

Part 16 Pattern of Unlawful Activity Act

76-10-1601 Short title.

This act is the "Pattern of Unlawful Activity Act."

Amended by Chapter 238, 1987 General Session

76-10-1602 Definitions.

As used in this part:

- (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation, business trust, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity, and includes illicit as well as licit entities.
- (2) "Pattern of unlawful activity" means engaging in conduct which 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 any 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 which would constitute any offense described by the following crimes or categories of crimes, or to attempt or conspire to engage in an act which would constitute any of those offenses, regardless of whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor or a felony:
 - (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized Recording Practices Act;
 - (b) any act prohibited by the criminal provisions of 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, in violation of Title 23, Wildlife Resources Code of Utah, or Section 23-20-4;
 - (d) false claims for medical benefits, kickbacks, and any other act prohibited by Title 26, Chapter 20, Utah False Claims Act, Sections 26-20-1 through 26-20-12;
 - (e) any act prohibited by the criminal provisions of Title 32B, Chapter 4, Criminal Offenses and Procedure Act;
 - (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform Land Sales Practices Act;
 - (g) any act prohibited by the criminal provisions of 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;

- (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform Securities Act;
- (i) any act prohibited by the criminal provisions of Title 63G, Chapter 6a, Utah Procurement Code;
- (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- (k) a threat of terrorism, Section 76-5-107.3;
- (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- (n) human trafficking, human smuggling, or aggravated human trafficking, Sections 76-5-308, 76-5-309, and 76-5-310;
- (o) sexual exploitation of a minor, Section 76-5b-201;
- (p) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- (q) causing a catastrophe, Section 76-6-105;
- (r) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- (s) burglary of a vehicle, Section 76-6-204;
- (t) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- (u) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- (v) theft, Section 76-6-404;
- (w) theft by deception, Section 76-6-405;
- (x) theft by extortion, Section 76-6-406;
- (y) receiving stolen property, Section 76-6-408;
- (z) theft of services, Section 76-6-409;
- (aa) forgery, Section 76-6-501;
- (bb) fraudulent use of a credit card, Sections 76-6-506.2, 76-6-506.3, 76-6-506.5, and 76-6-506.6;
- (cc) deceptive business practices, Section 76-6-507;
- (dd) bribery or receiving bribe by person in the business of selection, appraisal, or criticism of goods, Section 76-6-508;
- (ee) bribery of a labor official, Section 76-6-509;
- (ff) defrauding creditors, Section 76-6-511;
- (gg) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- (hh) unlawful dealing with property by fiduciary, Section 76-6-513;
- (ii) bribery or threat to influence contest, Section 76-6-514;
- (jj) making a false credit report, Section 76-6-517;
- (kk) criminal simulation, Section 76-6-518;
- (ll) criminal usury, Section 76-6-520;
- (mm) fraudulent insurance act, Section 76-6-521;
- (nn) retail theft, Section 76-6-602;
- (oo) computer crimes, Section 76-6-703;
- (pp) identity fraud, Section 76-6-1102;
- (qq) mortgage fraud, Section 76-6-1203;
- (rr) sale of a child, Section 76-7-203;
- (ss) bribery to influence official or political actions, Section 76-8-103;
- (tt) threats to influence official or political action, Section 76-8-104;
- (uu) receiving bribe or bribery by public servant, Section 76-8-105;
- (vv) receiving bribe or bribery for endorsement of person as public servant, Section 76-8-106;
- (ww) official misconduct, Sections 76-8-201 and 76-8-202;
- (xx) obstruction of justice, Section 76-8-306;

- (yy) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- (zz) false or inconsistent material statements, Section 76-8-502;
- (aaa) false or inconsistent statements, Section 76-8-503;
- (bbb) written false statements, Section 76-8-504;
- (ccc) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- (ddd) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- (eee) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- (fff) tampering with evidence, Section 76-8-510.5;
- (ggg) falsification or alteration of government record, Section 76-8-511, if the record is a record described in Title 20A, Election Code, or Title 36, Chapter 11, Lobbyist Disclosure and Regulation Act;
- (hhh) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or 76-8-1205;
- (iii) unemployment insurance fraud, Section 76-8-1301;
- (jjj) intentionally or knowingly causing one animal to fight with another, Subsection 76-9-301(2)(d) or (e), or Section 76-9-301.1;
- (kkk) possession, use, or removal of explosives, chemical, or incendiary devices or parts, Section 76-10-306;
- (lll) delivery to common carrier, mailing, or placement on premises of an incendiary device, Section 76-10-307;
- (mmm) possession of a deadly weapon with intent to assault, Section 76-10-507;
- (nnn) unlawful marking of pistol or revolver, Section 76-10-521;
- (ooo) alteration of number or mark on pistol or revolver, Section 76-10-522;
- (ppp) forging or counterfeiting trademarks, trade name, or trade device, Section 76-10-1002;
- (qqq) selling goods under counterfeited trademark, trade name, or trade devices, Section 76-10-1003;
- (rrr) sales in containers bearing registered trademark of substituted articles, Section 76-10-1004;
- (sss) selling or dealing with article bearing registered trademark or service mark with intent to defraud, Section 76-10-1006;
- (ttt) gambling, Section 76-10-1102;
- (uuu) gambling fraud, Section 76-10-1103;
- (vvv) gambling promotion, Section 76-10-1104;
- (www) possessing a gambling device or record, Section 76-10-1105;
- (xxx) confidence game, Section 76-10-1109;
- (yyy) distributing pornographic material, Section 76-10-1204;
- (zzz) inducing acceptance of pornographic material, Section 76-10-1205;
- (aaaa) dealing in harmful material to a minor, Section 76-10-1206;
- (bbbb) distribution of pornographic films, Section 76-10-1222;
- (cccc) indecent public displays, Section 76-10-1228;
- (dddd) prostitution, Section 76-10-1302;
- (eeee) aiding prostitution, Section 76-10-1304;
- (ffff) exploiting prostitution, Section 76-10-1305;
- (gggg) aggravated exploitation of prostitution, Section 76-10-1306;
- (hhhh) communications fraud, Section 76-10-1801;
- (iiii) any act prohibited by the criminal provisions of Part 19, Money Laundering and Currency Transaction Reporting Act;
- (jjjj) vehicle compartment for contraband, Section 76-10-2801;
- (kkkk) any act prohibited by the criminal provisions of the laws governing taxation in this state;
and

- (III) any act illegal under the laws of the United States and enumerated in 18 U.S.C. Sec. 1961(1) (B), (C), and (D).

Amended by Chapter 167, 2014 General Session

76-10-1603 Unlawful acts.

- (1) It is unlawful for any person who has received any proceeds derived, whether directly or indirectly, from a pattern of unlawful activity in which the person has participated as a principal, to use or invest, directly or indirectly, any part of that income, or the proceeds of the income, or the proceeds derived from the investment or use of those proceeds, in the acquisition of any interest in, or the establishment or operation of, any enterprise.
- (2) It is unlawful for any person through a pattern of unlawful activity to acquire or maintain, directly or indirectly, any interest in or control of any enterprise.
- (3) It is unlawful for any person employed by or associated with any enterprise to conduct or participate, whether directly or indirectly, in the conduct of that enterprise's affairs through a pattern of unlawful activity.
- (4) It is unlawful for any person to conspire to violate any provision of Subsection (1), (2), or (3).

Repealed and Re-enacted by Chapter 238, 1987 General Session

76-10-1603.5 Violation a felony -- Costs -- Fines -- Divestiture -- Restrictions -- Dissolution or reorganization -- Prior restraint.

- (1) A person who violates any provision of Section 76-10-1603 is guilty of a second degree felony. In addition to penalties prescribed by law, the court may order the person found guilty of the felony 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.
- (2) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603, a defendant who derives net proceeds from a conduct prohibited by Section 76-10-1603 may be fined not more than twice the amount of the net proceeds.
- (3) Upon conviction for violating any provision of Section 76-10-1603, and in addition to any 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 any provision of Section 76-10-1603;
 - (b) order the person to divest himself of any interest in or any control, direct or indirect, of any 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 any enterprise.
- (4) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any 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.

- (5) For purposes of this section, the "net proceeds" of an offense means property acquired as a result of the violation minus the direct costs of acquiring the property.

Amended by Chapter 394, 2013 General Session

76-10-1604 Enforcement authority of peace officers.

Notwithstanding any law to the contrary, peace officers in the state of Utah shall have authority to enforce the criminal provisions of this act by initiating investigations, assisting grand juries, obtaining indictments, filing informations, and assisting in the prosecution of criminal cases through the attorney general or county attorneys' offices.

Enacted by Chapter 94, 1981 General Session

76-10-1605 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 district court.

- (1) A person injured in his person, business, or property by a person engaged in conduct forbidden by any provision of Section 76-10-1603 may sue in an appropriate district court and recover twice the damages he sustains, regardless of whether:
 - (a) 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
 - (b) the conduct has been adjudged criminal by any 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 which are grounded in fraud are subject to arbitration under Title 78B, Chapter 11, Utah Uniform Arbitration Act.
- (4) 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 his employment or apparent authority. 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 his 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 actions under this section on behalf of the state, the county, or any person injured by a person engaged in conduct forbidden by any provision of Section 76-10-1603, 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 prior to 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 its reasonable expenses incurred because of the defense against the action, claim, or counterclaim, including a reasonable attorney's fee.

- (9) An action or proceeding brought under this section shall be commenced within three years after the conduct prohibited by Section 76-10-1603 terminates or the cause of action accrues, whichever is later. This provision supersedes any limitation to the contrary.
- (10)
- (a) In any action brought under this section, the district court has jurisdiction to 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 district court may:
 - (i) issue restraining orders and injunctions;
 - (ii) require satisfactory performance bonds or any other bond it considers appropriate and necessary in connection with any property or any 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 district court may, in addition to granting the relief allowed in Subsection (1), do any one or all of the following:
 - (i) order any person to divest himself of any interest in or any control, direct or indirect, of any enterprise;
 - (ii) impose reasonable restrictions on the future activities or investments of any person, including prohibiting any 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 any enterprise.
 - (d) However, if an action is brought to obtain any relief provided by this section, and if the conduct prohibited by Section 76-10-1603 has for its pattern of unlawful activity acts or conduct illegal under Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, the court may not enter any 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. The court shall, upon the request of any affected party, and upon the notice to all parties, prior to the issuance of any 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 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222. In making its findings the court shall be guided by the same considerations required of a court making similar findings in criminal cases brought under Section 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, including, but not limited to, the definitions in Sections 76-10-1201, 76-10-1203, and 76-10-1216, and the exemptions in Section 76-10-1226.

Amended by Chapter 3, 2008 General Session

76-10-1607 Evidentiary value of criminal judgment in civil proceeding.

A final judgment or decree rendered in favor of the state or a county in any criminal proceeding brought by this state or a county shall preclude the defendant from denying the essential allegations of the criminal offense in any subsequent civil proceeding.

Enacted by Chapter 94, 1981 General Session

76-10-1608 Severability clause.

If any part or application of the Utah Pattern of Unlawful Activity Act is held invalid, the remainder of this part, or its application to other situations or persons, is not affected.

Amended by Chapter 238, 1987 General Session

76-10-1609 Prospective application.

The amendments to the Utah Pattern of Unlawful Activity Act are prospective in nature and apply only to civil causes of action accruing after the effective date of this act. However, crimes committed prior to the effective date of this act may comprise part of a pattern of unlawful activity if at least one of the criminal episodes comprising that pattern occurs after the effective date of this act and the pattern otherwise meets the definition of pattern of unlawful activity as defined in Section 76-10-1602.

Enacted by Chapter 238, 1987 General Session