

**Senator Mark B. Madsen** proposes the following substitute bill:

**WEAPONS AMENDMENTS**

2006 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark B. Madsen**

House Sponsor: Aaron Tilton

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**LONG TITLE**

**General Description:**

This bill modifies provisions of the Utah Criminal Code ~~§→ [dealing with the possession and carrying of weapons.] ←§~~

**Highlighted Provisions:**

This bill:

- ▶ modifies the definition of "securely encased";
- ▶ creates residence and property exceptions to the criminal penalty provisions for carrying a concealed firearm, without having a concealed firearm permit; and
- ▶ allows for the possession of a loaded firearm, concealed firearm, and loaded and concealed firearm at a person's place of residence or on the person's real property.

**Monies Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**76-10-501**, as last amended by Chapter 111, Laws of Utah 2001

**76-10-504**, as last amended by Chapter 2, Laws of Utah 2005



26           **76-10-511**, as last amended by Chapter 234, Laws of Utah 1993



27  
28 *Be it enacted by the Legislature of the state of Utah:*

29           Section 1. Section **76-10-501** is amended to read:

30           **76-10-501. Definitions.**

31           As used in this part:

32           (1) (a) "Antique firearm" means any firearm:

33           (i) (A) with a matchlock, flintlock, percussion cap, or similar type of ignition system;

34 and

35           (B) that was manufactured in or before 1898; or

36           (ii) that is a replica of any firearm described in this Subsection (1)(a), if the replica:

37           (A) is not designed or redesigned for using rimfire or conventional centerfire fixed

38 ammunition; or

39           (B) uses rimfire or centerfire fixed ammunition which is:

40           (I) no longer manufactured in the United States; and

41           (II) is not readily available in ordinary channels of commercial trade; or

42           (iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and

43           (B) is designed to use black powder, or a black powder substitute, and cannot use fixed

44 ammunition.

45           (b) "Antique firearm" does not include:

46           (i) any weapon that incorporates a firearm frame or receiver;

47           (ii) any firearm that is converted into a muzzle loading weapon; or

48           (iii) any muzzle loading weapon that can be readily converted to fire fixed ammunition

49 by replacing the:

50           (A) barrel;

51           (B) bolt;

52           (C) breechblock; or

53           (D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

54           (2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered,

55 hidden, or secreted in a manner that the public would not be aware of its presence and is readily

56 accessible for immediate use.

57 (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a  
58 firearm which is unloaded and is securely encased.

59 (3) "Criminal history background check" means a criminal background check  
60 conducted by a licensed firearms dealer on every purchaser of a handgun through the division  
61 or the local law enforcement agency where the firearms dealer conducts business.

62 (4) "Curio or relic firearm" means any firearm that:

63 (a) is of special interest to a collector because of a quality that is not associated with  
64 firearms intended for:

65 (i) sporting use;

66 (ii) use as an offensive weapon; or

67 (iii) use as a defensive weapon;

68 (b) (i) was manufactured at least 50 years prior to the current date; and

69 (ii) is not a replica of a firearm described in Subsection (4)(b)(i);

70 (c) is certified by the curator of a municipal, state, or federal museum that exhibits  
71 firearms to be a curio or relic of museum interest;

72 (d) derives a substantial part of its monetary value:

73 (i) from the fact that the firearm is:

74 (A) novel;

75 (B) rare; or

76 (C) bizarre; or

77 (ii) because of the firearm's association with an historical:

78 (A) figure;

79 (B) period; or

80 (C) event; and

81 (e) has been designated as a curio or relic firearm by the director of the United States  
82 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 178.11.

83 (5) (a) "Dangerous weapon" means any item that in the manner of its use or intended  
84 use is capable of causing death or serious bodily injury. The following factors shall be used in  
85 determining whether a knife, or any other item, object, or thing not commonly known as a  
86 dangerous weapon is a dangerous weapon:

87 (i) the character of the instrument, object, or thing;

- 88 (ii) the character of the wound produced, if any;
- 89 (iii) the manner in which the instrument, object, or thing was used; and
- 90 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

91 (b) "Dangerous weapon" does not include any explosive, chemical, or incendiary  
92 device as defined by Section 76-10-306.

93 (6) "Dealer" means every person who is licensed under crimes and criminal procedure,  
94 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a  
95 handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

96 (7) "Division" means the Criminal Investigations and Technical Services Division of  
97 the Department of Public Safety, created in Section 53-10-103.

98 (8) "Enter" means intrusion of the entire body.

99 (9) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or  
100 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled  
101 a projectile by action of an explosive.

102 (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an  
103 antique firearm.

104 (10) "Firearms transaction record form" means a form created by the division to be  
105 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

106 (11) "Fully automatic weapon" means any firearm which fires, is designed to fire, or  
107 can be readily restored to fire, automatically more than one shot without manual reloading by a  
108 single function of the trigger.

109 (12) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded  
110 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of  
111 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

112 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol  
113 or revolver" do not include an antique firearm.

114 (13) "House of worship" means a church, temple, synagogue, mosque, or other  
115 building set apart primarily for the purpose of worship in which religious services are held and  
116 the main body of which is kept for that use and not put to any other use inconsistent with its  
117 primary purpose.

118 (14) "Prohibited area" means any place where it is unlawful to discharge a firearm.

119 (15) "Readily accessible for immediate use" means that a firearm or other dangerous  
120 weapon is carried on the person or within such close proximity and in such a manner that it can  
121 be retrieved and used as readily as if carried on the person.

122 (16) "Residence" means an improvement to real property used or occupied as a primary  
123 or secondary residence.

124 (17) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or  
125 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of  
126 fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by  
127 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer  
128 than 26 inches.

129 (18) "Securely encased" means not readily accessible for immediate use, such as held  
130 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other  
131 storage area of a motor vehicle ~~§~~ [F], [H] ~~←§~~ [not] ~~§~~ [F] **including a glove box or console box** [H] ~~←§~~ .

132 (19) "State entity" means each department, commission, board, council, agency,  
133 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,  
134 unit, bureau, panel, or other administrative unit of the state.

135 (20) "Violent felony" means the same as defined in Section 76-3-203.5.

136 Section 2. Section **76-10-504** is amended to read:

137 **76-10-504. Carrying concealed dangerous weapon -- Penalties.**

138 (1) Except as provided in Section 76-10-503 and in Subsections (2) and (3) ~~§~~ **and for**  
138a **persons described in 18 U.S.C. 922(g)** ~~←§~~ :

139 (a) a person who carries a concealed dangerous weapon, as defined in Section  
140 76-10-501, which is not a firearm on his person or one that is readily accessible for immediate  
141 use which is not securely encased, as defined in this part, in a place other than his residence,  
142 property, or business under his control is guilty of a class B misdemeanor; and

143 (b) a person without a valid concealed firearm permit who carries a concealed  
144 dangerous weapon which is a firearm ~~§~~ **in a place other than the person's residence or real**  
144a **property** ~~[and that]~~ :

144b **(i) is guilty of a class B misdemeanor if the firearm** ~~←§~~ contains no ammunition ~~§~~ ~~[, in~~  
144c **a place other than**

145 ~~**the person's residence or property,**~~ ] ; and

145a (ii) ~~←§~~ is guilty of a class ~~§~~ ~~[B]~~ ~~A~~ ~~←§~~ misdemeanor ~~§~~ ~~[, but]~~ ~~←§~~ if the firearm  
146 contains ammunition ~~§~~ ~~[the person is guilty of a class A misdemeanor]~~ ~~←§~~ .

147 (2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of  
148 a second degree felony.

149 (3) If the concealed firearm is used in the commission of a violent felony as defined in

150 Section 76-3-203.5, and the person is a party to the offense, the person is guilty of a second  
151 degree felony.

152 (4) Nothing in Subsection (1) [~~shall prohibit~~] prohibits a person engaged in the lawful  
153 taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources Code,  
154 from carrying a concealed weapon or a concealed firearm with a barrel length of four inches or  
155 greater as long as the taking of wildlife does not occur:

156 (a) within the limits of a municipality in violation of that municipality's ordinances; or

157 (b) upon the highways of the state as defined in Section 41-6a-102.

158 Section 3. Section **76-10-511** is amended to read:

159 **76-10-511. Possession of loaded weapon authorized at specific locations.**

160 Except for persons described in Section 76-10-503 ~~§~~ **→ and 18 U.S.C. 922(g)** ~~←§~~ , a person  
160a may have a loaded firearm,

161 concealed firearm, or loaded and concealed firearm:

162 (1) at [~~his~~] the person's place of residence, including any temporary residence or  
163 camp[-]; or

164 (2) on the person's ~~§~~ **→ real** ~~←§~~ property.

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**Fiscal Note**  
**Bill Number SB0024S03**

**Weapons Amendments**

*22-Feb-06*

*11:15 AM*

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**State Impact**

No Fiscal Impact.

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**Individual and Business Impact**

No fiscal impact on law-abiding citizens.

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**Office of the Legislative Fiscal Analyst**