

**ORGANIZED RETAIL THEFT**

2007 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Paul Ray**

Senate Sponsor: Gregory S. Bell

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**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

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*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:

30 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,  
31 business trust, association, or other legal entity, and any union or group of individuals  
32 associated in fact although not a legal entity, and includes illicit as well as licit entities.

33 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the  
34 commission of at least three episodes of unlawful activity, which episodes are not isolated, but  
35 have the same or similar purposes, results, participants, victims, or methods of commission, or  
36 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall  
37 demonstrate continuing unlawful conduct and be related either to each other or to the  
38 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have  
39 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful  
40 activity as defined by this part shall have occurred within five years of the commission of the  
41 next preceding act alleged as part of the pattern.

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

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

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

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

54 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary  
55 purpose of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, Wildlife  
56 Resources Code of Utah, or Section 23-20-4;

57 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False

- 58 Claims Act, Sections 26-20-1 through 26-20-12;
- 59 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
- 60 Offenses;
- 61 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
- 62 Land Sales Practices Act;
- 63 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
- 64 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act,
- 65 Title 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
- 66 Clandestine Drug Lab Act;
- 67 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
- 68 Securities Act;
- 69 (i) any act prohibited by the criminal provisions of Title 63, Chapter 56, Utah
- 70 Procurement Code;
- 71 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 72 (k) a terroristic threat, Section 76-5-107;
- 73 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 74 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 75 (n) sexual exploitation of a minor, Section 76-5a-3;
- 76 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 77 (p) causing a catastrophe, Section 76-6-105;
- 78 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 79 (r) burglary of a vehicle, Section 76-6-204;
- 80 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;
- 81 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 82 (u) theft, Section 76-6-404;
- 83 (v) theft by deception, Section 76-6-405;
- 84 (w) theft by extortion, Section 76-6-406;
- 85 (x) receiving stolen property, Section 76-6-408;

- 86 (y) theft of services, Section 76-6-409;
- 87 (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)~~] (eee) 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.

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

**76-10-1603.5. Violation a felony -- Costs -- Forfeiture -- 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

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

182 (2) If a violation of Section 76-10-1603 is based on a pattern of unlawful activity  
183 consisting of acts or conduct in violation of Section 76-10-1204, 76-10-1205, 76-10-1206, or  
184 76-10-1222, the property subject to forfeiture under this section is limited to property, the  
185 seizure or forfeiture of which would not constitute a prior restraint on the exercise of an  
186 affected party's rights under the First Amendment to the Constitution of the United States or  
187 Article I, Sec. 15 of the Utah Constitution, or would not otherwise unlawfully interfere with the  
188 exercise of those rights.

189 (3) In lieu of a fine otherwise authorized by law for a violation of Section 76-10-1603,  
190 a defendant who derives net proceeds from a conduct prohibited by Section 76-10-1603 may be  
191 fined not more than twice the amount of the net proceeds.

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

194 (a) includes:

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

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

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

200 (5) Upon conviction for violating any provision of Section 76-10-1603, and in addition  
201 to any penalty prescribed by law and in addition to any forfeitures provided for in this section,  
202 the court may do any or all of the following:

203 (a) order restitution to any victim or rightful owner of property obtained, directly or  
204 indirectly, from:

205 (i) the conduct constituting the pattern of unlawful activity; or

206 (ii) any act or conduct constituting the pattern of unlawful activity that is proven as part  
207 of the violation of any provision of Section 76-10-1603;

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

210 [~~(b)~~] (c) impose reasonable restrictions on the future activities or investments of any  
211 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.