

Representative Paul Ray proposes the following substitute bill:

ORGANIZED RETAIL THEFT OFFENSES

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Paul Ray

Senate Sponsor: Gregory S. Bell

LONG TITLE

General Description:

This bill modifies the Criminal Code regarding conduct that constitutes a pattern of unlawful activity.

Highlighted Provisions:

This bill:

- ▶ includes the criminal offense of retail theft in the definition of a pattern of unlawful activity; and
- ▶ provides that persons found guilty of a pattern of unlawful activity may be ordered to pay restitution for property obtained through a pattern of unlawful activity.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-1602, as last amended by Chapters 104, 140 and 319, Laws of Utah 2004

76-10-1603.5, as last amended by Chapter 185, Laws of Utah 2002



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

Section 1. Section **76-10-1602** is amended to read:

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, Chapter 13, Wildlife Resources Code of Utah, or Section 23-20-4;

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

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

(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 63, Chapter 56, Utah Procurement Code;

(j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;

(k) a terroristic threat, Section 76-5-107;

(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) sexual exploitation of a minor, Section 76-5a-3;

(o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;

(p) causing a catastrophe, Section 76-6-105;

(q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;

(r) burglary of a vehicle, Section 76-6-204;

(s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

(t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;

(u) theft, Section 76-6-404;

(v) theft by deception, Section 76-6-405;

(w) theft by extortion, Section 76-6-406;

(x) receiving stolen property, Section 76-6-408;

(y) theft of services, Section 76-6-409;

(z) forgery, Section 76-6-501;

88 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
89 (bb) deceptive business practices, Section 76-6-507;
90 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
91 criticism of goods, Section 76-6-508;
92 (dd) bribery of a labor official, Section 76-6-509;
93 (ee) defrauding creditors, Section 76-6-511;
94 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
95 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
96 (hh) bribery or threat to influence contest, Section 76-6-514;
97 (ii) making a false credit report, Section 76-6-517;
98 (jj) criminal simulation, Section 76-6-518;
99 (kk) criminal usury, Section 76-6-520;
100 (ll) fraudulent insurance act, Section 76-6-521;
101 (mm) retail theft, Section 76-6-602;
102 [~~(mm)~~] (nn) computer crimes, Section 76-6-703;
103 [~~(mm)~~] (oo) identity fraud, Section 76-6-1102;
104 [~~(oo)~~] (pp) sale of a child, Section 76-7-203;
105 [~~(pp)~~] (qq) bribery to influence official or political actions, Section 76-8-103;
106 [~~(qq)~~] (rr) threats to influence official or political action, Section 76-8-104;
107 [~~(rr)~~] (ss) receiving bribe or bribery by public servant, Section 76-8-105;
108 [~~(ss)~~] (tt) receiving bribe or bribery for endorsement of person as public servant,
109 Section 76-8-106;
110 [~~(tt)~~] (uu) official misconduct, Sections 76-8-201 and 76-8-202;
111 [~~(uu)~~] (vv) obstruction of justice, Section 76-8-306;
112 [~~(vv)~~] (ww) acceptance of bribe or bribery to prevent criminal prosecution, Section
113 76-8-308;
114 [~~(ww)~~] (xx) false or inconsistent material statements, Section 76-8-502;
115 [~~(xx)~~] (yy) false or inconsistent statements, Section 76-8-503;
116 [~~(yy)~~] (zz) written false statements, Section 76-8-504;
117 [~~(zz)~~] (aaa) tampering with a witness or soliciting or receiving a bribe, Section
118 76-8-508;

119 ~~[(aaa)]~~ (bbb) retaliation against a witness, victim, or informant, Section 76-8-508.3;
 120 ~~[(bbb)]~~ (ccc) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
 121 ~~[(ccc)]~~ (ddd) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
 122 76-8-1205;
 123 ~~[(ddd)]~~ (eee) unemployment insurance fraud, Section 76-8-1301;
 124 ~~[(eee)]~~ (fff) intentionally or knowingly causing one animal to fight with another,
 125 Subsection 76-9-301(1)(f);
 126 ~~[(fff)]~~ (ggg) possession, use, or removal of explosives, chemical, or incendiary devices
 127 or parts, Section 76-10-306;
 128 ~~[(ggg)]~~ (hhh) delivery to common carrier, mailing, or placement on premises of an
 129 incendiary device, Section 76-10-307;
 130 ~~[(hhh)]~~ (iii) possession of a deadly weapon with intent to assault, Section 76-10-507;
 131 ~~[(iii)]~~ (jjj) unlawful marking of pistol or revolver, Section 76-10-521;
 132 ~~[(jjj)]~~ (kkk) alteration of number or mark on pistol or revolver, Section 76-10-522;
 133 ~~[(kkk)]~~ (lll) forging or counterfeiting trademarks, trade name, or trade device, Section
 134 76-10-1002;
 135 ~~[(lll)]~~ (mmm) selling goods under counterfeited trademark, trade name, or trade
 136 devices, Section 76-10-1003;
 137 ~~[(mmm)]~~ (nnn) sales in containers bearing registered trademark of substituted articles,
 138 Section 76-10-1004;
 139 ~~[(nnn)]~~ (ooo) selling or dealing with article bearing registered trademark or service
 140 mark with intent to defraud, Section 76-10-1006;
 141 ~~[(ooo)]~~ (ppp) gambling, Section 76-10-1102;
 142 ~~[(ppp)]~~ (qqq) gambling fraud, Section 76-10-1103;
 143 ~~[(qqq)]~~ (rrr) gambling promotion, Section 76-10-1104;
 144 ~~[(rrr)]~~ (sss) possessing a gambling device or record, Section 76-10-1105;
 145 ~~[(sss)]~~ (ttt) confidence game, Section 76-10-1109;
 146 ~~[(ttt)]~~ (uuu) distributing pornographic material, Section 76-10-1204;
 147 ~~[(uuu)]~~ (vvv) inducing acceptance of pornographic material, Section 76-10-1205;
 148 ~~[(vvv)]~~ (www) dealing in harmful material to a minor, Section 76-10-1206;
 149 ~~[(www)]~~ (xxx) distribution of pornographic films, Section 76-10-1222;

150 ~~[(xxx)]~~ (yyy) indecent public displays, Section 76-10-1228;
151 ~~[(yyy)]~~ (zzz) prostitution, Section 76-10-1302;
152 ~~[(zzz)]~~ (aaaa) aiding prostitution, Section 76-10-1304;
153 ~~[(aaaa)]~~ (bbbb) exploiting prostitution, Section 76-10-1305;
154 ~~[(bbbb)]~~ (cccc) aggravated exploitation of prostitution, Section 76-10-1306;
155 ~~[(cccc)]~~ (dddd) communications fraud, Section 76-10-1801;
156 ~~[(dddd)]~~ (eeee) any act prohibited by the criminal provisions of Title 76, Chapter 10,
157 Part 19, Money Laundering and Currency Transaction Reporting Act;
158 ~~[(eeee)]~~ (ffff) any act prohibited by the criminal provisions of the laws governing
159 taxation in this state; and
160 ~~[(ffff)]~~ (gggg) any act illegal under the laws of the United States and enumerated in
161 Title 18, Section 1961 (1)(B), (C), and (D) of the United States Code.

162 Section 2. Section **76-10-1603.5** is amended to read:

163 **76-10-1603.5. Violation a felony -- Costs -- Forfeiture -- Fines -- Divestiture --**
164 **Restrictions -- Dissolution or reorganization -- Prior restraint.**

165 (1) A person who violates any provision of Section 76-10-1603 is guilty of a second
166 degree felony. In addition to penalties prescribed by law, the court may order the person found
167 guilty of the felony to pay to the state, if the attorney general brought the action, or to the
168 county, if the county attorney or district attorney brought the action, the costs of investigating
169 and prosecuting the offense and the costs of securing the forfeitures provided for in this
170 section. The person shall forfeit to the Uniform School Fund, as provided in Section
171 53A-16-101:

172 (a) any interest acquired or maintained in violation of any provision of Section
173 76-10-1603;

174 (b) any interest in, security of, claim against, or property or contractual right of any
175 kind affording a source of influence over any enterprise which the person has established,
176 operated, controlled, conducted, or participated in the conduct of in violation of Section
177 76-10-1603; and

178 (c) any property constituting or derived from the net proceeds which the person
179 obtained, directly or indirectly, from the conduct constituting the pattern of unlawful activity or
180 from any act or conduct constituting the pattern of unlawful activity proven as part of the

violation of any provision of Section 76-10-1603.

(2) 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 property subject to forfeiture under this section is limited to property, the seizure or forfeiture of which would not 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 Article I, Sec. 15 of the Utah Constitution, or would not otherwise unlawfully interfere with the exercise of those rights.

(3) 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.

(4) Property subject to criminal forfeiture in accord with the procedures and substantive protections of Title 24, Chapter 1, Utah Uniform Forfeiture Procedures Act:

(a) includes:

(i) real property, including things growing on, affixed to, and found in land; and

(ii) tangible and intangible personal property including money, rights, privileges, interests, claims, and securities of any kind; but

(b) does not include property exchanged or to be exchanged for services rendered in connection with the defense of the charges or any related criminal case.

(5) Upon conviction for violating any provision of Section 76-10-1603, and in addition to any penalty prescribed by law and in addition to any forfeitures provided for in this section, 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;

~~[(a)]~~ (b) order the person to divest himself of any interest in or any control, direct or indirect, of any enterprise;

~~[(b)]~~ (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

212 enterprise engaged in, to the extent the Utah Constitution and the Constitution of the United
213 States permit; or

214 ~~[(c)]~~ (d) order the dissolution or reorganization of any enterprise.

215 (6) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity
216 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or
217 76-10-1222, the court may not enter any order that would amount to a prior restraint on the
218 exercise of an affected party's rights under the First Amendment to the Constitution of the
219 United States or Article I, Section 15, Utah Constitution.

220 (7) All rights, title, and interest in forfeitable property described in Subsections (1) and
221 (2) vest in the state treasurer, on behalf of the Uniform School Fund, upon the commission of
222 the act or conduct giving rise to the forfeiture under this section.

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

Fiscal Note**Organized Retail Theft Offenses***15-Feb-06***Bill Number HB0321S01***10:56 AM*

State Impact

No fiscal impact.

Individual and Business Impact

No fiscal impact.

Office of the Legislative Fiscal Analyst