

Adult-oriented Performance and Material Amendments

2026 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Colin W. Jack

Senate Sponsor:

LONG TITLE**General Description:**

This bill addresses criminal offenses relating to adult-oriented performances and materials.

Highlighted Provisions:

This bill:

- removes unlawful pornographic performances from the offense of distributing pornographic material and places the conduct into a new stand-alone offense;
- removes aiding or abetting a minor in an unlawful pornographic performance from the offense of aiding or abetting a minor in distributing pornographic material and places the conduct into a new stand-alone offense;
- removes engaging in a performance that is harmful to minors while in the presence of a minor from the offense of distributing material harmful to minors and places the conduct into a new stand-alone offense;
- changes the mental state required to be convicted of engaging in a performance that is harmful to minors while in the presence of a minor;
- amends penalties for committing the offense of distributing material harmful to minors;
- removes aiding or abetting a minor to engage in a performance that is harmful to minors while in the presence of another minor from the offense of aiding or abetting a minor in distributing material harmful to minors and places the conduct into a new stand-alone offense;
- revises the criminal conduct referenced above for clarity, including penalty provisions;
- adds the new stand-alone offenses to statutes in which the current offenses are referenced, including:
 - the offense of creating, viewing, or accessing pornographic or indecent material on school property; and
 - statutes concerning patterns of unlawful activity, property subject to forfeiture, court orders for criminal investigations, and civil enforcement actions; and
- makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:**AMENDS:****76-5c-202**, as renumbered and amended by Laws of Utah 2025, Chapter 173**76-5c-203**, as enacted by Laws of Utah 2025, Chapter 173**76-5c-205**, as renumbered and amended by Laws of Utah 2025, Chapter 173**76-5c-206**, as enacted by Laws of Utah 2025, Chapter 173**76-5c-208**, as renumbered and amended by Laws of Utah 2025, Chapter 173**76-17-401**, as renumbered and amended by Laws of Utah 2025, Chapter 173**76-17-403**, as renumbered and amended by Laws of Utah 2025, Chapter 173**76-17-407**, as renumbered and amended by Laws of Utah 2025, Chapter 173**77-11b-102**, as last amended by Laws of Utah 2025, Chapters 173, 208**77-22-2.5**, as last amended by Laws of Utah 2025, Chapter 173**78B-6-2105**, as last amended by Laws of Utah 2025, Chapter 173**ENACTS:****76-5c-202.2**, Utah Code Annotated 1953**76-5c-203.2**, Utah Code Annotated 1953**76-5c-205.2**, Utah Code Annotated 1953**76-5c-206.2**, Utah Code Annotated 1953

*Be it enacted by the Legislature of the state of Utah:*Section 1. Section **76-5c-202** is amended to read:**76-5c-202 . Distributing pornographic material.**

(1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) An actor commits distributing pornographic material if the actor knowingly:

(a) sends or brings pornographic material into the state with intent to distribute or exhibit the pornographic material to another individual;

(b) prepares, publishes, prints, or possesses pornographic material with intent to distribute or exhibit the pornographic material to another individual;

(c) distributes or offers to distribute, or exhibits or offers to exhibit, pornographic material to another individual;

- (d) writes, creates, or solicits the publication or advertising of pornographic material; or
- (e) promotes the distribution or exhibition of material the actor represents to be
pornographic[; or] .

~~[(f) presents or directs a pornographic performance in a public place or a place exposed
to public view or participates in that portion of the performance which makes the
performance pornographic.]~~

(3)(a) ~~[Except as provided in Subsection (3)(b) or (c), a]~~ A violation of Subsection (2) is
a third degree felony if the actor is 18 years old or older and is subject to:

- (i) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article
exhibited up to the maximum allowed by law; and
- (ii) incarceration~~[-, without suspension of sentence in any way,]~~ for a term of not less
than 30 days, which may not be suspended.

(b) ~~[Except as provided in Subsection (3)(c), a]~~ A violation of Subsection (2) is a class A
misdemeanor if the actor is 16 or 17 years old.

(c) A violation of Subsection (2) is a class B misdemeanor if the actor is younger than
16 years old.

(4) It is a separate offense under this section for:

- (a) each day's exhibition of a pornographic motion picture film;
- (b) each day in which a pornographic publication is displayed or exhibited in a public
place with intent to distribute or exhibit the publication to another individual; or
- (c) each act of distributing of pornographic material described in Subsection (2).

(5)(a) This section does not apply to an Internet service provider if:

- (i) the distribution of pornographic material by the Internet service provider occurs
only incidentally through the Internet service provider's function of:
 - (A) transmitting or routing data from one person to another person; or
 - (B) providing a connection between one person and another person;
- (ii) the Internet service provider does not intentionally aid or abet in the distribution
of the pornographic material; and
- (iii) the Internet service provider does not knowingly receive funds from or through a
person who distributes the pornographic material in exchange for permitting the
person to distribute the pornographic material.

(b) This section does not apply to a hosting company if:

- (i) the distribution of pornographic material by the hosting company occurs only
incidentally through the hosting company's function of providing data storage

space or data caching to a person;

(ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and

(iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

[(6) Subsection (3)(a) supersedes Section 77-18-105.]

Section 2. Section **76-5c-202.2** is enacted to read:

76-5c-202.2 . Unlawful pornographic performance.

(1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) An actor commits unlawful pornographic performance if the actor knowingly presents or directs a pornographic performance in a public place or a place exposed to public view or participates in a portion of the performance that makes the performance pornographic.

(3)(a) A violation of Subsection (2) is a third degree felony if the actor is 18 years old or older and is subject to:

(i) a minimum mandatory fine of not less than \$1,000; and

(ii) incarceration for a term of not less than 30 days, which may not be suspended.

(b) A violation of Subsection (2) is a class A misdemeanor if the actor is 16 or 17 years old.

(c) A violation of Subsection (2) is a class B misdemeanor if the actor is younger than 16 years old.

Section 3. Section **76-5c-203** is amended to read:

76-5c-203 . Aiding or abetting a minor in distributing pornographic material.

(1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) An actor commits aiding or abetting a minor in distributing pornographic material if the actor:

(a) is 18 years old or older; and

(b) knowingly solicits, requests, commands, encourages, or intentionally aids a minor in:

(i) sending or bringing pornographic material into the state with intent to distribute or exhibit the pornographic material to another individual;

(ii) preparing, publishing, printing, or possessing pornographic material with intent to distribute or exhibit the pornographic material to another individual;

(iii) distributing or offering to distribute, or exhibiting or offering to exhibit,

- 133 pornographic material to another individual;
- 134 (iv) writing, creating, or soliciting the publication or advertising of pornographic
- 135 material; or
- 136 (v) promoting the distribution or exhibition of material the minor represents to be
- 137 pornographic[; ~~or~~] .
- 138 ~~[(vi) presenting or directing a pornographic performance in a public place or a place~~
- 139 ~~exposed to public view or participates in that portion of the performance which~~
- 140 ~~makes the performance pornographic.]~~
- 141 (3) A violation of Subsection (2) is a third degree felony subject to:
- 142 (a) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article
- 143 exhibited up to the maximum allowed by law; and
- 144 (b) incarceration[~~, without suspension of sentence in any way,~~] for a term of not less
- 145 than 30 days, which may not be suspended.
- 146 (4)(a) Each act of distributing pornographic material described in Subsection (2) is a
- 147 separate offense.
- 148 (b) It is a separate offense under this section for:
- 149 (i) each day's exhibition of any pornographic motion picture film; and
- 150 (ii) each day in which any pornographic publication is displayed or exhibited in a
- 151 public place with intent to distribute or exhibit the publication to another
- 152 individual.
- 153 (5)(a) This section does not apply to an Internet service provider if:
- 154 (i) the distribution of pornographic material by the Internet service provider occurs
- 155 only incidentally through the Internet service provider's function of:
- 156 (A) transmitting or routing data from one person to another person; or
- 157 (B) providing a connection between one person and another person;
- 158 (ii) the Internet service provider does not intentionally aid or abet in the distribution
- 159 of the pornographic material; and
- 160 (iii) the Internet service provider does not knowingly receive funds from or through a
- 161 person who distributes the pornographic material in exchange for permitting the
- 162 person to distribute the pornographic material.
- 163 (b) This section does not apply to a hosting company if:
- 164 (i) the distribution of pornographic material by the hosting company occurs only
- 165 incidentally through the hosting company's function of providing data storage
- 166 space or data caching to a person;

- (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
- (iii) the hosting company does not knowingly receive funds from or through a person who distributes the pornographic material in exchange for permitting the person to distribute, store, or cache the pornographic material.

~~[(6) Subsection (3) supersedes Section 77-18-105.]~~

Section 4. Section **76-5c-203.2** is enacted to read:

76-5c-203.2 . Aiding or abetting a minor in an unlawful pornographic performance.

(1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) An actor commits aiding or abetting a minor in an unlawful pornographic performance if the actor:

- (a) is 18 years old or older; and
- (b) knowingly solicits, requests, commands, encourages, or intentionally aids a minor in presenting or directing a pornographic performance in a public place or a place exposed to public view or participating in that portion of the performance that makes the performance pornographic.

(3) A violation of Subsection (2) is a third degree felony subject to:

- (a) a minimum mandatory fine of not less than \$1,000; and
- (b) incarceration for a term of not less than 30 days, which may not be suspended.

Section 5. Section **76-5c-205** is amended to read:

76-5c-205 . Distributing material harmful to minors.

(1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) An actor commits distributing material harmful to minors if the actor:

- (a) ~~[(i)]~~ intentionally distributes or offers to distribute, or exhibits or offers to exhibit, material harmful to minors to an individual; and
- ~~[(ii) intentionally produces, performs, or directs any performance, before an individual that is harmful to minors; or]~~
- ~~[(iii) intentionally participates in a performance before an individual that is harmful to minors; and]~~
- (b)(i) knows or believes the individual described in Subsection (2)(a) is a minor; or
- (ii) negligently fails to determine if the individual described in Subsection (2)(a) is a minor and the individual is a minor.

(3)(a) Except as provided in Subsection ~~[(3)(b), (c), (d), or (e)]~~ (3)(b)(iii), a violation of

Subsection (2) is a second degree felony if the actor is 18 years old or older and has previously been convicted or adjudicated of a violation of Subsection (2) and is subject to:

- (i) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (ii) incarceration~~[, without suspension of sentence,]~~ for a term of not less than one year, which may not be suspended.
- (b) ~~[Except as provided in Subsection (3)(c), (d), or (e), a]~~ A violation of Subsection (2) is a third degree felony if:
- (i) except as provided in Subsection (3)(c), the actor is 18 years old or older and is subject to:
 - (A) a minimum mandatory fine of not less than \$1,000, plus \$10 for each article exhibited up to the maximum allowed by law; and
 - (B) incarceration~~[, without suspension of sentence,]~~ for a term of not less than 14 days, which may not be suspended; [or]
 - (ii) the actor is younger than 18 years old and has previously been convicted or adjudicated of a violation of Subsection (2)~~[-]~~ ; or
 - (iii)(A) the actor is 18 years old or older;
 - (B) the minor or the individual the actor believed to be a minor described in Subsection (2)(a) is 16 years old or older;
 - (C) the actor is less than seven years older than the minor or the individual the actor believed to be a minor at the time of the offense; and
 - (D) the actor has previously been convicted or adjudicated of a violation of Subsection (2).
- (c) Except as provided in Subsection ~~[(3)(d) or (e)]~~ (3)(b)(iii), a violation of Subsection (2) is a class A misdemeanor if the actor is 18 years old or older and the minor or the individual the actor believed to be a minor described in Subsection (2) is 16 years old or older, ~~[but younger than 18 years old,]~~ and the actor is less than seven years older than the minor or the individual the actor believed to be a minor at the time of the offense.
- (d) Except as provided in Subsection ~~[(3)(e)]~~ (3)(b)(ii), a violation of Subsection (2) is a class A misdemeanor if the actor is 16 years old or 17 years old.
- (e) ~~[A]~~ Except as provided in Subsection (3)(b)(ii), a violation of Subsection (2) is a class B misdemeanor if the actor is younger than 16 years old.

- (4)(a) This section does not apply to an Internet service provider, a provider of an electronic communications service as defined in 18 U.S.C. Sec. 2510, a telecommunications service, information service, or mobile service as defined in 47 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec. 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:
- (i) the distribution of pornographic material by the Internet service provider occurs only incidentally through the provider's function of:
 - (A) transmitting or routing data from one person to another person; or
 - (B) providing a connection between one person and another person;
 - (ii) the provider does not intentionally aid or abet in the distribution of the pornographic material; and
 - (iii) the provider does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute the pornographic material.
- (b) This section does not apply to a hosting company if:
- (i) the distribution of pornographic material by the hosting company occurs only incidentally through the hosting company's function of providing data storage space or data caching to a person;
 - (ii) the hosting company does not intentionally engage, aid, or abet in the distribution of the pornographic material; and
 - (iii) the hosting company does not knowingly receive from or through a person who distributes the pornographic material a fee greater than the fee generally charged by the provider, as a specific condition for permitting the person to distribute, store, or cache the pornographic material.
- (5) An Internet service provider is not negligent under this section if the Internet service provider complies with Section 76-5c-402.
- (6) It is an affirmative defense to a prosecution for a violation of this section if the violation arises from displaying or exhibiting an outer portion of material that the material is:
- (a) in a sealed opaque wrapper that covers at least the lower 2/3 of the material so that the lower 2/3 of the material is concealed from view;
 - (b) placed behind a blinder rack; or
 - (c)(i) displayed in an area from which a minor is physically excluded; and
 - (ii) the material cannot be viewed by the minor from an area where the minor is

allowed.

~~[(7) Subsections (3)(a) and (3)(b)(i) supersede Section 77-18-105.]~~

Section 6. Section **76-5c-205.2** is enacted to read:

76-5c-205.2 . Engaging in a performance that is harmful to minors while in the presence of a minor.

(1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) An actor commits engaging in a performance that is harmful to minors while in the presence of a minor if the actor:

(a) intentionally produces, performs, directs, or participates in a performance that is harmful to minors; and

(b) undertakes the action described in Subsection (2)(a) while:

(i) knowingly in the presence of a minor or an individual who the actor believes is a minor; or

(ii)(A) being reckless as to whether a minor is present or able to view the performance described in Subsection (2)(a); and

(B) a minor is present or able to view the performance described in Subsection (2)(a).

(3)(a) Except as provided in Subsection (3)(b)(iii), a violation of Subsection (2) is a second degree felony if the actor is 18 years old or older and has previously been convicted or adjudicated of a violation of Subsection (2) and is subject to:

(i) a minimum mandatory fine of not less than \$5,000; and

(ii) incarceration for a term of not less than one year, which may not be suspended.

(b) A violation of Subsection (2) is a third degree felony if:

(i) except as provided in Subsection (3)(c), the actor is 18 years old or older and is subject to:

(A) a minimum mandatory fine of not less than \$1,000; and

(B) incarceration for a term of not less than 14 days, which may not be suspended;

(ii) the actor is younger than 18 years old and has previously been convicted or adjudicated of a violation of Subsection (2); or

(iii)(A) the actor is 18 years old or older;

(B) the minor or the individual the actor believed to be a minor described in

Subsection (2) is 16 years old or older and the actor is less than seven years

older than the minor or the individual the actor believed to be a minor at the

time of the offense; and

(C) the actor has previously been convicted or adjudicated of a violation of Subsection (2).

(c) Except as provided in Subsection (3)(b)(iii), a violation of Subsection (2) is a class A misdemeanor if the actor is 18 years old or older and the minor or the individual the actor believed to be a minor described in Subsection (2) is 16 years old or older and the actor is less than seven years older than the minor or the individual who the actor believed to be a minor at the time of the offense.

(d) Except as provided in Subsection (3)(b)(ii), a violation of Subsection (2) is a class A misdemeanor if the actor is 16 years old or 17 years old.

(e) Except as provided in Subsection (3)(b)(ii), a violation of Subsection (2) is a class B misdemeanor if the actor is younger than 16 years old.

(4) It is an affirmative defense to a prosecution for a violation of this section if the conduct:

(a) occurs in an area from which a minor is physically excluded; and

(b) cannot be viewed by a minor from an area where the minor is allowed.

Section 7. Section **76-5c-206** is amended to read:

76-5c-206 . Aiding or abetting a minor in distributing material harmful to minors.

(1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) An actor commits aiding or abetting a minor in distributing material harmful to minors if:

(a) the actor is 18 years old or older; ~~[and]~~

(b) the actor knowingly solicits, requests, commands, encourages, or intentionally aids a minor to[:]

~~[(i)] intentionally distribute or offer to distribute, or exhibit or offer to exhibit, material harmful to minors to an individual; and~~

~~[(ii) intentionally produce, perform, or direct any performance, before an individual that is harmful to minors; or]~~

~~[(iii) intentionally participate in any performance, before an individual that is harmful to minors; and]~~

(c)(i) the minor described in Subsection (2)(b) knows or believes the individual described in ~~[Subsections (2)(b)(i) through (iii)]~~ Subsection (2)(b) is ~~[a]~~ another minor; or

(ii) the minor described in Subsection (2)(b):

(A) negligently fails to determine if the individual described in [Subsections

- 337 ~~(2)(b)(i) through (iii)]~~ Subsection (2)(b) is [a] another minor; and
- 338 (B) the individual described in Subsection (2)(b) is a minor.
- 339 (3) A violation of Subsection (2) is a third degree felony subject to:
- 340 (a) a minimum mandatory fine of not less than \$5,000, plus \$10 for each article
- 341 exhibited up to the maximum allowed by law; and
- 342 (b) incarceration~~[-without suspension of sentence;]~~ for a term of not less than one year,
- 343 which may not be suspended.
- 344 (4)(a) This section does not apply to an Internet service provider, a provider of an
- 345 electronic communications service as defined in 18 U.S.C. Sec. 2510, a
- 346 telecommunications service, information service, or mobile service as defined in 47
- 347 U.S.C. Sec. 153, including a commercial mobile service as defined in 47 U.S.C. Sec.
- 348 332(d), or a cable operator as defined in 47 U.S.C. Sec. 522, if:
- 349 (i) the distribution of pornographic material by the Internet service provider occurs
- 350 only incidentally through the provider's function of:
- 351 (A) transmitting or routing data from one person to another person; or
- 352 (B) providing a connection between one person and another person;
- 353 (ii) the provider does not intentionally aid or abet in the distribution of the
- 354 pornographic material; and
- 355 (iii) the provider does not knowingly receive from or through a person who
- 356 distributes the pornographic material a fee greater than the fee generally charged
- 357 by the provider, as a specific condition for permitting the person to distribute the
- 358 pornographic material.
- 359 (b) This section does not apply to a hosting company if:
- 360 (i) the distribution of pornographic material by the hosting company occurs only
- 361 incidentally through the hosting company's function of providing data storage
- 362 space or data caching to a person;
- 363 (ii) the hosting company does not intentionally engage, aid, or abet in the distribution
- 364 of the pornographic material; and
- 365 (iii) the hosting company does not knowingly receive from or through a person who
- 366 distributes the pornographic material a fee greater than the fee generally charged
- 367 by the provider, as a specific condition for permitting the person to distribute,
- 368 store, or cache the pornographic material.
- 369 (5) An Internet service provider is not negligent under this section if the Internet service
- 370 provider complies with Section 76-5c-402.

- (6) It is an affirmative defense to prosecution for a violation of this section if the violation arises from displaying or exhibiting an outer portion of material that the material is:
- (a) in a sealed opaque wrapper that covers at least the lower 2/3 of the material so that the lower 2/3 of the material is concealed from view;
 - (b) placed behind a blinder rack; or
 - (c)(i) displayed in an area from which a minor is physically excluded; and
 - (ii) the material cannot be viewed by the minor from an area where the minor is allowed.

[~~(7) Subsection (3) supersedes Section 77-18-105.~~]

Section 8. Section **76-5c-206.2** is enacted to read:

76-5c-206.2 . Aiding or abetting a minor to engage in a performance that is harmful to minors while in the presence of another minor.

- (1) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.
- (2) An actor commits aiding or abetting a minor to engage in a performance that is harmful to minors while in the presence of another minor if:
 - (a) the actor is 18 years old or older;
 - (b) the actor knowingly solicits, requests, commands, encourages, or intentionally aids a minor to intentionally produce, perform, direct, or participate in a performance that is harmful to minors;
 - (c) the minor undertakes the action described in Subsection (2)(b) while:
 - (i) knowingly in the presence of another minor or an individual who the minor believes is another minor; or
 - (ii)(A) being reckless as to whether another minor is present or able to view the performance described in Subsection (2)(b); and
 - (B) another minor is present or able to view the performance described in Subsection (2)(b).

- (3) A violation of Subsection (2) is a third degree felony subject to:

- (a) a minimum mandatory fine of not less than \$5,000; and
 - (b) incarceration for a term of not less than one year, which may not be suspended.

- (4) It is an affirmative defense to prosecution for a violation of this section if the conduct:
 - (a) occurs in an area from which a minor is physically excluded; and
 - (b) cannot be viewed by a minor from an area where the minor is allowed.

Section 9. Section **76-5c-208** is amended to read:

76-5c-208 . Creating, viewing, or accessing pornographic or indecent material on

school property.

(1)(a) As used in this section:

(i) "Description or depiction of illicit sex or sexual immorality" means the same as that term is defined in Section 76-5c-207.

(ii) "Nude or partially denuded figure" means the same as that term is defined in Section 76-5c-207.

(iii) "Pornographic or indecent material" means any material that:

(A) is harmful to minors;

(B) is pornographic;

(C) is a description of or depiction of illicit sex or sexual immorality; or

(D) contains a nude or partially denuded figure.

(iv) "School property" means property, including land and improvements, that a school district or charter school owns, leases, or occupies.

(b) Terms defined in Sections 76-1-101.5, 76-5c-101, and 76-5c-201 apply to this section.

(2) Under circumstances not amounting to an offense listed in Subsection (4), an actor commits creating, viewing, or accessing pornographic or indecent material on school property if the actor willfully or knowingly creates, views, or otherwise gains access to pornographic or indecent material while present on school property.

(3)(a) Except as provided in Subsection (3)(b), a violation of Subsection (2) is a class A misdemeanor if the actor is 18 years old or older.

(b) A violation of Subsection (2) is a class B misdemeanor if the actor is younger than 18 years old.

(4) The offenses referred to in Subsection (2) are:

(a) distributing pornographic material as described in Section 76-5c-202;

(b) unlawful pornographic performance as described in Section 76-5c-202.2;

~~[(b)]~~ (c) aiding or abetting a minor in distributing pornographic material as described in Section 76-5c-203;

(d) aiding or abetting a minor in an unlawful pornographic performance as described in Section 76-5c-203.2;

~~[(e)]~~ (e) inducing acceptance of pornographic material as described in Section 76-5c-204;

~~[(d)]~~ (f) distributing material harmful to minors as described in Section 76-5c-205;

(g) engaging in a performance that is harmful to minors while in the presence of a minor as described in Section 76-5c-205.2;

[~~(e)~~] (h) aiding or abetting a minor in distributing material harmful to minors as described in Section 76-5c-206; [~~or~~]

(i) aiding or abetting a minor to engage in a performance that is harmful to minors while in the presence of another minor as described in Section 76-5c-206.2; or
[~~(f)~~] (j) indecent public display in the presence of a minor as described in Section 76-5c-207.

(5) This section does not:

- (a) prohibit disciplinary action for actions that violate this section; or
- (b) apply to school or law enforcement personnel when the school or law enforcement personnel views or otherwise gains access to pornographic or indecent material while on school property for the limited purpose of:
 - (i) investigating a violation of this section; or
 - (ii) enforcing this section.

Section 10. Section **76-17-401** is amended to read:

76-17-401 . Definitions.

As used in this part:

- (1)(a) "Enterprise" means an individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and a union or group of individuals associated in fact although not a legal entity.
- (b) "Enterprise" includes illicit as well as licit entities.
- (2) "Pattern of unlawful activity" means engaging in conduct that constitutes the commission of at least three episodes of unlawful activity, which episodes are not isolated, but have the same or similar purposes, results, participants, victims, or methods of commission, or otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct and be related either to each other or to the enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful activity as defined by this part shall have occurred within five years of the commission of the next preceding act alleged as part of the pattern.
- (3) "Person" includes an individual or entity capable of holding a legal or beneficial interest in property, including state, county, and local governmental entities.
- (4) "Unlawful activity" means to directly engage in conduct or to solicit, request, command, encourage, or intentionally aid another person to engage in conduct that would constitute

- an offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act that would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by an authority or is classified as a misdemeanor or a felony:
- (a) an act prohibited by the criminal provisions under Title 13, Chapter 10, Unauthorized Recording Practices Act;
 - (b) an act prohibited by the criminal provisions under Title 19, Environmental Quality Code, Sections 19-1-101 through 19-7-109;
 - (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose of sale, trade, or other pecuniary gain under Title 23A, Wildlife Resources Act, or Section 23A-5-311;
 - (d) false claims for medical benefits, kickbacks, or other acts prohibited under Title 26B, Chapter 3, Part 11, Utah False Claims Act, Sections 26B-3-1101 through 26B-3-1112;
 - (e) an act prohibited by the criminal provisions under Title 32B, Chapter 4, Criminal Offenses and Procedure Act;
 - (f) unlawful marking of pistol or revolver under Section 53-5a-105;
 - (g) alteration of number or mark on pistol or revolver under Section 53-5a-106;
 - (h) an act prohibited by the criminal provisions under Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
 - (i) an act prohibited by the criminal provisions under Title 58, Chapter 37, Utah Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d, Clandestine Drug Lab Act;
 - (j) an act prohibited by the criminal provisions under Title 61, Chapter 1, Utah Uniform Securities Act;
 - (k) an act prohibited by the criminal provisions under Title 63G, Chapter 6a, Utah Procurement Code;
 - (l) assault under Section 76-5-102;
 - (m) aggravated assault under Section 76-5-103;
 - (n) a threat of terrorism under Section 76-5-107.3;
 - (o) a criminal homicide offense under Section 76-5-201;
 - (p) kidnapping under Section 76-5-301;
 - (q) aggravated kidnapping under Section 76-5-302;
 - (r) human trafficking for labor under Section 76-5-308;

- 507 (s) human trafficking for sexual exploitation under Section 76-5-308.1;
- 508 (t) human smuggling under Section 76-5-308.3;
- 509 (u) human trafficking of a child under Section 76-5-308.5;
- 510 (v) benefiting from trafficking and human smuggling under Section 76-5-309;
- 511 (w) aggravated human trafficking under Section 76-5-310;
- 512 (x) sexual exploitation of a minor under Section 76-5b-201;
- 513 (y) aggravated sexual exploitation of a minor under Section 76-5b-201.1;
- 514 (z) sexual extortion under Section 76-5b-204;
- 515 (aa) arson under Section 76-6-102;
- 516 (bb) aggravated arson under Section 76-6-103;
- 517 (cc) causing a catastrophe under Section 76-6-105;
- 518 (dd) burglary under Section 76-6-202;
- 519 (ee) aggravated burglary under Section 76-6-203;
- 520 (ff) burglary of a vehicle under Section 76-6-204;
- 521 (gg) manufacture or possession of an instrument for burglary or theft under Section
- 522 76-6-205;
- 523 (hh) robbery under Section 76-6-301;
- 524 (ii) aggravated robbery under Section 76-6-302;
- 525 (jj) theft under Section 76-6-404;
- 526 (kk) theft by deception under Section 76-6-405;
- 527 (ll) theft by extortion under Section 76-6-406;
- 528 (mm) receiving stolen property under Section 76-6-408;
- 529 (nn) theft of services under Section 76-6-409;
- 530 (oo) forgery under Section 76-6-501;
- 531 (pp) unlawful use of financial transaction card under Section 76-6-506.2;
- 532 (qq) unlawful acquisition, possession, or transfer of financial transaction card under
- 533 Section 76-6-506.3;
- 534 (rr) financial transaction card offenses under Section 76-6-506.6;
- 535 (ss) deceptive business practices under Section 76-6-507;
- 536 (tt) bribery or receiving bribe by person in the business of selection, appraisal, or
- 537 criticism of goods under Section 76-6-508;
- 538 (uu) bribery of a labor official under Section 76-6-509;
- 539 (vv) defrauding creditors under Section 76-6-511;
- 540 (ww) acceptance of deposit by insolvent financial institution under Section 76-6-512;

541 (xx) unlawful dealing with property by fiduciary under Section 76-6-513;
542 (yy) unlawful influence of a contest under Section 76-6-514;
543 (zz) making a false credit report under Section 76-6-517;
544 (aaa) criminal simulation under Section 76-6-518;
545 (bbb) criminal usury under Section 76-6-520;
546 (ccc) insurance fraud under Section 76-6-521;
547 (ddd) retail theft under Section 76-6-602;
548 (eee) computer crimes under Section 76-6-703;
549 (fff) identity fraud under Section 76-6-1102;
550 (ggg) mortgage fraud under Section 76-6-1203;
551 (hhh) sale of a child under Section 76-7-203;
552 (iii) bribery or offering a bribe under Section 76-8-103;
553 (jjj) threat to influence official or political action under Section 76-8-104;
554 (kkk) receiving bribe or bribery by public servant under Section 76-8-105;
555 (lll) receiving bribe for endorsement of person as a public servant under Section
556 76-8-106;
557 (mmm) bribery for endorsement of person as public servant under Section 76-8-106.1;
558 (nnn) official misconduct based on unauthorized act or failure of duty under Section
559 76-8-201;
560 (ooo) official misconduct concerning inside information under Section 76-8-202;
561 (ppp) obstruction of justice in a criminal investigation or proceeding under Section
562 76-8-306;
563 (qqq) acceptance of bribe or bribery to prevent criminal prosecution under Section
564 76-8-308;
565 (rrr) harboring or concealing offender who has escaped from official custody under
566 Section 76-8-309.2;
567 (sss) making a false or inconsistent material statement under Section 76-8-502;
568 (ttt) making a false or inconsistent statement under Section 76-8-503;
569 (uuu) making a written false statement under Section 76-8-504;
570 (vvv) tampering with a witness under Section 76-8-508;
571 (www) retaliation against a witness, victim, or informant under Section 76-8-508.3;
572 (xxx) receiving or soliciting a bribe as a witness under Section 76-8-508.7;
573 (yyy) extortion or bribery to dismiss a criminal proceeding under Section 76-8-509;
574 (zzz) tampering with evidence under Section 76-8-510.5;

575 (aaaa) falsification or alteration of a government record under Section 76-8-511, if the
576 record is a record described in Title 20A, Election Code, or Title 36, Chapter 11,
577 Lobbyist Disclosure and Regulation Act;

578 (bbbb) public assistance fraud by an applicant for public assistance under Section
579 76-8-1203.1;

580 (cccc) public assistance fraud by a recipient of public assistance under Section
581 76-8-1203.3;

582 (dddd) public assistance fraud by a provider under Section 76-8-1203.5;

583 (eeee) fraudulently misappropriating public assistance funds under Section 76-8-1203.7;

584 (ffff) false statement to obtain or increase unemployment compensation under Section
585 76-8-1301;

586 (gggg) false statement to prevent or reduce unemployment compensation or liability
587 under Section 76-8-1302;

588 (hhhh) unlawful failure to comply with Employment Security Act requirements under
589 Section 76-8-1303;

590 (iiii) unlawful use or disclosure of employment information under Section 76-8-1304;

591 (jjjj) intentionally or knowingly causing one animal to fight with another under
592 Subsection 76-13-202(2)(d) or (3), or Section 76-13-205 or 76-13-206 concerning
593 dog fighting;

594 (kkkk) soliciting, recruiting, enticing, or intimidating a minor to join a criminal street
595 gang under Section 76-9-803;

596 (llll) aggravated soliciting, recruiting, enticing, or intimidating a minor to join a criminal
597 street gang under Section 76-9-803.1;

598 (mmmm) intimidating a minor to remain in a criminal street gang under Section
599 76-9-803.2;

600 (nnnn) aggravated intimidating a minor to remain in a criminal street gang under Section
601 76-9-803.3;

602 (oooo) unlawful conduct involving an explosive, chemical, or incendiary device under
603 Section 76-15-210;

604 (pppp) unlawful conduct involving an explosive, chemical, or incendiary part under
605 Section 76-15-211;

606 (qqqq) unlawful delivery or mailing of an explosive, chemical, or incendiary device
607 under Section 76-15-209;

608 (rrrr) forging or counterfeiting trademarks, trade name, or trade device under Section

609 76-16-302;
 610 (ssss) selling goods under counterfeited trademark, trade name, or trade devices under
 611 Section 76-16-303;
 612 (tttt) sales in containers bearing registered trademark of substituted articles under
 613 Section 76-16-304;
 614 (uuuu) selling or dealing with article bearing registered trademark or service mark with
 615 intent to defraud under Section 76-16-306;
 616 (vvvv) participating in gambling under Section 76-9-1402;
 617 (www) permitting gambling under Section 76-9-1403;
 618 (xxxx) online gambling prohibition under Section 76-9-1404;
 619 (yyyy) gambling promotion under Section 76-9-1405;
 620 (zzzz) gambling fraud under Section 76-9-1406;
 621 (aaaaa) possessing a gambling device or record under Section 76-9-1407;
 622 (bbbbb) obtaining a benefit from a confidence game under Section 76-9-1410;
 623 (ccccc) distributing pornographic material under Section 76-5c-202;
 624 (ddddd) unlawful pornographic performance under Section 76-5c-202.2;
 625 [~~(dddd)~~] (eeee) aiding or abetting a minor in distributing pornographic material under
 626 Section 76-5c-203;
 627 (fffff) aiding or abetting a minor in an unlawful pornographic performance under
 628 Section 76-5c-203.2;
 629 [~~(eeee)~~] (ggggg) inducing acceptance of pornographic material under Section 76-5c-204;
 630 [~~(ffff)~~] (hhhhh) distributing material harmful to minors under Section 76-5c-205;
 631 (iiiii) engaging in a performance that is harmful to minors while in the presence of a
 632 minor under Section 76-5c-205.2;
 633 [~~(gggg)~~] (jjjjj) aiding or abetting a minor in distributing material harmful to minors
 634 under Section 76-5c-206;
 635 (kkkkk) aiding or abetting a minor to engage in a performance that is harmful to minors
 636 while in the presence of another minor under Section 76-5c-206.2;
 637 [~~(hhhh)~~] (lllll) distribution of a pornographic file for exhibition under Section 76-5c-305;
 638 [~~(iiii)~~] (mmmmm) indecent public display in the presence of a minor under Section
 639 76-5c-207;
 640 [~~(jjjj)~~] (nnnnn) engaging in prostitution under Section 76-5d-202;
 641 [~~(kkkk)~~] (oooo) aiding prostitution under Section 76-5d-206;
 642 [~~(HHH)~~] (ppppp) exploiting prostitution under Section 76-5d-207;

[(mmmmmm)] (qqqqq) aggravated exploitation of prostitution under Section 76-5d-208;
 [(nnnnn)] (rrrrr) communications fraud under Section 76-6-525;
 [(ooooo)] (sssss) possession of a dangerous weapon with criminal intent under Section
 76-11-208;
 [(ppppp)] (ttttt) an act prohibited by the criminal provisions of Chapter 9, Part 16, Money
 Laundering and Currency Transaction Reporting;
 [(qqqqq)] (uuuuu) vehicle compartment for contraband under Section 76-9-1902 or
 76-9-1903;
 [(rrrrr)] (vvvvv) an act prohibited by the criminal provisions of the laws governing
 taxation in this state; or
 [(sssss)] (wwwww) an act illegal under the laws of the United States and enumerated in
 18 U.S.C. Secs. 1961(1)(B), (C), and (D).

Section 11. Section **76-17-403** is amended to read:

76-17-403 . Remedies of person injured by a pattern of unlawful activity --
Double damages -- Costs, including attorney fees -- Arbitration -- Agency -- Burden of
proof -- Actions by attorney general or county attorney -- Dismissal -- Statute of
limitations -- Authorized orders of a court.

(1)(a) A person injured in the person's person, business, or property by a person engaged in conduct forbidden by Section 76-17-407 may bring an action in a court with jurisdiction under Title 78A, Judiciary and Judicial Administration, to recover twice the damages that the person sustains, regardless of whether:

- (i) the injury is separate or distinct from the injury suffered as a result of the acts or conduct constituting the pattern of unlawful conduct alleged as part of the cause of action; or
- (ii) the conduct has been adjudged criminal by a court of the state or of the United States.

(2) A party who prevails on a cause of action brought under this section recovers the cost of the suit, including reasonable attorney fees.

(3) All actions arising under this section that are grounded in fraud are subject to arbitration under Title 78B, Chapter 11, Utah Uniform Arbitration Act.

(4)(a) In all actions under this section, a principal is liable for actual damages for harm caused by an agent acting within the scope of either the agent's employment or apparent authority.

(b) A principal is liable for double damages only if the pattern of unlawful activity

alleged and proven as part of the cause of action was authorized, solicited, requested, commanded, undertaken, performed, or recklessly tolerated by the board of directors or a high managerial agent acting within the scope of the agent's employment.

(5) In all actions arising under this section, the burden of proof is clear and convincing evidence.

(6) The attorney general, county attorney, or, if within a prosecution district, the district attorney may maintain an action under this section on behalf of the state, the county, or any person injured by a person engaged in conduct forbidden by Section 76-17-407, to prevent, restrain, or remedy injury as defined in this section and may recover the damages and costs allowed by this section.

(7) In all actions under this section, the elements of each claim or cause of action shall be stated with particularity against each defendant.

(8) If an action, claim, or counterclaim brought or asserted by a private party under this section is dismissed before trial or disposed of on summary judgment, or if it is determined at trial that there is no liability, the prevailing party shall recover from the party who brought the action or asserted the claim or counterclaim the amount of the prevailing party's reasonable expenses incurred because of the defense against the action, claim, or counterclaim, including a reasonable attorney fee.

(9)(a) An action or proceeding brought under this section shall be commenced within three years after the conduct prohibited by Section 76-17-407 terminates or the cause of action accrues, whichever is later.

(b) Subsection (9)(a) supersedes any limitation to the contrary.

(10)(a) In any action brought under this section, the court may prevent, restrain, or remedy injury as defined by this section by issuing appropriate orders after making provisions for the rights of innocent persons.

(b) Before liability is determined in any action brought under this section, the court may:

(i) issue restraining orders and injunctions;

(ii) require satisfactory performance bonds or any other bond the court considers appropriate and necessary in connection with any property or requirement imposed upon a party by the court; and

(iii) enter any other order the court considers necessary and proper.

(c) After a determination of liability, the court may, in addition to granting the relief allowed in Subsection (1), do any one or all of the following:

(i) order a person to divest the person's self of any interest in or any control, direct or

- indirect, of an enterprise;
- (ii) impose reasonable restrictions on the future activities or investments of a person, including prohibiting a person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or
- (iii) order the dissolution or reorganization of an enterprise.
- (d)(i) However, if an action is brought to obtain any relief provided by this section, and if the conduct prohibited by Section 76-17-407 has for its pattern of unlawful activity acts or conduct illegal under Section 76-5c-202, 76-5c-202.2, 76-5c-203, 76-5c-203.2, 76-5c-204, 76-5c-205, 76-5c-205.2, 76-5c-206, 76-5c-206.2, or 76-5c-305, the court may not enter an order that would amount to a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States, or Article I, Sec. 15 of the Utah Constitution.
- (ii) The court shall, upon the request of an affected party, and upon the notice to all parties, before the issuance of an order provided for in this subsection, and at any later time, hold hearings as necessary to determine whether any materials at issue are obscene or pornographic and to determine if there is probable cause to believe that any act or conduct alleged violates Section 76-5c-202, 76-5c-202.2, 76-5c-203, 76-5c-203.2, 76-5c-204, 76-5c-205, 76-5c-205.2, 76-5c-206, 76-5c-206.2, or 76-5c-305.
- (iii) In making the court's findings, the court shall be guided by the same considerations required of a court making similar findings in criminal cases brought under Section 76-5c-202, 76-5c-202.2, 76-5c-203, 76-5c-203.2, 76-5c-204, 76-5c-205, 76-5c-205.2, 76-5c-206, 76-5c-206.2, or 76-5c-305, including, but not limited to, the definitions in Sections 76-5c-101 and 76-5c-301, and the exemptions in Section 76-5c-302.
- Section 12. Section **76-17-407** is amended to read:
- 76-17-407 . Prohibited conduct concerning a pattern of unlawful activity.**
- (1)(a) As used in this section, "net proceeds" of a violation of this section means property acquired as a result of the violation minus the direct costs of acquiring the property.
- (b) Terms defined in Sections 76-1-101.5, 76-17-101, and 76-17-401 apply to this section.
- (2) An actor commits prohibited conduct concerning a pattern of unlawful activity if the

actor:

- (a)(i) has received proceeds derived, whether directly or indirectly, from a pattern of unlawful activity in which the actor has participated as a principal; and
- (ii) uses or invests, directly or indirectly, any part of the income described in Subsection (2)(a)(i), or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of an interest in, or the establishment or operation of, an enterprise;
- (b) acquires or maintains, directly or indirectly, through a pattern of unlawful activity, an interest in or control of an enterprise;
- (c)(i) is employed by or associated with an enterprise; and
- (ii) conducts or participates, whether directly or indirectly, in the conduct of the enterprise's affairs through a pattern of unlawful activity; or
- (d) conspires to violate Subsection (2)(a), (b), or (c).

(3) A violation of Subsection (2) is a second degree felony.

(4) In addition to penalties prescribed by law, the court may order an actor to pay to the state, if the attorney general brought the action, or to the county, if the county attorney or district attorney brought the action, the costs of investigating and prosecuting the offense and the costs of securing the forfeitures provided for in this section.

(5) In lieu of a fine otherwise authorized by law for a violation of this section, an actor who derives net proceeds from a conduct prohibited by this section may be fined not more than twice the amount of the net proceeds.

(6) Upon a conviction for a violation of this section, and in addition to a penalty prescribed by law, the court may do any or all of the following:

- (a) order restitution to any victim or rightful owner of property obtained, directly or indirectly, from:
 - (i) the conduct constituting the pattern of unlawful activity; or
 - (ii) any act or conduct constituting the pattern of unlawful activity that is proven as part of the violation of this section;
- (b) order the actor to divest the actor of any interest in or any control, direct or indirect, of an enterprise;
- (c) impose reasonable restrictions on the future activities or investments of any person, including prohibiting the person from engaging in the same type of endeavor as the enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United States permit; or

(d) order the dissolution or reorganization of an enterprise.

- (7) If a violation of this section is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-5c-202, 76-5c-202.2, 76-5c-203, 76-5c-203.2, 76-5c-204, 76-5c-205, 76-5c-205.2, 76-5c-206, 76-5c-206.2, or 76-5c-305, the court may not enter an order that would amount to a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15.

Section 13. Section **77-11b-102** is amended to read:

77-11b-102 . Property subject to forfeiture.

- (1)(a) Except as provided in Subsection (2), (3), (4), or (5), an agency may seek to forfeit:
- (i) seized property that was used to facilitate the commission of an offense that is a violation of federal or state law; or
 - (ii) seized proceeds.
- (b) An agency, or the prosecuting attorney, may not forfeit the seized property of an innocent owner or an interest holder.
- (2) If seized property is used to facilitate an offense that is a violation of Section 76-5c-202, 76-5c-202.2, 76-5c-203, 76-5c-203.2, 76-5c-204, 76-5c-205, 76-5c-205.2, 76-5c-206, 76-5c-206.2, or 76-5c-305, an agency may not forfeit the property if the forfeiture would constitute a prior restraint on the exercise of an affected party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15, or would otherwise unlawfully interfere with the exercise of the party's rights under the First Amendment to the Constitution of the United States or Utah Constitution, Article I, Section 15.
- (3) If a motor vehicle is used in an offense that is a violation of Section 41-6a-502, 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1), Subsection 76-5-102.1(2)(b), or Section 76-5-207, an agency may not seek forfeiture of the motor vehicle, unless:
- (a) the operator of the vehicle has previously been convicted of an offense committed after May 12, 2009, that is:
 - (i) a felony driving under the influence violation under Section 41-6a-502 or Subsection 76-5-102.1(2)(a);
 - (ii) a felony violation under Subsection 76-5-102.1(2)(b);
 - (iii) a violation under Section 76-5-207; or

- 813 (iv) operating a motor vehicle with any amount of a controlled substance in an
814 individual's body and causing serious bodily injury or death, as codified before
815 May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection
816 58-37-8(2)(g); or
- 817 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or
818 disqualified license and:
- 819 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)
820 was imposed because of a violation under:
- 821 (A) Section 41-6a-502;
822 (B) Section 41-6a-517;
823 (C) a local ordinance that complies with the requirements of Subsection
824 41-6a-510(1);
825 (D) Section 41-6a-520.1;
826 (E) operating a motor vehicle with any amount of a controlled substance in an
827 individual's body and causing serious bodily injury or death, as codified before
828 May 4, 2022, Laws of Utah 2021, Chapter 236, Section 1, Subsection
829 58-37-8(2)(g);
830 (F) Section 76-5-102.1;
831 (G) Section 76-5-207; or
832 (H) a criminal prohibition as a result of a plea bargain after having been originally
833 charged with violating one or more of the sections or ordinances described in
834 Subsections (3)(b)(i)(A) through (G); or
- 835 (ii) the denial, suspension, revocation, or disqualification described in Subsection
836 (3)(b)(i):
- 837 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,
838 revocation, or disqualification; and
839 (B) the original denial, suspension, revocation, or disqualification was imposed
840 because of a violation described in Subsection (3)(b)(i).
- 841 (4) If a peace officer seizes property incident to an arrest solely for possession of a
842 controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection
843 58-37-8(2)(b)(i), an agency may not seek to forfeit the property that was seized in
844 accordance with the arrest.
- 845 (5) If a peace officer seizes an individual's firearm as the result of an offense under Section
846 76-11-218, an agency may not seek to forfeit the individual's firearm if the individual

may lawfully possess the firearm.

Section 14. Section **77-22-2.5** is amended to read:

77-22-2.5 . Court orders for criminal investigations for records concerning an electronic communications system or service or remote computing service -- Content -- Fee for providing information.

(1) As used in this section:

- (a)(i) "Electronic communication" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photooptical system.
- (ii) "Electronic communication" does not include:
 - (A) a wire or oral communication;
 - (B) a communication made through a tone-only paging device;
 - (C) a communication from a tracking device; or
 - (D) electronic funds transfer information stored by a financial institution in a communications system used for the electronic storage and transfer of funds.
- (b) "Electronic communications service" means a service which provides for users the ability to send or receive wire or electronic communications.
- (c) "Electronic communications system" means a wire, radio, electromagnetic, photooptical, or photoelectronic facilities for the transmission of wire or electronic communications, and a computer facilities or related electronic equipment for the electronic storage of the communication.
- (d) "Internet service provider" means the same as that term is defined in Section 76-5c-401.
- (e) "Prosecutor" means the same as that term is defined in Section 77-22-4.5.
- (f) "Remote computing service" means the provision to the public of computer storage or processing services by means of an electronic communications system.
- (g)(i) "Sexual offense against a minor" means:
 - (A) sexual exploitation of a minor or attempted sexual exploitation of a minor in violation of Section 76-5b-201;
 - (B) aggravated sexual exploitation of a minor or attempted aggravated sexual exploitation of a minor in violation of Section 76-5b-201.1;
 - (C) a sexual offense or attempted sexual offense committed against a minor in violation of Title 76, Chapter 5, Part 4, Sexual Offenses;
 - (D) dealing in or attempting to deal in material or performances harmful to a

- 881 minor in violation of Section 76-5c-205~~[-or]~~ , 76-5c-205.2, 76-5c-206, or
882 76-5c-206.2;
- 883 (E) human trafficking of a child in violation of Section 76-5-308.5; or
884 (F) aggravated sexual extortion of a child in violation of Section 76-5b-204.
- 885 (ii) "Sexual offense against a minor" does not include an offense described in Section
886 76-5-418, 76-5-419, or 76-5-420.
- 887 (2) When a law enforcement agency is investigating a sexual offense against a minor, an
888 offense of stalking under Section 76-5-106.5, or an offense of child kidnapping under
889 Section 76-5-301.1, and has reasonable suspicion that an electronic communications
890 system or service or remote computing service has been used in the commission of a
891 criminal offense, a law enforcement agent shall:
- 892 (a) articulate specific facts showing reasonable grounds to believe that the records or
893 other information sought, as designated in Subsections (2)(c)(i) through (v), are
894 relevant and material to an ongoing investigation;
- 895 (b) present the request to a prosecutor for review and authorization to proceed; and
896 (c) submit the request to a magistrate for a court order, consistent with 18 U.S.C. Sec.
897 2703 and 18 U.S.C. Sec. 2702, to the electronic communications system or service or
898 remote computing service provider that owns or controls the Internet protocol
899 address, websites, email address, or service to a specific telephone number, requiring
900 the production of the following information, if available, upon providing in the court
901 order the Internet protocol address, email address, telephone number, or other
902 identifier, and the dates and times the address, telephone number, or other identifier
903 is suspected of being used in the commission of the offense:
- 904 (i) names of subscribers, service customers, and users;
905 (ii) addresses of subscribers, service customers, and users;
906 (iii) records of session times and durations;
907 (iv) length of service, including the start date and types of service utilized; and
908 (v) telephone or other instrument subscriber numbers or other subscriber identifiers,
909 including a temporarily assigned network address.
- 910 (3) A court order issued under this section shall state that the electronic communications
911 system or service or remote computing service provider shall produce a record under
912 Subsections (2)(c)(i) through (v) that is reasonably relevant to the investigation of the
913 suspected criminal activity or offense as described in the court order.
- 914 (4)(a) An electronic communications system or service or remote computing service

provider that provides information in response to a court order issued under this section may charge a fee, not to exceed the actual cost, for providing the information.

(b) The law enforcement agency conducting the investigation shall pay the fee.

(5) The electronic communications system or service or remote computing service provider served with or responding to the court order may not disclose the court order to the account holder identified [~~pursuant to~~] in accordance with the court order for a period of 90 days.

(6) If the electronic communications system or service or remote computing service provider served with the court order does not own or control the Internet protocol address, websites, or email address, or provide service for the telephone number that is the subject of the court order, the provider shall notify the investigating law enforcement agency that the provider does not have the information.

(7) There is no cause of action against a provider or wire or electronic communication service, or the provider or service's officers, employees, agents, or other specified persons, for providing information, facilities, or assistance in accordance with the terms of the court order issued under this section or statutory authorization.

(8)(a) A court order issued under this section is subject to the provisions of Title 77, Chapter 23b, Access to Electronic Communications.

(b) Rights and remedies for providers and subscribers under Title 77, Chapter 23b, Access to Electronic Communications, apply to providers and subscribers subject to a court order issued under this section.

(9) A prosecutorial agency shall annually on or before February 15 report to the Commission on Criminal and Juvenile Justice:

(a) the number of requests for court orders authorized by the prosecutorial agency;

(b) the number of orders issued by the court and the criminal offense, [~~pursuant to~~] in accordance with Subsection (2), each order was used to investigate; and

(c) if the court order led to criminal charges being filed, the type and number of offenses charged.

Section 15. Section **78B-6-2105** is amended to read:

78B-6-2105 . Civil action for enforcement -- Penalties.

(1) A person who distributes or otherwise provides pornographic material to consumers may not distribute any obscene material or performance as defined in Section 76-5c-101 without first giving a clear and reasonable warning of the harmful impact of exposing minors to the material or performance.

- (2) The warning of the harm shall be prominently displayed in the following form:
- STATE OF UTAH WARNING
- Exposing minors to obscene material may damage or negatively impact minors.
- (3)(a) For print publications created after May 12, 2020, the warning in Subsection (2) shall be placed in clear, readable type on the cover of each publication which includes material as defined in Section 76-5c-101.
- (b) For digital publications:
- (i) the warning in Subsection (2) shall be displayed in searchable text format and for at least five seconds ~~[prior to]~~ before the display of any video or each image which includes material as defined in Section 76-5c-101; or
- (ii) if the website complies with Subsection 78B-6-2103(3), it is not required to display the warning in Subsection (2) ~~[prior to]~~ before each video or image contained on the website.
- (4) A person who violates this section shall be liable for a civil penalty not to exceed \$2,500 per violation, plus filing fees and attorney fees, in addition to any other penalty established by law, and enjoined from further violations.
- (5) The civil penalty may be assessed and recovered in a civil action brought in any court of competent jurisdiction.
- (6) Each of the following violations shall create a separate liability per violation:
- (a) the sale or display of potentially harmful content without the warning required in Subsection (2), in accordance with Subsection (3); or
- (b) the absence of the following searchable text within the website's metadata -
utahobscenitywarning.
- (7) The determination by a court as to whether a person is distributing material the state considers to be obscene material or performance as defined in Section 78B-6-1203 shall be proven by clear and convincing evidence. All other elements of proof shall be proven by a preponderance of the evidence.
- (8) The court, in ordering payment, shall specify each amount for the civil penalty, filing fees, and attorney fees.
- (9) In assessing the amount of a civil penalty for a violation of this chapter, the court shall consider all of the following:
- (a) the nature and extent of the violation;
- (b) the number and severity of the violations;
- (c) the economic effect of the penalty on the violator;

- 983 (d) whether the violator took good faith measures to comply with this chapter and when
984 those measures were taken;
- 985 (e) the willfulness of the violator's misconduct;
- 986 (f) the deterrent effect that the imposition of the penalty would have on both the violator
987 and the regulated community as a whole; and
- 988 (g) any other factor that the court determines justice requires.

989 (10) Actions [~~pursuant to~~] in accordance with this section may be brought by the attorney
990 general's office in the name of the people of the state or by a private person in
991 accordance with Subsection (11).

992 (11) A private person may bring an action in the public interest [~~pursuant to~~] in accordance
993 with this section if:

- 994 (a) the person has served notice of an alleged violation of Section 78B-6-2103 on the
995 alleged violator and the attorney general's office;
- 996 (b) the attorney general's office has not provided a letter to the noticing party within 60
997 days of receipt of the notice of an alleged violation indicating that:
- 998 (i) an action is currently being pursued or will be pursued by the attorney general's
999 office regarding the violation; or
- 1000 (ii) the attorney general believes that there is no merit to the action; and
- 1001 (c) the alleged violator has not responded to the notice of alleged violation or returned
1002 the proof of compliance form provided in Subsection (17).

1003 (12) If a lawsuit is commenced, the plaintiff may include additional violations in the claim
1004 that are discovered through the discovery process.

1005 (13) Notice of the alleged violation shall be executed by the attorney for the noticing party,
1006 or by the noticing party, if the noticing party is not represented by an attorney, and
1007 include a notice of alleged violation. The notice of alleged violation shall:

- 1008 (a) state that the person executing the notice believes that there is a violation; and
1009 (b) provide factual information sufficient to establish the basis for the alleged violation.

1010 (14) A person who serves a notice of alleged violation identified in Subsection (13) shall
1011 complete and provide to the alleged violator at the time the notice of alleged violation is
1012 served, a notice of special compliance procedure and proof of compliance form [
1013 ~~pursuant to~~] in accordance with Subsection (17). The person may file an action against
1014 the alleged violator, or recover from the alleged violator if:

- 1015 (a) the notice of alleged violation alleges that the alleged violator failed to provide a
1016 clear and reasonable warning as required under Subsection (1); and

(b) within 14 days after receipt of the notice of alleged violation, the alleged violator has not:

(i) corrected the alleged violation and all similar violations known to the alleged violator;

(ii) agreed to pay a penalty for the alleged violation in the amount of \$500 per violation; and

(iii) notified, in writing, the noticing party that the violation has been corrected.

(15) The written notice required in Subsection (14)(b)(iii) shall be the notice of special compliance procedure and proof of compliance form specified in Subsection (17). The alleged violator shall deliver the civil penalty to the noticing party within 30 days of receipt of the notice of alleged violation.

(16) The attorney general shall review the notice of alleged violation and may confer with the noticing party. If the attorney general believes there is no merit to the action, the attorney general shall, within 45 days of receipt of the notice of alleged violation, provide a letter to the noticing party and the alleged violator stating that the attorney general believes there is no merit to the action.

(17) The notice required to be provided to an alleged violator [~~pursuant to~~] in accordance with Subsection (14) shall be presented as follows:

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

SPECIAL COMPLIANCE PROCEDURE

PROOF OF COMPLIANCE

You are receiving this form because the Noticing Party listed above has alleged that you are in violation of Utah Code Section 78B-6-2103.

The Noticing Party may bring legal proceedings against you for the alleged violation checked below if:

(1) you have not actually taken the corrective steps that you have certified in this form;

(2) the Noticing Party has not received this form at the address shown above, accurately completed by you, postmarked within 14 days of your receiving this notice; and

(3) the Noticing Party does not receive the required \$500 penalty payment for each violation alleged from you at the address shown above postmarked within 30 days of your receiving this notice.

PART 1: TO BE COMPLETED BY THE NOTICING PARTY OR ATTORNEY FOR
THE NOTICING PARTY

This notice of alleged violation is for failure to warn against an exposure to minors of materials considered harmful to minors. (provide complete description of violation, including when and where observed)

Date:

Name of Noticing Party or attorney for Noticing Party:

Address:

Phone number:

PART 2: TO BE COMPLETED BY THE ALLEGED VIOLATOR OR AUTHORIZED
REPRESENTATIVE

Certification of Compliance

Accurate completion of this form will demonstrate that you are now in compliance with Utah Code Section 78B-6-2103, for the alleged violation listed above. You must complete and submit the form below to the Noticing Party at the address shown above, postmarked within 14 days of you receiving this notice.

I hereby agree to pay, within 30 days of receipt of this notice, a penalty of \$500 for each violation alleged to the Noticing Party only and certify that I have complied with by (check only one of the following):

☐ Posting a warning or warnings, and attaching a copy of that warning and a photograph accurately showing its placement on the print or digital publication.

☐ Eliminating the alleged exposure, and attaching a statement accurately describing how the alleged exposure has been eliminated.

CERTIFICATION

My statements on this form, and on any attachments to it, are true, complete, and correct to the best of my knowledge and belief and are made in good faith. I have carefully read the instructions to complete this form. I understand that if I make a false statement on this form, I may be subject to additional penalties under Utah Code Sections 76-5c-205[-and] , 76-5c-205.2, 76-5c-206, and 76-5c-206.2.

Signature of alleged violator or authorized representative:

Date:

Name and title of signatory:

(18) An alleged violator may satisfy the conditions set forth in Subsection (17) only one time for a specific violation.

(19) Notwithstanding Subsection (17), the attorney general may file an action [~~pursuant to~~] in accordance with Subsection (10) against an alleged violator. In any action, the amount of any civil penalty for a violation shall be reduced to reflect any payment made by the alleged violator to a private person in accordance with Subsection (17) for the same alleged violation.

(20) Payments shall be made in accordance with this section.

(a) A civil penalty ordered by the court shall be paid to the plaintiff as directed by the court.

(b) A penalty paid in accordance with the special compliance procedure in Subsection (17) shall be made directly to the noticing party.

(21) The Utah Office for Victims of Crime shall receive 50% of any penalty paid in accordance with this section. Funds received shall be deposited into the Crime Victim Reparations Fund created in Section 63M-7-526. The penalty amount upon which the 50% is calculated may not include attorney fees or costs awarded by the court.

(a) If the penalty is paid to a noticing party in accordance with Subsection (17), the noticing party shall remit the required amount along with a copy of the Special Compliance Procedure document.

(b) If a civil penalty is ordered by the court, the plaintiff shall remit the required amount along with a copy of the court order.

(22) The attorney general's office shall provide to the Utah Office for Victims of Crime a copy of all notices of alleged violations to which the attorney general's office did not respond with a letter of no merit in accordance with Subsection (16).

(23) The court shall provide to the Utah Office for Victims of Crime a copy of the court's order for payment.

(24) The Utah Office for Victims of Crime shall:

(a) maintain a record of documents and payments submitted [~~pursuant to~~] in accordance with Subsections (21), (22), and (23);

(b) create and provide to the Legislature in odd-numbered years beginning November 2021, a report containing the following for the previous two years:

(i) the number of notices of alleged violations received from the attorney general's office;

(ii) the number of court orders received; and

(iii) the total amount received and deposited into the Crime Victim Reparations Fund.

(25) This section does not apply to:

1119 (a) a person portrayed in obscene or pornographic material that is created, duplicated, or
1120 distributed without the person's knowledge or consent; or

1121 (b) a person who is coerced or blackmailed into distributing obscene or pornographic
1122 material.

1123 (26) Beginning May 1, 2025, and at each five-year interval, the dollar amount of the civil
1124 penalty provided in Subsection (4) shall be adjusted by the Judicial Council based on the
1125 change in the annual Consumer Price Index for the most recent five-year period ending
1126 on December 31 of the previous year, and rounded to the nearest five dollars. The
1127 attorney general shall publish the dollar amount of the civil penalty together with the
1128 date of the next scheduled adjustment.

1129 Section 16. **Effective Date.**

1130 This bill takes effect on May 6, 2026.