

## HB0163S02 compared with HB0163S01

~~text~~ shows text that was in HB0163S01 but was deleted in HB0163S02.

Inserted text shows text that was not in HB0163S01 but was inserted into HB0163S02.

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Representative Craig Hall proposes the following substitute bill:

### OFFENSES AGAINST THE ADMINISTRATION OF GOVERNMENT AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Craig Hall**

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

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#### LONG TITLE

##### General Description:

This bill amends provisions relating to offenses against the administration of government.

##### Highlighted Provisions:

This bill:

- ▶ defines terms in the Utah Criminal Code in relation to public entities;
- ▶ modifies the crime of misusing public money;
- ▶ makes it a crime to misuse public property;
- ▶ describes the type of personal use of public property that is permitted; and
- ▶ makes technical and conforming changes.

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### Money Appropriated in this Bill:

None

### Other Special Clauses:

This bill provides a special effective date.

### Utah Code Sections Affected:

#### AMENDS:

**11-57-104**, as enacted by Laws of Utah 2017, Chapter 354

**53B-7-106**, as enacted by Laws of Utah 2017, Chapter 354

**63A-3-110**, as last amended by Laws of Utah 2018, Chapter 25

**76-1-601**, as last amended by Laws of Utah 2007, Chapter 339

**76-5-413**, as last amended by Laws of Utah 2018, Chapter 192

**76-6-513**, as last amended by Laws of Utah 2010, Chapter 193

**76-8-101**, as last amended by Laws of Utah 1993, Chapter 42

**76-8-402**, as last amended by Laws of Utah 2017, Chapter 354

**76-8-404**, as last amended by Laws of Utah 1999, Chapter 106

**77-23a-8**, as last amended by Laws of Utah 2016, Chapter 399

#### REPEALS:

**76-8-401**, as last amended by Laws of Utah 2012, Chapter 369

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

Section 1. Section **11-57-104** is amended to read:

**11-57-104. Relation to other actions -- Prohibition on disbursing funds and accessing accounts.**

(1) Nothing in this chapter:

(a) immunizes a political subdivision officer or employee from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure;

or

(b) limits or supersedes the authority of a political subdivision to set compensation in accordance with Section 10-3-818.

(2) A political subdivision officer or employee who [~~has been~~] is convicted of misusing public money or public property under Section 76-8-402 may not disburse public funds or

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access public accounts.

Section 2. Section **53B-7-106** is amended to read:

**53B-7-106. Personal use expenditures for officers and employees of institutions of higher education.**

(1) As used in this section:

(a) "Employee" means a person who is not an elected or appointed officer and who is employed on a full- or part-time basis by an institution of higher education.

(b) "Institution of higher education" means an institution that is part of the state system of higher education as described in Section 53B-1-102.

(c) "Officer" means a person who is elected or appointed to an office or position within an institution of higher education.

(d) (i) "Personal use expenditure" means an expenditure made without the authority of law that:

(A) is not directly related to the performance of an activity as an officer or employee of an institution of higher education;

(B) primarily furthers a personal interest of an officer or employee of an institution of higher education or the family, a friend, or an associate of an officer or employee of an institution of higher education; and

(C) would constitute taxable income under federal law.

(ii) "Personal use expenditure" does not include:

(A) a de minimis or incidental expenditure; or

(B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the institution of higher education.

(e) "Public funds" means the same as that term is defined in Section 51-7-3.

(2) An officer or employee of an institution of higher education may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, an institution of higher education for a personal use expenditure.

(3) If the institution of higher education determines that an officer or employee of an institution of higher education has intentionally made a personal use expenditure in violation of

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Subsection (2), the institution of higher education shall:

(a) require the officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the institution of higher education; and

(c) deposit the money received under Subsection (3)(b) into the operating fund of the institution of higher education.

(4) (a) Any officer or employee of an institution of higher education who has been found by the institution of higher education to have made a personal use expenditure in violation of Subsection (2) may appeal the finding of the institution of higher education.

(b) The institution of higher education shall establish an appeal process for an appeal made under Subsection (4)(a).

(5) (a) Subject to Subsection (5)(b), an institution of higher education may withhold all or a portion of the wages of an officer or employee of the institution of higher education who has violated Subsection (2) until the requirements of Subsection (3) have been met.

(b) If the officer or employee has requested an appeal under Subsection (4), the institution of higher education may only withhold the wages of the officer or employee after the appeal process has confirmed that the officer or employee violated Subsection (2).

(6) Nothing in this chapter immunizes an officer or employee of an institution of higher education from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.

(7) An officer or employee of an institution of higher education who [~~has been~~] is convicted of misusing public money or public property under Section 76-8-402 may not disburse public funds or access public accounts.

Section 3. Section **63A-3-110** is amended to read:

**63A-3-110. Personal use expenditures for state officers and employees.**

(1) As used in this section:

(a) "Employee" means a person who is not an elected or appointed officer and who is

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employed on a full- or part-time basis by a governmental entity.

(b) "Governmental entity" means:

(i) an executive branch agency of the state, the offices of the governor, lieutenant governor, state auditor, attorney general, and state treasurer, the State Board of Education, and the State Board of Regents;

(ii) the Office of the Legislative Auditor General, the Office of the Legislative Fiscal Analyst, the Office of Legislative Research and General Counsel, the Legislature, and legislative committees;

(iii) courts, the Judicial Council, the Administrative Office of the Courts, and similar administrative units in the judicial branch;

(iv) independent state entities created under Title 63H, Independent State Entities; or

(v) the Utah Science Technology and Research Governing Authority created under Section 63M-2-301.

(c) "Officer" means a person who is elected or appointed to an office or position within a governmental entity.

(d) (i) "Personal use expenditure" means an expenditure made without the authority of law that:

(A) is not directly related to the performance of an activity as a state officer or employee;

(B) primarily furthers a personal interest of a state officer or employee or a state officer's or employee's family, friend, or associate; and

(C) would constitute taxable income under federal law.

(ii) "Personal use expenditure" does not include:

(A) a de minimis or incidental expenditure; or

(B) a state vehicle or a monthly stipend for a vehicle that an officer or employee uses to travel to and from the officer or employee's official duties, including a minimal allowance for a detour as provided by the state.

(e) "Public funds" means the same as that term is defined in Section 51-7-3.

(2) A state officer or employee may not:

(a) use public funds for a personal use expenditure; or

(b) incur indebtedness or liability on behalf of, or payable by, a governmental entity for

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a personal use expenditure.

(3) If the Division of Finance or the responsible governmental entity determines that a state officer or employee has intentionally made a personal use expenditure in violation of Subsection (2), the governmental entity shall:

(a) require the state officer or employee to deposit the amount of the personal use expenditure into the fund or account from which:

(i) the personal use expenditure was disbursed; or

(ii) payment for the indebtedness or liability for a personal use expenditure was disbursed;

(b) require the state officer or employee to remit an administrative penalty in an amount equal to 50% of the personal use expenditure to the Division of Finance; and

(c) deposit the money received under Subsection (3)(b) into the General Fund.

(4) (a) Any state officer or employee who has been found by a governmental entity to have made a personal use expenditure in violation of Subsection (2) may appeal the finding of the governmental entity.

(b) In accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the Division of Finance shall make rules regarding an appeal process for an appeal made under Subsection (4)(a), including the designation of an appeal authority.

(5) (a) Subject to Subsection (5)(b), the Division of Finance may withhold all or a portion of the wages of a state officer or employee who has violated Subsection (2) until the requirements of Subsection (3) have been met.

(b) If the state officer or employee has requested an appeal under Subsection (4), the Division of Finance may only withhold the wages of the officer or employee after the appeal authority described in Subsection (4)(b) has confirmed that the officer or employee violated Subsection (2).

(6) Nothing in this chapter immunizes a state officer or employee from or precludes any criminal prosecution or civil or employment action for an unlawful personal use expenditure.

(7) A state officer or employee who [~~has been~~] is convicted of misusing public money or public property under Section 76-8-402 may not disburse public funds or access public accounts.

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Section 4. Section **76-1-601** is amended to read:

### **76-1-601. Definitions.**

Unless otherwise provided, ~~[the following terms apply to]~~ as used in this title:

- (1) "Act" means a voluntary bodily movement and includes speech.
- (2) "Actor" means a person whose criminal responsibility is in issue in a criminal action.
- (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.
- (4) "Conduct" means an act or omission.
- (5) "Dangerous weapon" means:
  - (a) any item capable of causing death or serious bodily injury; or
  - (b) a facsimile or representation of the item, if:
    - (i) the actor's use or apparent intended use of the item leads the victim to reasonably believe the item is likely to cause death or serious bodily injury; or
    - (ii) the actor represents to the victim verbally or in any other manner that he is in control of such an item.
- (6) "Grievous sexual offense" means:
  - (a) rape, Section 76-5-402;
  - (b) rape of a child, Section 76-5-402.1;
  - (c) object rape, Section 76-5-402.2;
  - (d) object rape of a child, Section 76-5-402.3;
  - (e) forcible sodomy, Subsection 76-5-403(2);
  - (f) sodomy on a child, Section 76-5-403.1;
  - (g) aggravated sexual abuse of a child, Subsection 76-5-404.1(4);
  - (h) aggravated sexual assault, Section 76-5-405;
  - (i) any felony attempt to commit an offense described in Subsections (6)(a) through (h); or
  - (j) an offense in another state, territory, or district of the United States that, if committed in Utah, would constitute an offense described in Subsections (6)(a) through (i).
- (7) "Offense" means a violation of any penal statute of this state.
- (8) "Omission" means a failure to act when there is a legal duty to act and the actor is

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capable of acting.

(9) "Person" means an individual, public or private corporation, government, partnership, or unincorporated association.

(10) "Possess" means to have physical possession of or to exercise dominion or control over tangible property.

(11) "Public entity" means:

(a) the state, or an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of the state;

(b) a political subdivision of the state, including a county, municipality, interlocal entity, local district, special service district, school district, or school board;

(c) an agency, bureau, office, department, division, board, commission, institution, laboratory, or other instrumentality of a political subdivision of the state; or

(d) another entity that:

(i) performs a public function; and

(ii) is authorized to hold, spend, transfer, disburse, use, or receive public money.

(12) (a) "Public money" or "public funds" means money, funds, or accounts, regardless of the source from which they are derived, that:

(i) are owned, held, or administered by an entity described in Subsections (11)(a) through (c); or

(ii) are in the possession of an entity described in Subsection (11)(d)(i) for the purpose of performing a public function.

(b) "Public money" or "public funds" includes money, funds, or accounts described in Subsection (12)(a) after the money, funds, or accounts are transferred by a public entity to an independent contractor of the public entity.

(c) "Public money" or "public funds" remains public money or public funds while in the possession of an independent contractor of a public entity for the purpose of providing a program or service for, or on behalf of, the public entity.

(13) "Public officer" means:

(a) an elected official of a public entity;

(b) an individual appointed to, or serving an unexpired term of, an elected official of a public entity;



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(c) a judge of a court of record or not of record, including justice court judges; or

(d) a member of the Board of Pardons and Parole.

(14) (a) "Public servant" means:

(i) a public officer;

(ii) an appointed official, employee, consultant, or independent contractor of a public entity; or

(iii) a person hired or paid by a public entity to perform a government function.

(b) Public servant includes a person described in Subsection (14)(a) upon the person's election, appointment, contracting, or other selection, regardless of whether the person has begun to officially occupy the position of a public servant.

~~[(11)]~~ (15) "Serious bodily injury" means bodily injury that creates or causes serious permanent disfigurement, protracted loss or impairment of the function of any bodily member or organ, or creates a substantial risk of death.

~~[(12)]~~ (16) "Substantial bodily injury" means bodily injury, not amounting to serious bodily injury, that creates or causes protracted physical pain, temporary disfigurement, or temporary loss or impairment of the function of any bodily member or organ.

~~[(13)]~~ (17) "Writing" or "written" includes any handwriting, typewriting, printing, electronic storage or transmission, or any other method of recording information or fixing information in a form capable of being preserved.

Section 5. Section **76-5-413** is amended to read:

**76-5-413. Custodial sexual relations or misconduct with youth receiving state services -- Definitions -- Penalties -- Defenses.**

(1) As used in this section:

(a) "Actor" means:

(i) an individual employed by the Department of Human Services, as created in Section 62A-1-102, or an employee of a private provider or contractor; or

(ii) an individual employed by the juvenile court of the state, or an employee of a private provider or contractor.

(b) "Department" means the Department of Human Services created in Section 62A-1-102.

(c) "Juvenile court" means the juvenile court of the state created in Section 78A-6-102.

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(d) "Private provider or contractor" means any individual or entity that contracts with the:

(i) department to provide services or functions that are part of the operation of the department; or

(ii) juvenile court to provide services or functions that are part of the operation of the juvenile court.

(e) "Youth receiving state services" means an individual:

(i) younger than 18 years of age, except as provided under Subsection (1)(e)(ii), who is:

(A) in the custody of the department under Subsection 78A-6-117(2)(c); or

(B) receiving services from any division of the department if any portion of the costs of these services is covered by public money [~~as defined in Section 76-8-401~~]; or

(ii) younger than 21 years of age who is:

(A) in the custody of the Division of Juvenile Justice Services, or the Division of Child and Family Services; or

(B) under the jurisdiction of the juvenile court.

(2) (a) An actor commits custodial sexual relations with a youth receiving state services if the actor commits any of the acts under Subsection (3):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (2)(a) is a third degree felony, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (2)(a) is a second degree felony.

(c) If the act committed under this Subsection (2) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (2), this Subsection (2) does not prohibit prosecution and sentencing for the more serious offense.

(3) Acts referred to in Subsection (2)(a) are:

(a) having sexual intercourse with a youth receiving state services;

(b) engaging in any sexual act with a youth receiving state services involving the

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genitals of one individual and the mouth or anus of another individual, regardless of the sex of either participant; or

(c) causing the penetration, however slight, of the genital or anal opening of a youth receiving state services by any foreign object, substance, instrument, or device, including a part of the human body, with the intent to cause substantial emotional or bodily pain to any individual, regardless of the sex of any participant or with the intent to arouse or gratify the sexual desire of any individual, regardless of the sex of any participant.

(4) (a) An actor commits custodial sexual misconduct with a youth receiving state services if the actor commits any of the acts under Subsection (5):

(i) under circumstances not amounting to commission of, or an attempt to commit, an offense under Subsection (6); and

(ii) (A) the actor knows that the individual is a youth receiving state services; or

(B) a reasonable person in the actor's position should have known under the circumstances that the individual was a youth receiving state services.

(b) A violation of Subsection (4)(a) is a class A misdemeanor, but if the youth receiving state services is younger than 18 years of age, a violation of Subsection (4)(a) is a third degree felony.

(c) If the act committed under this Subsection (4) amounts to an offense subject to a greater penalty under another provision of state law than is provided under this Subsection (4), this Subsection (4) does not prohibit prosecution and sentencing for the more serious offense.

(5) Acts referred to in Subsection (4)(a) are the following acts when committed with the intent to cause substantial emotional or bodily pain to any individual or with the intent to arouse or gratify the sexual desire of any individual, regardless of the sex of any participant:

(a) touching the anus, buttocks, pubic area, or any part of the genitals of a youth receiving state services;

(b) touching the breast of a female youth receiving state services; or

(c) otherwise taking indecent liberties with a youth receiving state services.

(6) The offenses referred to in Subsections (2)(a)(i) and (4)(a)(i) are:

(a) Section 76-5-401, unlawful sexual activity with a minor;

(b) Section 76-5-402, rape;

(c) Section 76-5-402.1, rape of a child;

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- (d) Section 76-5-402.2, object rape;
- (e) Section 76-5-402.3, object rape of a child;
- (f) Section 76-5-403, forcible sodomy;
- (g) Section 76-5-403.1, sodomy on a child;
- (h) Section 76-5-404, forcible sexual abuse;
- (i) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child; or
- (j) Section 76-5-405, aggravated sexual assault.

(7) (a) It is not a defense to the commission of the offense of custodial sexual relations with a youth receiving state services under Subsection (2) or custodial sexual misconduct with a youth receiving state services under Subsection (4), or an attempt to commit either of these offenses, if the youth receiving state services is younger than 18 years of age, that the actor:

(i) mistakenly believed the youth receiving state services to be 18 years of age or older at the time of the alleged offense; or

(ii) was unaware of the true age of the youth receiving state services.

(b) Consent of the youth receiving state services is not a defense to any violation or attempted violation of Subsection (2) or (4).

(8) It is a defense that the commission by the actor of an act under Subsection (2) or (4) is the result of compulsion, as the defense is described in Subsection 76-2-302(1).

Section 6. Section **76-6-513** is amended to read:

### **76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.**

(1) As used in this section:

(a) "Fiduciary" [~~is as~~] means the same as that term is defined in Section 22-1-1.

(b) "Financial institution" means "depository institution" and "trust company" as defined in Section 7-1-103.

(c) "Governmental entity" is as defined in Section 63G-7-102.

(d) "Person" does not include a financial institution whose fiduciary functions are supervised by the Department of Financial Institutions or a federal regulatory agency.

(e) "Property" [~~is as~~] means the same as that term is defined in Section 76-6-401.

~~[(f) "Public money" is as defined in Section 76-8-401.]~~

(2) A person is guilty of unlawfully dealing with property by a fiduciary if the person deals with property that has been entrusted to him as a fiduciary, or property of a governmental

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entity, public money, or of a financial institution, in a manner which the person knows is a violation of the person's duty and which involves substantial risk of loss or detriment to the owner or to a person for whose benefit the property was entrusted. A violation of this Subsection (2) is punishable under Section 76-6-412.

(3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if, without permission of the owner of the property or some other person with authority to give permission, the person pledges as collateral for a personal loan, or as collateral for the benefit of some party, other than the owner or the person for whose benefit the property was entrusted, the property that has been entrusted to the fiduciary.

(b) An offense under Subsection (3)(a) is punishable as:

(i) a felony of the second degree if the value of the property wrongfully pledged is or exceeds \$5,000;

(ii) a felony of the third degree if the value of the property wrongfully pledged is or exceeds \$1,500 but is less than \$5,000;

(iii) a class A misdemeanor if the value of the property is or exceeds \$500, but is less than \$1,500 or the actor has been twice before convicted of theft, robbery, burglary with intent to commit theft, or unlawful dealing with property by a fiduciary; or

(iv) a class B misdemeanor if the value of the property is less than \$500.

Section 7. Section **76-8-101** is amended to read:

### **76-8-101. Definitions.**

[For the purposes of] As used in this chapter:

(1) "Candidate for electoral office" means a person who [~~has filed~~] files as a candidate for office under the laws of the state.

(2) "Party official" means [~~any~~] a person holding any post in a political party whether by election, appointment, or otherwise.

(3) "Peace officer" means [~~any~~] an employee of a police or law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose duties consist primarily of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(4) (a) "Pecuniary benefit" means any advantage in the form of money, property, commercial interest, or anything else, the primary significance of which is economic gain.

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(b) "Pecuniary benefit" does not include economic advantage applicable to the public generally, such as tax reduction or increased prosperity generally.

~~[(5) (a) "Public servant" means any officer or employee of the state or any political subdivision of the state, including judges, legislators, consultants, and persons otherwise performing a governmental function.]~~

~~[(b) A person is considered a public servant upon his election, appointment, or other designation as such, although he may not yet officially occupy that position.]~~

(5) (a) "Public property" means real or personal property that is owned, held, or managed by a public entity.

(b) "Public property" includes real or personal property that is owned, held, or managed by a public entity after the real or personal property is transferred by the public entity to an independent contractor of the public entity.

(c) "Public property" remains public property while in the possession of an independent contractor of a public entity for the purpose of providing a program or service for, or on behalf of, the public entity.

Section 8. Section ~~76-8-402~~ is amended to read:

### **76-8-402. Misusing public money or public property.**

~~[(1) Every public officer of this state or a political subdivision, or of any county, city, town, precinct, or district of this state, and every other person charged, either by law or under contract, with the receipt, safekeeping, transfer, disbursement, or use of public money commits an offense if the officer or other charged person:]~~

(1) As used in this section, "authorized personal use" means:

(a) the use of public property, for a personal matter, by a public servant if:

(i) the public servant is authorized to use or possess the public property to fulfill the public servant's duties as a public servant;

(ii) the primary purpose of the public servant using or possessing the public property is to fulfill the public servant's duties as a public servant;

(iii) at the time the public servant uses the public property for a personal matter, a written policy of the public servant's public entity is in effect that authorizes the public servant to use or possess the public property for personal use in addition to the primary purpose of fulfilling the public servant's duties as a public servant; and

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(iv) the public servant uses and possesses the public property in a lawful manner and in accordance with the policy described in Subsection (1)(a)(iii); or

(b) ~~{minimal,}~~ incidental ~~{, infrequent}~~ use of public property for a personal matter by a public servant, if:

(i) the value provided to the public servant's public entity by the public servant's use or possession of the public property for a public purpose substantially outweighs the personal benefit received by the employee from the ~~{minimal,}~~ incidental ~~{, infrequent}~~ use of the public property for a personal matter; and

(ii) the ~~{minimal,}~~ incidental ~~{, infrequent}~~ use of the public property for a personal matter is not prohibited by law or by the public servant's public entity.

(2) It is unlawful for a public servant to:

(a) [~~appropriates the money or any portion of it to his~~] appropriate public money or public property to the public servant's own use or benefit or to the use or benefit of another without authority of law;

(b) [~~loans or transfers the money or any portion of it~~] loan or transfer public money or public property without authority of law;

(c) [~~fails to keep the money in his~~] fail to keep public money or public property in the public servant's possession until disbursed [~~or paid out~~] by authority of law;

(d) unlawfully [~~deposits the money or any portion in any~~] deposit public money in a bank or with [~~any other~~] another person;

(e) knowingly [~~keeps any~~] keep a false account or [~~makes any false~~] make a false entry or erasure in [~~any~~] an account of, or relating to [~~the~~], public money;

(f) fraudulently [~~alters, falsifies, conceals, destroys, or obliterates any such account~~] alter, falsify, conceal, or destroy an account described in Subsection (2)(e);

(g) willfully [~~refuses or omits~~] refuse or omit to pay over, on demand, any public money in [~~his hands~~] the public servant's custody or control, upon the presentation of a draft, order, or warrant drawn upon [~~such money~~] the public money by competent authority;

(h) willfully [~~omits to transfer the~~] omit to transfer public money when the transfer is required by law; or

(i) willfully [~~omits or refuses~~] omit or refuse to pay over, to any officer or person authorized by law to receive [~~it, any money received by him~~] public money, public money

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received by the public servant under any duty imposed [by law so to pay over the same] on the public servant by law.

~~[(2)] (3) [A]~~ Except as provided in Subsection (4), a violation of Subsection [(+)] (2) is a felony of the third degree[~~, except it~~.

(4) A violation of Subsection (2) is a felony of the second degree if:

(a) the value of the public money or the value of the use of the public property exceeds \$5,000;

(b) the amount of the false account exceeds \$5,000;

(c) the amount falsely entered exceeds \$5,000;

(d) the amount that is the difference between the original amount and the fraudulently altered amount exceeds \$5,000; or

(e) the amount falsely erased, fraudulently concealed, destroyed, ~~[obliterated,]~~ or falsified in the account exceeds \$5,000.

~~[(3)] (5)~~ In addition to the penalty described in Subsection [(2)] (3) or (4), a public officer who violates Subsection [(+)] (2):

(a) is subject to the penalties described in Section 76-8-404; and

(b) may not disburse public funds or access public accounts.

(6) (a) A public servant is not guilty of a violation of this section for authorized personal use of public property.

(b) Subsection (6)(a) does not apply if:

(i) the public servant's personal use of the public property does not constitute authorized personal use at the time of the personal use; and

(ii) a public entity ~~{attempts}~~ modifies or adopts a policy or law, or takes other action, to retroactively ~~{adopt or modify a policy or law, after the unauthorized}~~ authorize or approve the personal use of the public property by the public servant, ~~{, to authorize the personal use of the public property}~~.

Section 9. Section **76-8-404** is amended to read:

**76-8-404. Making profit from or misusing public money or public property -- Disqualification from office -- Criminal penalty.**

A public officer, regardless of whether ~~[or not]~~ the public officer receives, safekeeps, transfers, disburses, or has a fiduciary relationship with public money, who makes a profit from



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or out of public money or public property, or who uses public money or public property in a manner or for a purpose not authorized by law, is guilty of a felony as provided in Section 76-8-402 and [~~shall~~] is, in addition to the punishment provided by law, [~~be~~] disqualified [~~to hold~~] from holding public office.

Section 10. Section 77-23a-8 is amended to read:

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

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

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

(a) any act:

(i) prohibited by the criminal provisions of:

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

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

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

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

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

(c) an offense:

(i) of:

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

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

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

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

(d) a threat of terrorism offense punishable by a maximum term of imprisonment of more than one year, Section 76-5-107.3;

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- (e) (i) aggravated murder, Section 76-5-202;
- (ii) murder, Section 76-5-203; or
- (iii) manslaughter, Section 76-5-205;
- (f) (i) kidnapping, Section 76-5-301;
- (ii) child kidnapping, Section 76-5-301.1;
- (iii) aggravated kidnapping, Section 76-5-302;
- (iv) human trafficking or human smuggling, Section 76-5-308; or
- (v) aggravated human trafficking or aggravated human smuggling, Section 76-5-310;
- (g) (i) arson, Section 76-6-102; or
- (ii) aggravated arson, Section 76-6-103;
- (h) (i) burglary, Section 76-6-202; or
- (ii) aggravated burglary, Section 76-6-203;
- (i) (i) robbery, Section 76-6-301; or
- (ii) aggravated robbery, Section 76-6-302;
- (j) an offense:
  - (i) of:
    - (A) theft, Section 76-6-404;
    - (B) theft by deception, Section 76-6-405; or
    - (C) theft by extortion, Section 76-6-406; and
  - (ii) punishable by a maximum term of imprisonment of more than one year;
  - (k) an offense of receiving stolen property that is punishable by a maximum term of imprisonment of more than one year, Section 76-6-408;
  - (l) a financial card transaction offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-506.2, 76-6-506.3, 76-6-506.5, or 76-6-506.6;
- (m) bribery of a labor official, Section 76-6-509;
- (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- (o) a criminal simulation offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-518;
- (p) criminal usury, Section 76-6-520;
- (q) a fraudulent insurance act offense punishable by a maximum term of imprisonment of more than one year, Section 76-6-521;

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- (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by a maximum term of imprisonment of more than one year, Section 76-6-703;
- (s) bribery to influence official or political actions, Section 76-8-103;
- (t) misusing public money or public property, Section 76-8-402;
- (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (y) obstruction of justice, Section 76-8-306;
- (z) destruction of property to interfere with preparation for defense or war, Section 76-8-802;
  - (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
  - (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;
  - (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
  - (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
  - (ee) riot punishable by a maximum term of imprisonment of more than one year, Section 76-9-101;
  - (ff) dog fighting, training dogs for fighting, or dog fighting exhibitions punishable by a maximum term of imprisonment of more than one year, Section 76-9-301.1;
  - (gg) possession, use, or removal of an explosive, chemical, or incendiary device and parts, Section 76-10-306;
  - (hh) delivery to a common carrier or mailing of an explosive, chemical, or incendiary device, Section 76-10-307;
  - (ii) exploiting prostitution, Section 76-10-1305;
  - (jj) aggravated exploitation of prostitution, Section 76-10-1306;
  - (kk) bus hijacking or assault with intent to commit hijacking, Section 76-10-1504;
  - (ll) discharging firearms and hurling missiles, Section 76-10-1505;
  - (mm) violations of Title 76, Chapter 10, Part 16, Pattern of Unlawful Activity Act, and the offenses listed under the definition of unlawful activity in the act, including the offenses not punishable by a maximum term of imprisonment of more than one year when those offenses are investigated as predicates for the offenses prohibited by the act, Section 76-10-1602;

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(nn) communications fraud, Section 76-10-1801;

(oo) money laundering, Sections 76-10-1903 and 76-10-1904; or

(pp) reporting by a person engaged in a trade or business when the offense is punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

### **Section 11. Repealer.**

This bill repeals:

Section 76-8-401, "Public funds," "public money," and "public officer" defined.

### **Section 12. Effective date.**

This bill takes effect on July 1, 2019.