

1                                   **PREVENTION OF CHILD ACCESS TO**  
2   **FIREARMS**

3   2004 GENERAL SESSION  
4   STATE OF UTAH

5   **Sponsor: Paula F. Julander**

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7   **LONG TITLE**

8   **General Description:**

9                   This bill modifies the Utah Criminal Code and Judicial Code.

10 **Highlighted Provisions:**

11                  This bill:

- 12                   ▶ creates a crime for negligent storage of a firearm and provides affirmative defenses  
13 to the alleged crime;
- 14                   ▶ requires a licensed firearm dealer to provide written warning of possible prosecution  
15 and civil suit for negligent storage of a firearm and provides a criminal penalty to  
16 dealers who violate this requirement;
- 17                   ▶ creates a civil cause of action for negligent storage of a firearm; and  
18                   ▶ provides a statute of limitation.

19 **Monies Appropriated in this Bill:**

20                  None

21 **Other Special Clauses:**

22                  This bill takes effect on July 1, 2004.

23 **Utah Code Sections Affected:**

24 ENACTS:

25                  **76-10-509.1**, Utah Code Annotated 1953

26                  **76-10-527.5**, Utah Code Annotated 1953

27                  **78-11-6.3**, Utah Code Annotated 1953



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

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

**76-10-509.1. Criminally negligent storage of a firearm -- Affirmative defenses --**

**Penalty.**

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

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

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

(c) the minor obtains access to the firearm and by discharging it causes death or bodily injury to the minor or another person.

(2) It is an affirmative defense to Subsection (1) if:

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

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

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

(d) the firearm is secured with a locking device;

(e) the person is authorized to possess a weapon under Subsection 76-10-505.5(3)(b) or (c) or Section 76-10-523 and the minor obtains the firearm during, or incidental to, the performance of the person's duties;

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

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

(3) The definitions in Section 78-11-6.3 apply to this section.

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

60 **76-10-527.5. Dealer requirement for firearm warning -- Penalty.**

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

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

68 (2) A wholesale or retail dealer of firearms shall conspicuously post at each purchase  
69 counter the same written warning required under Subsection (1).

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

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

73 **78-11-6.3. Negligent storage of a firearm -- Definitions -- Affirmative defenses --**  
74 **Civil action.**

75 (1) As used in this section and Section 76-10-509.1:

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

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

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

82 (d) "Locking device" means a device which temporarily prevents a firearm from  
83 functioning.

84 (e) "Minor" means a person who is younger than 18.

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

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

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

90 (i) the injured person may maintain an action for the person's bodily injury; or  
91 (ii) the heirs or the personal representative of the person may maintain an action for the  
92 death of the person.

93 (3) A person commits the act of negligent storage of a firearm if:

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

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

100 (c) the minor obtains access to the firearm and by discharging it causes death or bodily  
101 injury to the minor or another person.

102 (4) It is an affirmative defense to Subsection (3) that:

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

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

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

109 (d) the firearm is secured with a locking device;

110 (e) the person is authorized to possess a weapon under Subsection 76-10-505.5(3)(b) or  
111 (c) or Section 76-10-523 and the minor obtains the firearm during, or incidental to, the  
112 performance of the person's duties;

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

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

118 (5) This section does not supersede any other cause of action.

119 (6) An action based upon a cause of action under this section shall be commenced  
120 within two years of the date of the injury.

121 Section 4. **Effective date.**  
122 This bill takes effect on July 1, 2004.

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**Legislative Review Note**  
**as of 9-16-03 7:53 AM**

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

**Office of Legislative Research and General Counsel**