

HB0378S01 compared with HB0378

~~deleted text~~ shows text that was in HB0378 but was deleted in HB0378S01.

inserted text shows text that was not in HB0378 but was inserted into HB0378S01.

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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: _____

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;

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- ▶ 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 ~~their~~ his or her name and information removed from the Utah White Collar Crime Offender Registry.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

ENACTS:

77-42-101, Utah Code Annotated 1953

77-42-102, Utah Code Annotated 1953

77-42-103, Utah Code Annotated 1953

77-42-104, Utah Code Annotated 1953

77-42-105, Utah Code Annotated 1953

77-42-106, Utah Code Annotated 1953

77-42-107, Utah Code Annotated 1953

77-42-108, Utah Code Annotated 1953

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

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

76-8-504.6. False or misleading information.

- (1) A person is guilty of a class B misdemeanor if the person, not under oath or affirmation, intentionally or knowingly provides false or misleading material information to:
- (a) an officer of the court for the purpose of influencing a criminal proceeding; or
 - (b) the Bureau of Criminal Identification for the purpose of obtaining a certificate of

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eligibility for:

(i) expungement; or

(ii) removal of the person's name from the White Collar Crime Registry created in Title 77, Chapter 42, Utah White Collar Crime Offender Registry.

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

(a) prosecutor;

(b) judge;

(c) court clerk;

(d) interpreter;

(e) presentence investigator;

(f) probation officer;

(g) parole officer; and

(h) any other person reasonably believed to be gathering information for a criminal proceeding.

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

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

CHAPTER 42. UTAH WHITE COLLAR CRIME OFFENDER REGISTRY

77-42-101. Title.

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

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

77-42-102. Definitions.

As used in this chapter:

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

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

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

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

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

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

Section ~~3~~4. Section 77-42-103 is enacted to read:

77-42-103. Duties.

(1) The attorney general shall:

(a) develop and operate a system to collect, analyze, maintain, and disseminate information on offenders; and

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

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

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

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

(3) The attorney general shall:

(a) provide the following additional information when available:

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

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

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

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

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

Section ~~4~~5. Section 77-42-104 is enacted to read:

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

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

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

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

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

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

(3) The attorney general shall construct the Utah White Collar Crime Offender Registry website so that before accessing registry information, users must indicate that they have read and understand the disclaimer and agree to comply with the disclaimer's terms.

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

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

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

(c) a recent photograph of the offender; and

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

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

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

Section ~~{5}~~6. Section 77-42-105 is enacted to read:

77-42-105. Registerable offenses.

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

(1) Section 61-1-1 or Section 61-1-2, securities fraud;

(2) Section 76-6-405, theft by deception;

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

(4) Section 76-6-521, fraudulent insurance;

(5) Section 76-6-1203, mortgage fraud;

(6) Section 76-10-1603, pattern of unlawful activity;

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(7) Section 76-10-1801, communications fraud; and

(8) Section 76-10-1903, money laundering.

Section ~~6~~7. Section **77-42-106** is enacted to read:

77-42-106. Registration of offenders -- Utah White Collar Crime Offender

Registry.

(1) An offender who has been convicted of any offense listed in Section 77-42-105 shall be on the Utah White Collar Crime Offender Registry for:

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

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

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

(2) An offender who has been convicted of any offense listed in Section 77-42-105 after December 31, 2005, shall register with the attorney general to be included in the Utah White Collar Crime Offender Registry.

Section ~~7~~8. Section **77-42-107** is enacted to read:

77-42-107. Department and agency requirements.

(1) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the attorney general shall make rules necessary to implement this chapter, including:

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

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

(2) Any information regarding the identity or location of a victim may be redacted by the attorney general from information provided under Subsection 77-42-104(6).

Section ~~8~~9. Section **77-42-108** is enacted to read:

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

(1) An offender may petition the court where the offender was convicted of the offense for which registration with the Utah White Collar Crime Offender Registry is required, for an order to remove the offender from the Utah White Collar Crime Offender Registry, if:

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

(b) the offender has successfully completed all treatment ordered by the court or the Board of Pardons and Parole relating to the conviction;

(c) (i) the offender has not been convicted of any other crime, excluding traffic offenses, as evidenced by a certificate of eligibility issued by the bureau; and

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(ii) as used in this section, "traffic offense" does not include a violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless Driving;

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

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

and

(f) the offender has not been found to be civilly liable in any case in which fraud, misrepresentation, deceit, breach of fiduciary duty, or the misuse or misappropriation of funds is an element.

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

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

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

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

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

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

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

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

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

~~(2)~~(3) The offender shall:

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(a) file with the court the following information:

(i) the petition;

(ii) the original information;

(iii) the court docket; and

(iv) an affidavit certifying that the offender is in compliance with the provisions of

Subsection (1); and

(b) deliver a copy of the petition to the office of the prosecutor.

(~~3~~4) (a) Upon receipt of a petition for removal from the Utah White Collar Crime Offender Registry, the office of the prosecutor shall provide notice of the petition by first-class mail to the victims at the most recent addresses of record on file.

(b) The notice shall:

(i) include a copy of the petition for removal from the registry;

(ii) state that the victim has a right to object to the removal of the offender from the registry; and

(iii) provide instructions for filing an objection with the court.

(~~4~~5) The office of the prosecutor shall provide the following, if available, to the court within 30 days after receiving the petition:

(a) a presentence report;

(b) any evaluation done as part of sentencing; and

(c) any other information the office of the prosecutor feels the court should consider.

(~~5~~6) The victim may respond to the petition by filing a recommendation or objection with the court within 45 days after the mailing of the petition to the victim.

(~~6~~7) The court shall:

(a) review the petition and all documents submitted with the petition; and

(b) hold a hearing if requested by the office of the prosecutor or the victim.

(~~7~~8) When considering a petition for removal from the registry, the court shall consider whether the offender has paid all restitution ordered by the court or the Board of Pardons and Parole.

(~~8~~9) If the court determines that it is not contrary to the interests of the public to do so, the court may grant the petition and order removal of the offender from the registry.

(~~9~~10) If the court grants the petition, the court shall forward a copy of the order

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directing removal of the offender from the registry to the attorney general and the office of the prosecutor.

(~~10~~11) The office of the prosecutor shall notify the victims of the court's decision in the same manner as the notification required in Subsection (3)(a).

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Legislative Review Note

~~as of 2-23-15 9:26 AM~~

~~Office of Legislative Research and General Counsel}~~