

TERRORISM AMENDMENTS

2010 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Eric K. Hutchings

Senate Sponsor: Daniel R. Liljenquist

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
- misdeemeanor 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:



28 None

29 **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 [~~(1)~~] (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; and

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 disturbance,
84 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 of
122 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, the
131 Utah Housing Corporation, the Workers' Compensation Fund, the State Retirement Board, and
132 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 disturbance,
135 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 the
140 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 are
147 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 offices.

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

151 (12) "Political subdivision" includes counties, cities, towns, townships, districts,

152 authorities, and other public corporations and entities whether organized and existing under
153 charter or general law.

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

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

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

160 (16) "Unavailable" means:

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

164 (b) as otherwise defined by local ordinance.

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

166 **63K-3-102. Definitions.**

167 As used in this chapter:

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

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

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

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

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

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

179 **63K-4-103. Definitions.**

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

182 (2) "Chief executive officer" means:

183 (a) for a municipality:

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

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

188 (b) for a county:

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

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

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

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

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

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

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

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

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

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

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

214 **76-3-203.5. Habitual violent offender -- Definition -- Procedure -- Penalty.**

215 (1) As used in this section:

216 (a) "Felony" means any violation of a criminal statute of the state, any other state, the
217 United States, or any district, possession, or territory of the United States for which the
218 maximum punishment the offender may be subjected to exceeds one year in prison.219 (b) "Habitual violent offender" means a person convicted within the state of any violent
220 felony and who on at least two previous occasions has been convicted of a violent felony and
221 committed to either prison in Utah or an equivalent correctional institution of another state or
222 of the United States either at initial sentencing or after revocation of probation.223 (c) ~~(f)~~ "Violent felony" means:224 (i) any of the following offenses, or any attempt, solicitation, or conspiracy to commit
225 any of ~~these~~ the following offenses punishable as a felony:226 (A) aggravated arson, arson, knowingly causing a catastrophe, and criminal mischief,
227 Title 76, Chapter 6, Part 1, Property Destruction;

228 (B) assault by prisoner, Section 76-5-102.5;

229 (C) disarming a police officer, Section 76-5-102.8;

230 (D) aggravated assault, Section 76-5-103;

231 (E) aggravated assault by prisoner, Section 76-5-103.5;

232 (F) mayhem, Section 76-5-105;

233 (G) stalking, Subsection 76-5-106.5(2) or (3);

234 (H) ~~terroristic~~ threat of terrorism, Section ~~[76-5-107]~~ 76-5-107.3;

235 (I) child abuse, Subsection 76-5-109(2)(a) or (b);

236 (J) commission of domestic violence in the presence of a child, Section 76-5-109.1;

237 (K) abuse or neglect of disabled child, Section 76-5-110;

238 (L) abuse, neglect, or exploitation of a vulnerable adult, Section 76-5-111;

239 (M) endangerment of a child or vulnerable adult, Section 76-5-112.5;

240 (N) criminal homicide offenses under Title 76, Chapter 5, Part 2, Criminal Homicide;

241 (O) kidnapping, child kidnapping, and aggravated kidnapping under Title 76, Chapter
242 5, Part 3, Kidnapping, Trafficking, and Smuggling;

243 (P) rape, Section 76-5-402;

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

- 245 (R) object rape, Section 76-5-402.2;
- 246 (S) object rape of a child, Section 76-5-402.3;
- 247 (T) forcible sodomy, Section 76-5-403;
- 248 (U) sodomy on a child, Section 76-5-403.1;
- 249 (V) forcible sexual abuse, Section 76-5-404;
- 250 (W) aggravated sexual abuse of a child or sexual abuse of a child, Section 76-5-404.1;
- 251 (X) aggravated sexual assault, Section 76-5-405;
- 252 (Y) sexual exploitation of a minor, Section 76-5a-3;
- 253 (Z) aggravated burglary and burglary of a dwelling under Title 76, Chapter 6, Part 2,
- 254 Burglary and Criminal Trespass;
- 255 (AA) aggravated robbery and robbery under Title 76, Chapter 6, Part 3, Robbery;
- 256 (BB) theft by extortion under Subsection 76-6-406(2)(a) or (b);
- 257 (CC) tampering with a witness under Subsection 76-8-508(1);
- 258 (DD) retaliation against a witness, victim, or informant under Section 76-8-508.3;
- 259 (EE) tampering with a juror under Subsection 76-8-508.5(2)(c);
- 260 (FF) extortion to dismiss a criminal proceeding under Section 76-8-509 if by any threat
- 261 or by use of force theft by extortion has been committed pursuant to Subsections
- 262 76-6-406(2)(a), (b), and (i);
- 263 (GG) possession, use, or removal of explosive, chemical, or incendiary devices under
- 264 Subsections 76-10-306(3) through (6);
- 265 (HH) unlawful delivery of explosive, chemical, or incendiary devices under Section
- 266 76-10-307;
- 267 (II) purchase or possession of a dangerous weapon or handgun by a restricted person
- 268 under Section 76-10-503;
- 269 (JJ) unlawful discharge of a firearm under Section 76-10-508;
- 270 (KK) aggravated exploitation of prostitution under Subsection 76-10-1306(1)(a);
- 271 (LL) bus hijacking under Section 76-10-1504; and
- 272 (MM) discharging firearms and hurling missiles under Section 76-10-1505; or
- 273 (ii) any felony violation of a criminal statute of any other state, the United States, or
- 274 any district, possession, or territory of the United States which would constitute a violent
- 275 felony as defined in this Subsection (1) if committed in this state.

276 (2) If a person is convicted in this state of a violent felony by plea or by verdict and the
277 trier of fact determines beyond a reasonable doubt that the person is a habitual violent offender
278 under this section, the penalty for a:

- 279 (a) third degree felony is as if the conviction were for a first degree felony;
- 280 (b) second degree felony is as if the conviction were for a first degree felony; or
- 281 (c) first degree felony remains the penalty for a first degree penalty except:
 - 282 (i) the convicted person is not eligible for probation; and
 - 283 (ii) the Board of Pardons and Parole shall consider that the convicted person is a
 - 284 habitual violent offender as an aggravating factor in determining the length of incarceration.

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

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

- 291 (A) the defendant is the person who was convicted or committed;
- 292 (B) the defendant was represented by counsel or had waived counsel; or
- 293 (C) the defendant's plea was understandingly or voluntarily entered.

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

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

- 299 (i) defendant's previous convictions for violent felonies, except as otherwise provided
300 in the Utah Rules of Evidence; or
- 301 (ii) allegation against the defendant of being a habitual violent offender.

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

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

307 (ii) The trier of fact shall consider any evidence presented at trial and the prosecution
308 and the defendant shall be afforded an opportunity to present any necessary additional
309 evidence.

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

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

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

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

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

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

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

330 (i) a grievous sexual offense;

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

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

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

334 (b) applying the sentencing enhancement provided for in this section would result in a
335 lower maximum penalty than the penalty provided for under the section that describes the
336 offense for which the person is being sentenced.

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

338 **76-5-107. Threat of violence -- Penalty.**

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

343 [~~(a) he threatens the use of a weapon of mass destruction, as defined in Section~~
 344 ~~76-10-401, or threatens by the use of a hoax weapon of mass destruction, as defined in Section~~
 345 ~~76-10-401; or]~~

346 [~~(b) he acts with intent to:~~

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

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

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

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

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

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

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

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

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

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

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

366 **Ĥ→ [F] (6) In addition to any other penalty authorized by law, a court shall order**
 366a **any person**
 367 **convicted of any violation of this section to reimburse any federal, state, or local unit of**
 368 **government, or any private business, organization, individual, or entity for all expenses and**

369 losses incurred in responding to the violation, unless the court states on the record the reasons
 370 why the reimbursement would be inappropriate. [H] ←H

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

372 **76-5-107.3. Threat of terrorism -- Penalty.**

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

375 (a) (i) threatens the use of a weapon of mass destruction, as defined in Section
 376 76-10-401; or

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

379 (b) acts with intent to:

380 (i) intimidate or coerce a civilian population or to influence or affect the conduct of a
 381 government or a unit of government; H→ [or] ←H

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

384a (iii) cause action of any nature by an official or volunteer agency organized to deal
 384b with emergencies ←H .

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

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

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

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

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

392a H→ (6) In addition to any other penalty authorized by law, a court shall order any person
 392b convicted of any violation of this section to reimburse any federal, state, or local unit of
 392c government, or any private business, organization, individual, or entity for all expenses and
 392d losses incurred in responding to the violation, unless the court states on the record the reasons
 392e why the reimbursement would be inappropriate. ←H

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

394 **76-6-206. Criminal trespass.**

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

396 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
 397 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204 or a violation of Section
 398 76-10-2402 regarding commercial [terrorism] obstruction:

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

- 400 (i) intends to cause annoyance or injury to any person or damage to any property,
- 401 including the use of graffiti as defined in Section 76-6-107;
- 402 (ii) intends to commit any crime, other than theft or a felony; or
- 403 (iii) is reckless as to whether his presence will cause fear for the safety of another;
- 404 (b) knowing [~~his~~] the person's entry or presence is unlawful, [~~he~~] the person enters or
- 405 remains on property as to which notice against entering is given by:
 - 406 (i) personal communication to the actor by the owner or someone with apparent
 - 407 authority to act for the owner;
 - 408 (ii) fencing or other enclosure obviously designed to exclude intruders; or
 - 409 (iii) posting of signs reasonably likely to come to the attention of intruders; or
 - 410 (c) [~~he~~] the person enters a condominium unit in violation of Subsection 57-8-7(7).
- 411 (3) (a) A violation of Subsection (2)(a) or (b) is a class B misdemeanor unless it was
- 412 committed in a dwelling, in which event it is a class A misdemeanor.
- 413 (b) A violation of Subsection (2)(c) is an infraction.
- 414 (4) It is a defense to prosecution under this section that:
 - 415 (a) the property was open to the public when the actor entered or remained; and
 - 416 (b) the actor's conduct did not substantially interfere with the owner's use of the
 - 417 property.

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

419 **76-10-1602. Definitions.**

420 As used in this part:

- 421 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
- 422 business trust, association, or other legal entity, and any union or group of individuals
- 423 associated in fact although not a legal entity, and includes illicit as well as licit entities.
- 424 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
- 425 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
- 426 have the same or similar purposes, results, participants, victims, or methods of commission, or
- 427 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
- 428 demonstrate continuing unlawful conduct and be related either to each other or to the
- 429 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
- 430 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful

431 activity as defined by this part shall have occurred within five years of the commission of the
432 next preceding act alleged as part of the pattern.

433 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
434 interest in property, including state, county, and local governmental entities.

435 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
436 command, encourage, or intentionally aid another person to engage in conduct which would
437 constitute any offense described by the following crimes or categories of crimes, or to attempt
438 or conspire to engage in an act which would constitute any of those offenses, regardless of
439 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
440 or a felony:

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

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

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

448 (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title
449 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;

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

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

454 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
455 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
456 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
457 Clandestine Drug Lab Act;

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

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

- 462 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 463 (k) a [~~terroristic~~] threat of terrorism, Section [~~76-5-107~~] 76-5-107.3;
- 464 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 465 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 466 (n) sexual exploitation of a minor, Section 76-5a-3;
- 467 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 468 (p) causing a catastrophe, Section 76-6-105;
- 469 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 470 (r) burglary of a vehicle, Section 76-6-204;
- 471 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 472 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 473 (u) theft, Section 76-6-404;
- 474 (v) theft by deception, Section 76-6-405;
- 475 (w) theft by extortion, Section 76-6-406;
- 476 (x) receiving stolen property, Section 76-6-408;
- 477 (y) theft of services, Section 76-6-409;
- 478 (z) forgery, Section 76-6-501;
- 479 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 480 (bb) deceptive business practices, Section 76-6-507;
- 481 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
482 criticism of goods, Section 76-6-508;
- 483 (dd) bribery of a labor official, Section 76-6-509;
- 484 (ee) defrauding creditors, Section 76-6-511;
- 485 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 486 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 487 (hh) bribery or threat to influence contest, Section 76-6-514;
- 488 (ii) making a false credit report, Section 76-6-517;
- 489 (jj) criminal simulation, Section 76-6-518;
- 490 (kk) criminal usury, Section 76-6-520;
- 491 (ll) fraudulent insurance act, Section 76-6-521;
- 492 (mm) retail theft, Section 76-6-602;

- 493 (nn) computer crimes, Section 76-6-703;
- 494 (oo) identity fraud, Section 76-6-1102;
- 495 (pp) mortgage fraud, Section 76-6-1203;
- 496 (qq) sale of a child, Section 76-7-203;
- 497 (rr) bribery to influence official or political actions, Section 76-8-103;
- 498 (ss) threats to influence official or political action, Section 76-8-104;
- 499 (tt) receiving bribe or bribery by public servant, Section 76-8-105;
- 500 (uu) receiving bribe or bribery for endorsement of person as public servant, Section
- 501 76-8-106;
- 502 (vv) official misconduct, Sections 76-8-201 and 76-8-202;
- 503 (ww) obstruction of justice, Section 76-8-306;
- 504 (xx) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 505 (yy) false or inconsistent material statements, Section 76-8-502;
- 506 (zz) false or inconsistent statements, Section 76-8-503;
- 507 (aaa) written false statements, Section 76-8-504;
- 508 (bbb) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 509 (ccc) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 510 (ddd) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 511 (eee) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 512 76-8-1205;
- 513 (fff) unemployment insurance fraud, Section 76-8-1301;
- 514 (ggg) intentionally or knowingly causing one animal to fight with another, Subsection
- 515 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- 516 (hhh) possession, use, or removal of explosives, chemical, or incendiary devices or
- 517 parts, Section 76-10-306;
- 518 (iii) delivery to common carrier, mailing, or placement on premises of an incendiary
- 519 device, Section 76-10-307;
- 520 (jjj) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 521 (kkk) unlawful marking of pistol or revolver, Section 76-10-521;
- 522 (lll) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 523 (mmm) forging or counterfeiting trademarks, trade name, or trade device, Section

524 76-10-1002;
525 (nnn) selling goods under counterfeited trademark, trade name, or trade devices,
526 Section 76-10-1003;
527 (ooo) sales in containers bearing registered trademark of substituted articles, Section
528 76-10-1004;
529 (ppp) selling or dealing with article bearing registered trademark or service mark with
530 intent to defraud, Section 76-10-1006;
531 (qqq) gambling, Section 76-10-1102;
532 (rrr) gambling fraud, Section 76-10-1103;
533 (sss) gambling promotion, Section 76-10-1104;
534 (ttt) possessing a gambling device or record, Section 76-10-1105;
535 (uuu) confidence game, Section 76-10-1109;
536 (vvv) distributing pornographic material, Section 76-10-1204;
537 (www) inducing acceptance of pornographic material, Section 76-10-1205;
538 (xxx) dealing in harmful material to a minor, Section 76-10-1206;
539 (yyy) distribution of pornographic films, Section 76-10-1222;
540 (zzz) indecent public displays, Section 76-10-1228;
541 (aaaa) prostitution, Section 76-10-1302;
542 (bbbb) aiding prostitution, Section 76-10-1304;
543 (cccc) exploiting prostitution, Section 76-10-1305;
544 (dddd) aggravated exploitation of prostitution, Section 76-10-1306;
545 (eeee) communications fraud, Section 76-10-1801;
546 (ffff) any act prohibited by the criminal provisions of Chapter 10, Part 19, Money
547 Laundering and Currency Transaction Reporting Act;
548 (gggg) vehicle compartment for contraband, Section 76-10-2801;
549 (hhhh) any act prohibited by the criminal provisions of the laws governing taxation in
550 this state; and
551 (iiii) any act illegal under the laws of the United States and enumerated in Title 18,
552 Section 1961 (1)(B), (C), and (D) of the United States Code.
553 Section 11. Section **76-10-2402** is amended to read:
554 **76-10-2402. Commercial obstruction -- Penalties.**

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

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

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

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

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

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

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

570 (e) commit any other felony.

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

573 (4) This section does not apply to action protected by the National Labor Relations Act,
574 29 U.S.C. Section 151 et seq., or the Federal Railway Labor Act, 45 U.S.C. Section 151 et seq.

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

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

579 **77-23a-8. Court order to authorize or approve interception -- Procedure.**

580 (1) The attorney general of the state, any assistant attorney general specially designated
581 by the attorney general, any county attorney, district attorney, deputy county attorney, or deputy
582 district attorney specially designated by the county attorney or by the district attorney, may
583 authorize an application to a judge of competent jurisdiction for an order for an interception of
584 wire, electronic, or oral communications by any law enforcement agency of the state, the
585 federal government or of any political subdivision of the state that is responsible for

586 investigating the type of offense for which the application is made.

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

589 (a) any act:

590 (i) prohibited by the criminal provisions of:

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

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

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

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

595 (b) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform

596 Securities Act and punishable by a term of imprisonment of more than one year;

597 (c) an offense:

598 (i) of:

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

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

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

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

603 (d) [~~terroristic~~] a threat of terrorism offense punishable by a maximum term of

604 imprisonment of more than one year, Section [~~76-5-107~~] 76-5-107.3;

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

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

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

608 (f) (i) kidnapping, Section 76-5-301;

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

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

611 (g) (i) arson, Section 76-6-102; or

612 (ii) aggravated arson, Section 76-6-103;

613 (h) (i) burglary, Section 76-6-202; or

614 (ii) aggravated burglary, Section 76-6-203;

615 (i) (i) robbery, Section 76-6-301; or

616 (ii) aggravated robbery, Section 76-6-302;

- 617 (j) an offense:
- 618 (i) of:
- 619 (A) theft, Section 76-6-404;
- 620 (B) theft by deception, Section 76-6-405; or
- 621 (C) theft by extortion, Section 76-6-406; and
- 622 (ii) punishable by a maximum term of imprisonment of more than one year;
- 623 (k) receiving stolen property offense punishable by a maximum term of imprisonment
- 624 of more than one year, Section 76-6-408;
- 625 (l) a financial card transaction offense punishable by a maximum term of imprisonment
- 626 of more than one year, Section 76-6-506.1, 76-6-506.2, 76-6-506.3, 76-6-506.4, 76-6-506.5, or
- 627 76-6-506.6;
- 628 (m) bribery of a labor official, Section 76-6-509;
- 629 (n) bribery or threat to influence a publicly exhibited contest, Section 76-6-514;
- 630 (o) a criminal simulation offense punishable by a maximum term of imprisonment of
- 631 more than one year, Section 76-6-518;
- 632 (p) criminal usury, Section 76-6-520;
- 633 (q) a fraudulent insurance act offense punishable by a maximum term of imprisonment
- 634 of more than one year, Section 76-6-521;
- 635 (r) a violation of Title 76, Chapter 6, Part 7, Utah Computer Crimes Act, punishable by
- 636 a maximum term of imprisonment of more than one year, Section 76-6-703;
- 637 (s) bribery to influence official or political actions, Section 76-8-103;
- 638 (t) misusing public moneys, Section 76-8-402;
- 639 (u) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 640 (v) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 641 (w) tampering with a juror, retaliation against a juror, Section 76-8-508.5;
- 642 (x) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 643 (y) obstruction of justice, Section 76-8-306;
- 644 (z) destruction of property to interfere with preparation for defense or war, Section
- 645 76-8-802;
- 646 (aa) an attempt to commit crimes of sabotage, Section 76-8-804;
- 647 (bb) conspiracy to commit crimes of sabotage, Section 76-8-805;

- 648 (cc) advocating criminal syndicalism or sabotage, Section 76-8-902;
- 649 (dd) assembly for advocating criminal syndicalism or sabotage, Section 76-8-903;
- 650 (ee) riot punishable by a maximum term of imprisonment of more than one year,
- 651 Section 76-9-101;
- 652 (ff) dog fighting, training dogs for fighting, dog fighting exhibitions punishable by a
- 653 maximum term of imprisonment of more than one year, Section 76-9-301.1;
- 654 (gg) explosive, chemical, or incendiary device and parts, possession, use, or removal,
- 655 Section 76-10-306;
- 656 (hh) explosive, chemical, or incendiary device, delivery to a common carrier or
- 657 mailing, Section 76-10-307;
- 658 (ii) exploiting prostitution, Section 76-10-1305;
- 659 (jj) aggravated exploitation of prostitution, Section 76-10-1306;
- 660 (kk) bus hijacking, assault with intent to commit hijacking, dangerous weapon or
- 661 firearm, Section 76-10-1504;
- 662 (ll) discharging firearms and hurling missiles, Section 76-10-1505;
- 663 (mm) violations of the Pattern of Unlawful Activity Act and the offenses listed under
- 664 the definition of unlawful activity in the act, including the offenses not punishable by a
- 665 maximum term of imprisonment of more than one year when those offenses are investigated as
- 666 predicates for the offenses prohibited by the act, Section 76-10-1602;
- 667 (nn) communications fraud, Section 76-10-1801;
- 668 (oo) money laundering, Sections 76-10-1903 and 76-10-1904; or
- 669 (pp) reporting by a person engaged in a trade or business when the offense is
- 670 punishable by a maximum term of imprisonment of more than one year, Section 76-10-1906.

Legislative Review Note
as of 2-5-10 10:16 AM

Office of Legislative Research and General Counsel

H.B. 306 - Terrorism Amendments

Fiscal Note

2010 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
