

1 **CHILD ACCESS TO FIREARM PREVENTION**

2 **AMENDMENTS**

3 2003 GENERAL SESSION

4 STATE OF UTAH

5 **Sponsor: Paula F. Julander**

6 **This act modifies the Utah Criminal Code. The act creates a crime for negligent storage**
7 **of a firearm with exceptions. The act requires a licensed firearm dealer to provide**
8 **written warning of possible prosecution and civil suit for negligent storage of a firearm**
9 **and provides a criminal penalty to dealers who violate this requirement. The act creates**
10 **a civil cause of action for negligent storage of a firearm. The act defines terms. The act**
11 **provides discretion for a prosecutor and an arresting officer. The act establishes a**
12 **damage cap and provides a statute of limitation.**

13 This act affects sections of Utah Code Annotated 1953 as follows:

14 ENACTS:

15 **76-10-509.1**, Utah Code Annotated 1953

16 **76-10-527.5**, Utah Code Annotated 1953

17 **78-11-6.3**, Utah Code Annotated 1953

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

19 Section 1. Section **76-10-509.1** is enacted to read:

20 **76-10-509.1. Criminally negligent storage of a firearm -- Exceptions -- Penalty.**

21 (1) A person is guilty of a class B misdemeanor if:

22 (a) notwithstanding Section 76-10-502, the person keeps a firearm that has ammunition
23 in the chamber, cylinder, or magazine in a condition that the firearm can be discharged within a
24 premise which is under the person's custody or control;

25 (b) the person knows or reasonably should know that a minor is likely to gain access to
26 the firearm without the permission of the minor's parent, legal guardian, or property owner
27 where the firearm is stored; and



28 (c) the minor obtains access to the firearm and with it causes death or bodily injury to
29 the minor or another person.

30 (2) This section does not apply if any of the following occur:

31 (a) the minor obtains the firearm as a result of an unlawful entry to any premises by any
32 person;

33 (b) the firearm is kept in a locked container or in a location which a reasonable person
34 would believe to be secure;

35 (c) the firearm is carried on the person or within a close proximity so that the person
36 can readily retrieve and use the firearm as if carried on the person;

37 (d) the firearm is equipped with an external locking device;

38 (e) the person is authorized to possess a weapon under Section 53A-3-502 or
39 76-10-523 and the minor obtains the firearm during, or incidental to, the performance of the
40 person's duties;

41 (f) the minor obtains, or obtains and discharges, the firearm in a lawful act of
42 self-defense or defense of another person; or

43 (g) the person who keeps a firearm on a premise which is under the person's custody or
44 control has no reasonable expectation, based on objective facts and circumstances, that a minor
45 is likely to be present on the premises.

46 Section 2. Section **76-10-527.5** is enacted to read:

47 **76-10-527.5. Dealer requirement for firearm warning -- Penalty.**

48 (1) Upon the retail sale or transfer of a firearm, the retail dealer or the dealer's
49 employee shall deliver to the purchaser or transferee the following written warning, printed in
50 block letters not less than 1/4 of an inch in height:

51 "AN ADULT CAN BE PROSECUTED AND SUED FOR LEAVING A
52 FIREARM WITHIN EASY ACCESS OF A MINOR. FIREARMS SHOULD
53 BE SECURED WITH A LOCKING DEVICE OR SECURELY STORED IN A
54 LOCKED BOX, CONTAINER, OR OTHER LOCATION."

55 (2) Every wholesale and retail dealer of firearms shall conspicuously post at each
56 purchase counter the same written warning required under Subsection (1).

57 (3) A retail or wholesale dealer of firearms who violates Subsection (1) or (2) is guilty
58 of a class C misdemeanor.

59 Section 3. Section **78-11-6.3** is enacted to read:

60 **78-11-6.3. Negligent storage of a firearm -- Definitions -- Exceptions -- Civil**
61 **action.**

62 (1) As used in this section:

63 (a) "Bodily injury" means a physical injury as defined in Section 76-1-601.

64 (b) "External locking device" means a device which temporarily prevents the firearm
65 from functioning.

66 (c) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off
67 rifle, or a device that could be used as a dangerous weapon, as defined in Section 76-10-501,
68 from which a projectile is expelled by action of an explosive.

69 (d) "Locked container" means a secure container which is fully enclosed and locked by
70 a padlock, key lock, combination lock, or similar locking device.

71 (e) "Minor" means a person who is 17 years of age or less.

72 (2) As provided in Section 78-11-6, when death or bodily injury is caused by the
73 negligent storage of a firearm by another person and the dead or injured person:

74 (a) is a minor, an action for the death or bodily injury of the minor may be maintained
75 by the minor's parent or legal guardian; or

76 (b) is a person other than a minor:

77 (i) the injured person may maintain an action for the person's bodily injury; or

78 (ii) the heirs or the personal representative of the person may maintain an action for the
79 death of the person.

80 (3) Except as provided in Subsection (4), a person commits the act of negligent storage
81 of a firearm if:

82 (a) the person keeps a firearm that has ammunition in the chamber, cylinder, or
83 magazine in a condition that it can be discharged within a premise which is under the person's
84 custody or control;

85 (b) the person knows or reasonably should know that a minor is likely to gain access to
86 the firearm without the permission of the minor's parent, legal guardian, or property owner
87 where the firearm is stored; and

88 (c) the minor obtains access to the firearm and with it causes death or bodily injury to
89 the minor or another person.

90 (4) Subsection (3) does not apply if any of the following occur:

91 (a) the minor obtains the firearm as a result of an unlawful entry to any premises by any
92 person;

93 (b) the firearm is kept in a locked container or in a location which a reasonable person
94 would believe to be secure;

95 (c) the firearm is carried on the person or within a close proximity so that the person
96 can readily retrieve and use the firearm as if carried on the person;

97 (d) the firearm is equipped with an external locking device;

98 (e) the person is authorized to possess a weapon under Section 53A-3-502 or
99 76-10-523 and the minor obtains the firearm during, or incidental to, the performance of the
100 person's duties;

101 (f) the minor obtains, or obtains and discharges, the firearm in a lawful act of
102 self-defense or defense of another person; or

103 (g) the person who keeps a firearm on a premise which is under the person's custody or
104 control has no reasonable expectation, based on objective facts and circumstances, that a minor
105 is likely to be present on the premise.

106 (5) (a) If the person who allegedly violated this section is the parent or guardian of a
107 minor who is injured or who dies as the result of an accidental shooting, the prosecuting
108 attorney shall consider, among other factors, the impact of the injury or death on the person
109 alleged to have violated this section when deciding whether to prosecute an alleged violation.

110 (b) It is the Legislature's intent that a parent or guardian of a minor who is injured or
111 who dies as the result of an accidental shooting shall be prosecuted only in those instances in
112 which the parent or guardian behaved in a grossly negligent manner or where similarly
113 egregious circumstances exist.

114 (c) This Subsection (5) may not otherwise restrict, in any manner, the factors that a
115 prosecuting attorney may consider when deciding whether to prosecute alleged violations of
116 this section.

117 (6) (a) If the person who allegedly violated this section is the parent or guardian of a
118 minor who is injured or who dies as the result of an accidental shooting, an arrest of the person
119 for the alleged violation of this section may not occur until at least seven days after the date
120 upon which the accidental shooting occurred.

121 (b) (i) In addition to the limitation contained in Subsection (6)(a), a law enforcement
122 officer shall consider the health status of a minor who suffers great bodily injury as the result of
123 an accidental shooting prior to arresting a person for a violation of this section, if the person to
124 be arrested is the parent or guardian of the injured minor.

125 (ii) The intent of this Subsection (6) is to encourage law enforcement officials to delay
126 the arrest of a parent or guardian of a seriously injured minor while the minor remains on
127 life-support equipment or is in a similarly critical medical condition.

128 (7) This section does not supersede any other cause of action.

129 (8) The total amount of damages that may be awarded to a person for a cause of action
130 under this section that arises after July 1, 2003, is limited to \$500,000.

131 (9) An action based upon a cause of action under this section shall be commenced
132 within two years after the date of the injury.

Legislative Review Note

as of 11-25-02 1:13 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel

Fiscal Note
Bill Number SB0038

Child Access to Firearm Prevention Amendments

20-Jan-03

4:32 PM

State Impact

The number of anticipated cases brought under this bill is very small and can be accommodated within existing budgets at both the State and local levels.

Individual and Business Impact

The wholesale and retail businesses that deal in firearms may incur some additional expenses for signs and tags required by this bill. These costs will likely be passed onto consumers through pricing. The bill also limits the damage awards for failure to secure firearms from juveniles to \$500,000.

Office of the Legislative Fiscal Analyst