

1 **OFFENSES AGAINST THE ADMINISTRATION OF**
2 **GOVERNMENT AMENDMENTS**

3 2020 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Craig Hall**

6 Senate Sponsor: Todd Weiler

8 **LONG TITLE**

9 **General Description:**

10 This bill amends criminal provisions relating to public property and public money.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ provides an exception for the de minimus use of public property by a public servant;
- 14 ▶ modifies the elements of the crime of misuse of public money;
- 15 ▶ makes it a crime for a public servant to knowingly engage in certain misconduct in
16 relation to public property;
- 17 ▶ establishes criminal penalties based on the value of, or cost to repair, public
18 property;
- 19 ▶ addresses related penalties; and
- 20 ▶ makes technical and conforming changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 76-8-402, as last amended by Laws of Utah 2019, Chapter 211

28 76-8-403, as last amended by Laws of Utah 1995, Chapter 232

29 **76-8-404**, as last amended by Laws of Utah 2019, Chapter 211



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

32 Section 1. Section **76-8-402** is amended to read:

33 **76-8-402. Misusing public money or public property.**

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

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

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

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

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

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

46 (b) incidental or de minimus use of public property for a personal matter by a public
47 servant, if:

48 (i) the value provided to the public servant's public entity by the public servant's use or
49 possession of the public property for a public purpose substantially outweighs the personal
50 benefit received by the employee from the incidental use of the public property for a personal
51 matter; and

52 (ii) the incidental or de minimus use of the public property for a personal matter is not
53 prohibited by law or by the public servant's public entity.

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

55 (a) appropriate public money [~~or public property~~] to the public servant's own use or

- 56 benefit or to the use or benefit of another without authority of law;
- 57 (b) loan or transfer public money [~~or public property~~] without authority of law;
- 58 (c) fail to keep public money [~~or public property~~] in the public servant's possession until
- 59 disbursed by authority of law;
- 60 (d) [~~unlawfully~~] deposit public money in a bank or with another person in violation of
- 61 the written policy of the public servant's public entity or the requirements of law;
- 62 (e) [~~knowingly~~] keep a false account or make a false entry or erasure in an account of,
- 63 or relating to, public money;
- 64 (f) fraudulently alter, falsify, conceal, or destroy an account described in Subsection
- 65 (2)(e);
- 66 (g) [~~willfully~~] refuse or omit to pay over, on demand, any public money in the public
- 67 servant's custody or control, upon the presentation of a draft, order, or warrant drawn upon the
- 68 public money by competent authority;
- 69 (h) [~~willfully~~] omit to transfer public money when the transfer is required by law; [~~or~~]
- 70 (i) [~~willfully~~] omit or refuse to pay over, to any officer or person authorized by law to
- 71 receive public money, public money received by the public servant under any duty imposed on
- 72 the public servant by law[-];
- 73 (j) damage or dispose of public property in violation of the written policy of the public
- 74 servant's public entity or the requirements of law;
- 75 (k) obtain or exercise unauthorized control of public property with the intent to deprive
- 76 the owner of possession of the public property;
- 77 (l) obtain or exercise unauthorized control of public property with the intent to
- 78 temporarily appropriate, possess, use, or deprive the owner of possession of the public
- 79 property;
- 80 (m) appropriate public property to the public servant's own use or benefit or to the use
- 81 or benefit of another without authority of law;
- 82 (n) loan or transfer public property without authority of law; or

83 (o) fail to keep public property in the public servant's possession until returned to the
84 property owner, or disposed of or relinquished, in accordance with the written policy of the
85 public servant's public entity and the requirements of law.

86 (3) Except as provided in Subsection (4), a violation of [~~Subsection (2)~~] Subsections
87 (2)(a) through (i) is a felony of the third degree.

88 (4) A violation of [~~Subsection (2)~~] Subsections (2)(a) through (i) is a felony of the
89 second degree if:

90 (a) the value of the public money [~~or the value of the use of the public property~~]
91 exceeds \$5,000;

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

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

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

96 (e) the amount falsely erased, fraudulently concealed, destroyed, or falsified in the
97 account exceeds \$5,000.

98 (5) A violation of Subsection (2)(j) is:

99 (a) a class B misdemeanor, if the cost to repair or replace the public property is less
100 than \$500;

101 (b) a class A misdemeanor, if the cost to repair or replace the public property is \$500 or
102 more, but less than \$1,500;

103 (c) a felony of the third degree, if the cost to repair or replace the public property is
104 \$1,500 or more, but less than \$5,000; or

105 (d) a felony of the second degree, if the cost to repair or replace the public property is
106 \$5,000 or more.

107 (6) A violation of Subsection (2)(k), (m), (n), or (o) is:

108 (a) a class B misdemeanor, if the value of the public property is less than \$500;

109 (b) a class A misdemeanor, if the value of the public property is \$500 or more, but less

110 than \$1,500;

111 (c) a felony of the third degree, if the value of the public property is \$1,500 or more,
112 but less than \$5,000; or

113 (d) a felony of the second degree, if the value of the public property is \$5,000 or more.

114 (7) A violation of Subsection (2)(l) is:

115 (a) a class C misdemeanor, if the value of the public property is less than \$500;

116 (b) a class B misdemeanor, if the value of the public property is \$500 or more, but less
117 than \$1,500;

118 (c) a class A misdemeanor, if the value of the public property is \$1,500 or more, but
119 less than \$5,000; or

120 (d) a felony of the third degree, if the value of the public property is \$5,000 or more.

121 ~~[(5)]~~ (8) In addition to the penalty described in ~~[Subsection (3) or (4)]~~ Subsections (3)
122 through (7), a public officer who ~~[violates]~~ is convicted of a felony violation of Subsection (2):

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

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

125 ~~[(6)]~~ (9) (a) A public servant is not guilty of a violation of ~~[this section]~~ Subsections
126 (2)(j) through (o) for authorized personal use of public property.

127 ~~[(b) Subsection (6)(a) does not apply if:~~

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

130 ~~[(ii) a public entity modifies or adopts a policy or law, or takes other action, to~~
131 ~~retroactively authorize or approve the personal use of the public property by the public~~
132 ~~servant.]~~

133 (10) It is not a defense to a violation of Subsection (2) that:

134 (a) subsequent to the violation, a public entity modifies or adopts a policy or law, or
135 takes other action, to retroactively authorize, approve, or ratify the conduct that constitutes a
136 violation; or

137 (b) a written policy of the public servant's public entity permits private use of the
138 public property if it is proven, beyond a reasonable doubt, that the public servant did not
139 comply with the written policy.

140 Section 2. Section **76-8-403** is amended to read:

141 **76-8-403. Failure to keep and pay over public money.**

142 ~~[Every]~~ Except as otherwise provided in Subsection 76-8-402(4), a person who
143 receives, safekeeps, transfers, or disburses public money who neglects or fails to keep and pay
144 over the money in the manner prescribed by law is guilty of a felony of the third degree.

145 Section 3. Section **76-8-404** is amended to read:

146 **76-8-404. Making profit from or misusing public money or public property --**
147 **Disqualification from office -- Criminal penalty.**

148 A public officer, regardless of whether the public officer receives, safekeeps, transfers,
149 disburses, or has a fiduciary relationship with public money, who makes a profit from or out of
150 public money or public property, or who uses public money or public property in a manner or
151 for a purpose not authorized by law ~~[, is guilty]~~ and is convicted of a felony ~~[as provided in]~~
152 under Section 76-8-402 [and] is, in addition to the punishment provided by law, disqualified
153 from holding public office.