includes the energy resources defined in Section 63K-2-103.

87 (6) "Expenses" means actual labor costs of government and volunteer personnel,  
88 including workers compensation benefits, fringe benefits, administrative overhead, cost of  
89 equipment, cost of equipment operation, cost of materials, and the cost of any contract labor  
90 and materials.

91 (7) "Hazardous materials emergency" means a sudden and unexpected release of any  
92 substance that because of its quantity, concentration, or physical, chemical, or infectious  
93 characteristics presents a direct and immediate threat to public safety or the environment and  
94 requires immediate action to mitigate the threat.

95 (8) "Internal disturbance" means a riot, prison break, [~~disruptive~~] terrorism, or strike.

96 (9) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide,  
97 avalanche, forest or range fire, drought, or epidemic.

98 (10) "State of emergency" means a condition in any part of this state that requires state  
99 government emergency assistance to supplement the local efforts of the affected political  
100 subdivision to save lives and to protect property, public health, welfare, or safety in the event  
101 of a disaster, or to avoid or reduce the threat of a disaster.

102 (11) "Technological hazard" means any hazardous materials accident, mine accident,  
103 train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

104 (12) "Terrorism" means activities that:

105 (a) involve acts dangerous to human life;

106 (b) are a violation of the criminal laws of the United States or of this state; and

107 (c) to a reasonable person, would appear to be intended to:

108 (i) intimidate or coerce a civilian population;

109 (ii) influence the policy of a government by intimidation or coercion; or

110 (iii) affect the conduct of a government by mass destruction, assassination, or

111 kidnapping.

112 Section 3. Section **63K-1-102** is amended to read:

113 **63K-1-102. Definitions.**

- 114 (1) (a) "Absent" means:
- 115 (i) not physically present or not able to be communicated with for 48 hours; or
- 116 (ii) for local government officers, as defined by local ordinances.
- 117 (b) "Absent" does not include a person who can be communicated with via telephone,
- 118 radio, or telecommunications.
- 119 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action
- 120 against the United States of America or this state.
- 121 (3) "Department" means the Department of Administrative Services, the Department
- 122 of Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of
- 123 Commerce, the Department of Community and Culture, the Department of Corrections, the
- 124 Department of Environmental Quality, the Department of Financial Institutions, the
- 125 Department of Health, the Department of Human Resource Management, the Department of
- 126 Workforce Services, the Labor Commission, the National Guard, the Department of Insurance,
- 127 the Department of Natural Resources, the Department of Public Safety, the Public Service
- 128 Commission, the Department of Human Services, the State Tax Commission, the Department
- 129 of Technology Services, the Department of Transportation, any other major administrative
- 130 subdivisions of state government, the State Board of Education, the State Board of Regents,
- 131 the Utah Housing Corporation, the Workers' Compensation Fund, the State Retirement Board,
- 132 and each institution of higher education within the system of higher education.
- 133 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,
- 134 social disruption, or injury or loss of life or property resulting from attack, internal
- 135 disturbance, natural phenomenon, or technological hazard.
- 136 (5) "Division" means the Division of Homeland Security established in Title 53,
- 137 Chapter 2, Part 1, Homeland Security Act.
- 138 (6) "Emergency interim successor" means a person designated by this chapter to
- 139 exercise the powers and discharge the duties of an office when the person legally exercising
- 140 the powers and duties of the office is unavailable.
- 141 (7) "Executive director" means the person with ultimate responsibility for managing

142 and overseeing the operations of each department, however denominated.

143 (8) "Internal disturbance" means a riot, prison break, [~~disruptive~~] terrorism, or strike.

144 (9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,  
145 avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

146 (10) (a) "Office" includes all state and local offices, the powers and duties of which  
147 are defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

148 (b) "Office" does not include the office of governor or the legislative or judicial  
149 offices.

150 (11) "Place of governance" means the physical location where the powers of an office  
151 are being exercised.

152 (12) "Political subdivision" includes counties, cities, towns, townships, districts,  
153 authorities, and other public corporations and entities whether organized and existing under  
154 charter or general law.

155 (13) "Political subdivision officer" means a person holding an office in a political  
156 subdivision.

157 (14) "State officer" means the attorney general, the state treasurer, the state auditor,  
158 and the executive director of each department.

159 (15) "Technological hazard" means any hazardous materials accident, mine accident,  
160 train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

161 (16) "Unavailable" means:

162 (a) absent from the place of governance during a disaster that seriously disrupts  
163 normal governmental operations, whether or not that absence or inability would give rise to a  
164 vacancy under existing constitutional or statutory provisions; or

165 (b) as otherwise defined by local ordinance.

166 Section 4. Section **63K-3-102** is amended to read:

167 **63K-3-102. Definitions.**

168 As used in this chapter:

169 (1) "Disaster" means a situation causing, or threatening to cause, widespread damage,

170 social disruption, or injury or loss of life or property resulting from attack, internal  
171 disturbance, natural phenomena or technological hazard.

172 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action  
173 against the United States of America or this state.

174 (3) "Internal disturbance" means a riot, prison break, [~~disruptive~~] terrorism, or strike.

175 (4) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide,  
176 avalanche, forest or range fire, drought, or epidemic.

177 (5) "Technological hazard" means any hazardous materials accident, mine accident,  
178 train derailment, air crash, radiation incident, pollution, structural fire or explosion.

179 Section 5. Section **63K-4-103** is amended to read:

180 **63K-4-103. Definitions.**

181 (1) "Attack" means a nuclear, conventional, biological, or chemical warfare action  
182 against the United States of America or this state.

183 (2) "Chief executive officer" means:

184 (a) for a municipality:

185 (i) the mayor for a municipality operating under all forms of municipal government  
186 except the council-manager form of government; or

187 (ii) the city manager for a municipality operating under the council-manager form of  
188 government; or

189 (b) for a county:

190 (i) the chair of the county commission for a county operating under the county  
191 commission or expanded county commission form of government;

192 (ii) the county executive officer for a county operating under the county-executive  
193 council form of government; or

194 (iii) the county manager for a county operating under the council-manager form of  
195 government.

196 (3) "Disaster" means a situation causing, or threatening to cause, widespread damage,  
197 social disruption, or injury or loss of life or property resulting from attack, internal

198 disturbance, natural phenomenon or technological hazard.

199 (4) "Internal disturbance" means a riot, prison break, [~~disruptive~~] terrorism, or strike.

200 (5) "Local emergency" means a condition in any political subdivision of the state  
201 which requires that emergency assistance be provided by the affected political subdivision to  
202 save lives and protect property within its jurisdiction in response to a disaster, or to avoid or  
203 reduce the threat of a disaster.

204 (6) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,  
205 avalanche, forest or range fire, drought, or epidemic.

206 (7) "Political subdivision" means municipality or county.

207 (8) "State of emergency" means a condition in any part of this state which requires  
208 state government emergency assistance to supplement the local efforts of the affected political  
209 subdivision to save lives and to protect property, public health, welfare, and safety in the event  
210 of a disaster or to avoid or reduce the threat of a disaster.

211 (9) "Technological hazard" means any hazardous materials accident, mine accident,  
212 train derailment, truck wreck, air crash, radiation incident, pollution, structural fire or  
213 explosion.

214 Section 6. Section **76-3-203.5** is amended to read:

215 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

216 (1) As used in this section:

217 (a) "Felony" means any violation of a criminal statute of the state, any other state, the  
218 United States, or any district, possession, or territory of the United States for which the  
219 maximum punishment the offender may be subjected to exceeds one year in prison.

220 (b) "Habitual violent offender" means a person convicted within the state of any  
221 violent felony and who on at least two previous occasions has been convicted of a violent  
222 felony and committed to either prison in Utah or an equivalent correctional institution of  
223 another state or of the United States either at initial sentencing or after revocation of  
224 probation.

225 (c) [~~(f)~~] "Violent felony" means:



- 226           (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit  
227 any of [~~these~~] the following offenses punishable as a felony:
- 228           (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,  
229 Title 76, Chapter 6, Part 1, Property Destruction;
  - 230           (B) assault by prisoner, Section 76-5-102.5;
  - 231           (C) disarming a police officer, Section 76-5-102.8;
  - 232           (D) aggravated assault, Section 76-5-103;
  - 233           (E) aggravated assault by prisoner, Section 76-5-103.5;
  - 234           (F) mayhem, Section 76-5-105;
  - 235           (G) stalking, Subsection 76-5-106.5(2) or (3);
  - 236           (H) [~~terroristic~~] threat of terrorism, Section [~~76-5-107~~] 76-5-107.3;
  - 237           (I) child abuse, Subsection 76-5-109(2)(a) or (b);
  - 238           (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;
  - 239           (K) abuse or neglect of disabled child, Section 76-5-110;
  - 240           (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;
  - 241           (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;
  - 242           (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;
  - 243           (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter  
244 5, Part 3, Kidnapping, Trafficking, and Smuggling;
  - 245           (P) rape, Section 76-5-402;
  - 246           (Q) rape of a child, Section 76-5-402.1;
  - 247           (R) object rape, Section 76-5-402.2;
  - 248           (S) object rape of a child, Section 76-5-402.3;
  - 249           (T) forcible sodomy, Section 76-5-403;
  - 250           (U) sodomy on a child, Section 76-5-403.1;
  - 251           (V) forcible sexual abuse, Section 76-5-404;
  - 252           (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
  - 253           (X) aggravated sexual assault, Section 76-5-405;

- 254 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 255 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 256 Burglary and Criminal Trespass;
- 257 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 258 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 259 (CC) tampering with a witness under Subsection 76-8-508(1);
- 260 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 261 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 262 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any
- 263 threat or by use of force theft by extortion has been committed pursuant to Subsections
- 264 76-6-406(2)(a), (b), and (i);
- 265 (GG) possession, use, or removal of explosive, chemical, or incendiary devices under
- 266 Subsections 76-10-306(3) through (6);
- 267 (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 268 76-10-307;
- 269 (II) purchase or possession of a dangerous weapon or handgun by a restricted person
- 270 under Section 76-10-503;
- 271 (JJ) unlawful discharge of a firearm under Section 76-10-508;
- 272 (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- 273 (LL) bus hijacking under Section 76-10-1504; and
- 274 (MM) discharging firearms and hurling missiles under Section 76-10-1505; or
- 275 (ii) any felony violation of a criminal statute of any other state, the United States, or
- 276 any district, possession, or territory of the United States which would constitute a violent
- 277 felony as defined in this Subsection (1) if committed in this state.
- 278 (2) If a person is convicted in this state of a violent felony by plea or by verdict and
- 279 the trier of fact determines beyond a reasonable doubt that the person is a habitual violent
- 280 offender under this section, the penalty for a:
- 281 (a) third degree felony is as if the conviction were for a first degree felony;

282 (b) second degree felony is as if the conviction were for a first degree felony; or

283 (c) first degree felony remains the penalty for a first degree penalty except:

284 (i) the convicted person is not eligible for probation; and

285 (ii) the Board of Pardons and Parole shall consider that the convicted person is a  
286 habitual violent offender as an aggravating factor in determining the length of incarceration.

287 (3) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall  
288 provide notice in the information or indictment that the defendant is subject to punishment as  
289 a habitual violent offender under this section. Notice shall include the case number, court, and  
290 date of conviction or commitment of any case relied upon by the prosecution.

291 (b) (i) The defendant shall serve notice in writing upon the prosecutor if the defendant  
292 intends to deny that:

293 (A) the defendant is the person who was convicted or committed;

294 (B) the defendant was represented by counsel or had waived counsel; or

295 (C) the defendant's plea was understandingly or voluntarily entered.

296 (ii) The notice of denial shall be served not later than five days prior to trial and shall  
297 state in detail the defendant's contention regarding the previous conviction and commitment.

298 (4) (a) If the defendant enters a denial under Subsection (3)(b) and if the case is tried  
299 to a jury, the jury may not be told until after it returns its verdict on the underlying felony  
300 charge, of the:

301 (i) defendant's previous convictions for violent felonies, except as otherwise provided  
302 in the Utah Rules of Evidence; or

303 (ii) allegation against the defendant of being a habitual violent offender.

304 (b) If the jury's verdict is guilty, the defendant shall be tried regarding the allegation of  
305 being an habitual violent offender by the same jury, if practicable, unless the defendant waives  
306 the jury, in which case the allegation shall be tried immediately to the court.

307 (c) (i) Prior to or at the time of sentencing the trier of fact shall determine if this  
308 section applies.

309 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution

310 and the defendant shall be afforded an opportunity to present any necessary additional  
311 evidence.

312 (iii) Prior to sentencing under this section, the trier of fact shall determine whether this  
313 section is applicable beyond a reasonable doubt.

314 (d) If any previous conviction and commitment is based upon a plea of guilty or no  
315 contest, there is a rebuttable presumption that the conviction and commitment were regular  
316 and lawful in all respects if the conviction and commitment occurred after January 1, 1970. If  
317 the conviction and commitment occurred prior to January 1, 1970, the burden is on the  
318 prosecution to establish by a preponderance of the evidence that the defendant was then  
319 represented by counsel or had lawfully waived the right to have counsel present, and that the  
320 defendant's plea was understandingly and voluntarily entered.

321 (e) If the trier of fact finds this section applicable, the court shall enter that specific  
322 finding on the record and shall indicate in the order of judgment and commitment that the  
323 defendant has been found by the trier of fact to be a habitual violent offender and is sentenced  
324 under this section.

325 (5) (a) The sentencing enhancement provisions of Section 76-3-407 supersede the  
326 provisions of this section.

327 (b) Notwithstanding Subsection (5)(a), the "violent felony" offense defined in  
328 Subsection (1)(c) shall include any felony sexual offense violation of Title 76, Chapter 5, Part  
329 4, Sexual Offenses, to determine if the convicted person is a habitual violent offender.

330 (6) The sentencing enhancement described in this section does not apply if:

331 (a) the offense for which the person is being sentenced is:

332 (i) a grievous sexual offense;

333 (ii) child kidnapping, Section 76-5-301.1;

334 (iii) aggravated kidnapping, Section 76-5-302; or

335 (iv) forcible sexual abuse, Section 76-5-404; and

336 (b) applying the sentencing enhancement provided for in this section would result in a  
337 lower maximum penalty than the penalty provided for under the section that describes the

338 offense for which the person is being sentenced.

339 Section 7. Section **76-5-107** is amended to read:

340 **76-5-107. Threat of violence -- Penalty.**

341 (1) A person commits a ~~terroristic~~ threat of violence if ~~he~~ the person threatens to  
342 commit any offense involving bodily injury, death, or substantial property damage, and~~[:]~~ acts  
343 with intent to place a person in fear of imminent serious bodily injury, substantial bodily  
344 injury, or death.

345 ~~[(a) he threatens the use of a weapon of mass destruction, as defined in Section~~  
346 ~~76-10-401, or threatens by the use of a hoax weapon of mass destruction, as defined in Section~~  
347 ~~76-10-401; or]~~

348 ~~[(b) he acts with intent to:]~~

349 ~~[(i) intimidate or coerce a civilian population or to influence or affect the conduct of a~~  
350 ~~government or a unit of government;]~~

351 ~~[(ii) cause action of any nature by an official or volunteer agency organized to deal~~  
352 ~~with emergencies;]~~

353 ~~[(iii) place a person in fear of imminent serious bodily injury, substantial bodily~~  
354 ~~injury, or death; or]~~

355 ~~[(iv) prevent or interrupt the occupation of a building or a portion of the building, a~~  
356 ~~place to which the public has access, or a facility or vehicle of public transportation operated~~  
357 ~~by a common carrier.]~~

358 ~~[(2) (a) A violation of Subsection (1)(a) or (1)(b)(i) is a second degree felony.]~~

359 ~~[(b) A violation of Subsection (1)(b)(iv) is a third degree felony.]~~

360 ~~[(c) Any other]~~

361 (2) A violation of this section is a class B misdemeanor.

362 (3) It is not a defense under this section that the person did not attempt to or was  
363 incapable of carrying out the threat.

364 (4) A threat under this section may be express or implied.

365 (5) A person who commits an offense under this section is subject to punishment for

366 that offense, in addition to any other offense committed, including the carrying out of the  
367 threatened act.

368 (6) In addition to any other penalty authorized by law, a court shall order any person  
369 convicted of any violation of this section to reimburse any federal, state, or local unit of  
370 government, or any private business, organization, individual, or entity for all expenses and  
371 losses incurred in responding to the violation, unless the court states on the record the reasons  
372 why the reimbursement would be inappropriate.

373 Section 8. Section **76-5-107.3** is enacted to read:

374 **76-5-107.3. Threat of terrorism -- Penalty.**

375 (1) A person commits a threat of terrorism if the person threatens to commit any  
376 offense involving bodily injury, death, or substantial property damage, and:

377 (a) (i) threatens the use of a weapon of mass destruction, as defined in Section  
378 76-10-401; or

379 (ii) threatens the use of a hoax weapon of mass destruction, as defined in Section  
380 76-10-401; or

381 (b) acts with intent to:

382 (i) intimidate or coerce a civilian population or to influence or affect the conduct of a  
383 government or a unit of government;

384 (ii) prevent or interrupt the occupation of a building or a portion of the building, a  
385 place to which the public has access, or a facility or vehicle of public transportation operated  
386 by a common carrier; or

387 (iii) cause action of any nature by an official or volunteer agency organized to deal  
388 with emergencies.

389 (2) (a) A violation of Subsection (1)(a) or (1)(b)(i) is a second degree felony.

390 (b) A violation of Subsection (1)(b)(ii) is a third degree felony.

391 (3) It is not a defense under this section that the person did not attempt to carry out or  
392 was incapable of carrying out the threat.

393 (4) A threat under this section may be express or implied.

394 (5) A person who commits an offense under this section is subject to punishment for  
395 that offense, in addition to any other offense committed, including the carrying out of the  
396 threatened act.

397 (6) In addition to any other penalty authorized by law, a court shall order any person  
398 convicted of any violation of this section to reimburse any federal, state, or local unit of  
399 government, or any private business, organization, individual, or entity for all expenses and  
400 losses incurred in responding to the violation, unless the court states on the record the reasons  
401 why the reimbursement would be inappropriate.

402 Section 9. Section **76-6-206** is amended to read:

403 **76-6-206. Criminal trespass.**

404 (1) As used in this section, "enter" means intrusion of the entire body.

405 (2) A person is guilty of criminal trespass if, under circumstances not amounting to  
406 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section  
407 76-10-2402 regarding commercial [~~terrorism~~] obstruction:

408 (a) [~~he~~] the person enters or remains unlawfully on property and:

409 (i) intends to cause annoyance or injury to any person or damage to any property,  
410 including the use of graffiti as defined in Section 76-6-107;

411 (ii) intends to commit any crime, other than theft or a felony; or

412 (iii) is reckless as to whether his presence will cause fear for the safety of another;

413 (b) knowing [~~his~~] the person's entry or presence is unlawful, [~~he~~] the person enters or  
414 remains on property as to which notice against entering is given by:

415 (i) personal communication to the actor by the owner or someone with apparent  
416 authority to act for the owner;

417 (ii) fencing or other enclosure obviously designed to exclude intruders; or

418 (iii) posting of signs reasonably likely to come to the attention of intruders; or

419 (c) [~~he~~] the person enters a condominium unit in violation of Subsection 57-8-7(7).

420 (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was  
421 committed in a dwelling, in which event it is a class A misdemeanor.

422 (b) A violation of Subsection (2)(c) is an infraction.

423 (4) It is a defense to prosecution under this section that:

424 (a) the property was open to the public when the actor entered or remained; and

425 (b) the actor's conduct did not substantially interfere with the owner's use of the

426 property.

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

428 **76-10-1602. Definitions.**

429 As used in this part:

430 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,

431 business trust, association, or other legal entity, and any union or group of individuals

432 associated in fact although not a legal entity, and includes illicit as well as licit entities.

433 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the

434 commission of at least three episodes of unlawful activity, which episodes are not isolated, but

435 have the same or similar purposes, results, participants, victims, or methods of commission, or

436 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall

437 demonstrate continuing unlawful conduct and be related either to each other or to the

438 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have

439 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful

440 activity as defined by this part shall have occurred within five years of the commission of the

441 next preceding act alleged as part of the pattern.

442 (3) "Person" includes any individual or entity capable of holding a legal or beneficial

443 interest in property, including state, county, and local governmental entities.

444 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,

445 command, encourage, or intentionally aid another person to engage in conduct which would

446 constitute any offense described by the following crimes or categories of crimes, or to attempt

447 or conspire to engage in an act which would constitute any of those offenses, regardless of

448 whether the act is in fact charged or indicted by any authority or is classified as a

449 misdemeanor or a felony:



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

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

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

457 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title  
458 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

459 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal  
460 Offenses;

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

463 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah  
464 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,  
465 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,  
466 Clandestine Drug Lab Act;

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

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

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

472 (k) a [~~terroristic~~] threat of terrorism, Section [~~76-5-107~~] 76-5-107.3;

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

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

475 (n) sexual exploitation of a minor, Section 76-5a-3;

476 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

477 (p) causing a catastrophe, Section 76-6-105;

- 478 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;  
479 (r) burglary of a vehicle, Section 76-6-204;  
480 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;  
481 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;  
482 (u) theft, Section 76-6-404;  
483 (v) theft by deception, Section 76-6-405;  
484 (w) theft by extortion, Section 76-6-406;  
485 (x) receiving stolen property, Section 76-6-408;  
486 (y) theft of services, Section 76-6-409;  
487 (z) forgery, Section 76-6-501;  
488 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;  
489 (bb) deceptive business practices, Section 76-6-507;  
490 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or  
491 criticism of goods, Section 76-6-508;  
492 (dd) bribery of a labor official, Section 76-6-509;  
493 (ee) defrauding creditors, Section 76-6-511;  
494 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;  
495 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;  
496 (hh) bribery or threat to influence contest, Section 76-6-514;  
497 (ii) making a false credit report, Section 76-6-517;  
498 (jj) criminal simulation, Section 76-6-518;  
499 (kk) criminal usury, Section 76-6-520;  
500 (ll) fraudulent insurance act, Section 76-6-521;  
501 (mm) retail theft, Section 76-6-602;  
502 (nn) computer crimes, Section 76-6-703;  
503 (oo) identity fraud, Section 76-6-1102;  
504 (pp) mortgage fraud, Section 76-6-1203;  
505 (qq) sale of a child, Section 76-7-203;

- 506 (rr) bribery to influence official or political actions, Section 76-8-103;  
507 (ss) threats to influence official or political action, Section 76-8-104;  
508 (tt) receiving bribe or bribery by public servant, Section 76-8-105;  
509 (uu) receiving bribe or bribery for endorsement of person as public servant, Section  
510 76-8-106;  
511 (vv) official misconduct, Sections 76-8-201 and 76-8-202;  
512 (ww) obstruction of justice, Section 76-8-306;  
513 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;  
514 (yy) false or inconsistent material statements, Section 76-8-502;  
515 (zz) false or inconsistent statements, Section 76-8-503;  
516 (aaa) written false statements, Section 76-8-504;  
517 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;  
518 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;  
519 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;  
520 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or  
521 76-8-1205;  
522 (fff) unemployment insurance fraud, Section 76-8-1301;  
523 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection  
524 76-9-301(2)(d) or (e), or Section 76-9-301.1;  
525 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or  
526 parts, Section 76-10-306;  
527 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary  
528 device, Section 76-10-307;  
529 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;  
530 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;  
531 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;  
532 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section  
533 76-10-1002;

534 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,  
535 Section 76-10-1003;

536 (ooo) sales in containers bearing registered trademark of substituted articles, Section  
537 76-10-1004;

538 (ppp) selling or dealing with article bearing registered trademark or service mark with  
539 intent to defraud, Section 76-10-1006;

540 (qqq) gambling, Section 76-10-1102;

541 (rrr) gambling fraud, Section 76-10-1103;

542 (sss) gambling promotion, Section 76-10-1104;

543 (ttt) possessing a gambling device or record, Section 76-10-1105;

544 (uuu) confidence game, Section 76-10-1109;

545 (vvv) distributing pornographic material, Section 76-10-1204;

546 (www) inducing acceptance of pornographic material, Section 76-10-1205;

547 (xxx) dealing in harmful material to a minor, Section 76-10-1206;

548 (yyy) distribution of pornographic films, Section 76-10-1222;

549 (zzz) indecent public displays, Section 76-10-1228;

550 (aaaa) prostitution, Section 76-10-1302;

551 (bbbb) aiding prostitution, Section 76-10-1304;

552 (cccc) exploiting prostitution, Section 76-10-1305;

553 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;

554 (eeee) communications fraud, Section 76-10-1801;

555 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money  
556 Laundering and Currency Transaction Reporting Act;

557 (gggg) vehicle compartment for contraband, Section 76-10-2801;

558 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in  
559 this state; and

560 (iiii) any act illegal under the laws of the United States and enumerated in Title 18,  
561 Section 1961 (1)(B), (C), and (D) of the United States Code.

562 Section 11. Section **76-10-2402** is amended to read:

563 **76-10-2402. Commercial obstruction -- Penalties.**

564 (1) (a) A person is guilty of a misdemeanor if ~~[he]~~ the person enters or remains  
565 unlawfully on the premises of or in a building of any business with the intent to interfere with  
566 the employees, customers, personnel, or operations of a business through any conduct that  
567 does not constitute an offense listed under Subsection (2).

568 (b) A violation of ~~[this]~~ Subsection (1)(a) is a class A misdemeanor.

569 (2) A person is guilty of felony commercial ~~[terrorism if he]~~ obstruction if the person  
570 enters or remains unlawfully on the premises or in a building of any business with the intent to  
571 interfere with the employees, customers, personnel, or operations of a business and also with  
572 the intent to:

573 (a) obtain unauthorized control over any merchandise, property, records, data, or  
574 proprietary information of the business;

575 (b) alter, eradicate, or remove any merchandise, records, data, or proprietary  
576 information of the business;

577 (c) damage, deface, or destroy any property on the premises of the business;

578 (d) commit an assault on any person; or

579 (e) commit any other felony.

580 (3) A person who violates any provision in Subsection (2) is guilty of a second degree  
581 felony ~~[of the second degree]~~.

582 (4) This section does not apply to action protected by the National Labor Relations  
583 Act, 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151  
584 et seq.

585 (5) This section does not apply to a person's exercise of the rights under the First  
586 Amendment to the Constitution of the United States or under Article I, Sec. 15 of the Utah  
587 Constitution.

588 Section 12. Section **77-23a-8** is amended to read:

589 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

590 (1) The attorney general of the state, any assistant attorney general specially  
591 designated by the attorney general, any county attorney, district attorney, deputy county  
592 attorney, or deputy district attorney specially designated by the county attorney or by the  
593 district attorney, may authorize an application to a judge of competent jurisdiction for an order  
594 for an interception of wire, electronic, or oral communications by any law enforcement agency  
595 of the state, the federal government or of any political subdivision of the state that is  
596 responsible for investigating the type of offense for which the application is made.

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

599 (a) any act:

600 (i) prohibited by the criminal provisions of:

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

602 (B) Title 58, Chapter 37c, Utah Controlled Substances Precursor Act; or

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

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

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

607 (c) an offense:

608 (i) of:

609 (A) attempt, Section 76-4-101;

610 (B) conspiracy, Section 76-4-201;

611 (C) solicitation, Section 76-4-203; and

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

613 (d) [~~terroristic~~] a threat of terrorism offense punishable by a maximum term of  
614 imprisonment of more than one year, Section [~~76-5-107~~] 76-5-107.3;

615 (e) (i) aggravated murder, Section 76-5-202;

616 (ii) murder, Section 76-5-203; or

617 (iii) manslaughter, Section 76-5-205;

- 618 (f) (i) kidnapping, Section 76-5-301;
- 619 (ii) child kidnapping, Section 76-5-301.1; or
- 620 (iii) aggravated kidnapping, Section 76-5-302;
- 621 (g) (i) arson, Section 76-6-102; or
- 622 (ii) aggravated arson, Section 76-6-103;
- 623 (h) (i) burglary, Section 76-6-202; or
- 624 (ii) aggravated burglary, Section 76-6-203;
- 625 (i) (i) robbery, Section 76-6-301; or
- 626 (ii) aggravated robbery, Section 76-6-302;
- 627 (j) an offense:
- 628 (i) of:
- 629 (A) theft, Section 76-6-404;
- 630 (B) theft by deception, Section 76-6-405; or
- 631 (C) theft by extortion, Section 76-6-406; and
- 632 (ii) punishable by a maximum term of imprisonment of more than one year;
- 633 (k) receiving stolen property offense punishable by a maximum term of imprisonment
- 634 of more than one year, Section 76-6-408;
- 635 (l) a financial card transaction offense punishable by a maximum term of
- 636 imprisonment of more than one year, Section 76-6-506.1, 76-6-506.2, 76-6-506.3, 76-6-506.4,
- 637 76-6-506.5, or 76-6-506.6;
- 638 (m) bribery of a labor official, Section 76-6-509;
- 639 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 640 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
- 641 more than one year, Section 76-6-518;
- 642 (p) criminal usury, Section 76-6-520;
- 643 (q) a fraudulent insurance act offense punishable by a maximum term of imprisonment
- 644 of more than one year, Section 76-6-521;
- 645 (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable

- 646 by a maximum term of imprisonment of more than one year, Section 76-6-703;
- 647 (s) bribery to influence official or political actions, Section 76-8-103;
- 648 (t) misusing public moneys, Section 76-8-402;
- 649 (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 650 (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 651 (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- 652 (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 653 (y) obstruction of justice, Section 76-8-306;
- 654 (z) destruction of property to interfere with preparation for defense or war, Section
- 655 76-8-802;
- 656 (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
- 657 (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
- 658 (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 659 (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 660 (ee) riot punishable by a maximum term of imprisonment of more than one year,
- 661 Section 76-9-101;
- 662 (ff) dog fighting, training dogs for fighting, dog fighting exhibitions punishable by a
- 663 maximum term of imprisonment of more than one year, Section 76-9-301.1;
- 664 (gg) explosive, chemical, or incendiary device and parts, possession, use, or removal,
- 665 Section 76-10-306;
- 666 (hh) explosive, chemical, or incendiary device, delivery to a common carrier or
- 667 mailing, Section 76-10-307;
- 668 (ii) exploiting prostitution, Section 76-10-1305;
- 669 (jj) aggravated exploitation of prostitution, Section 76-10-1306;
- 670 (kk) bus hijacking, assault with intent to commit hijacking, dangerous weapon or
- 671 firearm, Section 76-10-1504;
- 672 (ll) discharging firearms and hurling missiles, Section 76-10-1505;
- 673 (mm) violations of the Pattern of Unlawful Activity Act and the offenses listed under



674 the definition of unlawful activity in the act, including the offenses not punishable by a  
675 maximum term of imprisonment of more than one year when those offenses are investigated as  
676 predicates for the offenses prohibited by the act, Section 76-10-1602;  
677 (nn) communications fraud, Section 76-10-1801;  
678 (oo) money laundering, Sections 76-10-1903 and 76-10-1904; or  
679 (pp) reporting by a person engaged in a trade or business when the offense is  
680 punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.