

FIREARMS AMENDMENTS

2008 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Michael G. Waddoups

LONG TITLE

General Description:

This bill modifies the definitions section of the Weapons Part of the Utah Criminal Code.

Highlighted Provisions:

This bill:

- ▶ provides a definition for a concealed firearm permit that permits, but does not require, the concealment of the firearm on the permittee ~~H~~→ **with an exception** ←~~H~~ ; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63-98-102, as enacted by Laws of Utah 2004, Chapter 264

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

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

Section 1. Section **63-98-102** is amended to read:

63-98-102. Uniform firearm laws.

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28 (1) The individual right to keep and bear arms being a constitutionally protected right
29 under Article I, Section 6 of the Utah Constitution, the Legislature finds the need to provide
30 uniform civil and criminal firearm laws throughout the state.

31 (2) Except as specifically provided by state law, a local authority or state entity may
32 not:

33 (a) prohibit an individual from owning, possessing, purchasing, selling, transferring,
34 transporting, or keeping a firearm at the individual's place of residence, property, business, or
35 in any vehicle lawfully in the individual's possession or lawfully under the individual's control;
36 or

37 (b) require an individual to have a permit or license to purchase, own, possess,
38 transport, or keep a firearm.

39 (3) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is uniformly
40 applicable throughout this state and in all its political subdivisions and municipalities.

41 (4) All authority to regulate firearms is reserved to the state except where the
42 Legislature specifically delegates responsibility to local authorities or state entities.

43 (5) Unless specifically authorized by the Legislature by statute, a local authority or
44 state entity may not enact, establish, or enforce any ordinance, regulation, rule, or policy
45 pertaining to firearms that in any way inhibits or restricts the possession or use of firearms on
46 either public or private property.

47 (6) As used in this section:

48 (a) "firearm" has the same meaning as defined in [~~Subsection~~] Section 76-10-501[~~(9)~~];
49 and

50 (b) "local authority or state entity" includes public school districts, public schools, and
51 state institutions of higher education.

52 (7) Nothing in this section restricts or expands private property rights.

53 Section 2. Section **76-10-501** is amended to read:

54 **76-10-501. Definitions.**

55 As used in this part:

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

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

58 and

59 (B) that was manufactured in or before 1898; or
 60 (ii) that is a replica of any firearm described in this Subsection (1)(a), if the replica:
 61 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed
 62 ammunition; or
 63 (B) uses rimfire or centerfire fixed ammunition which is:
 64 (I) no longer manufactured in the United States; and
 65 (II) is not readily available in ordinary channels of commercial trade; or
 66 (iii) (A) that is a muzzle loading rifle, shotgun, or pistol; and
 67 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed
 68 ammunition.

69 (b) "Antique firearm" does not include:
 70 (i) any weapon that incorporates a firearm frame or receiver;
 71 (ii) any firearm that is converted into a muzzle loading weapon; or
 72 (iii) any muzzle loading weapon that can be readily converted to fire fixed ammunition
 73 by replacing the:

74 (A) barrel;
 75 (B) bolt;
 76 (C) breechblock; or
 77 (D) any combination of Subsection (1)(b)(iii)(A), (B), or (C).

78 (2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered,
 79 hidden, or secreted in a manner that the public would not be aware of its presence and is readily
 80 accessible for immediate use.

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

83 (3) ~~H→~~ (a) ~~←H~~ "Concealed firearm permit" means a permit issued pursuant to Section
 83a 53-5-704
 84 that permits, but does not require, concealment of the firearm on the permittee H→, except as
 84a otherwise provided in Subsection (3)(b)(i).

84b (b)(i) The permittee shall conceal the firearm on the permittee, which may include
 84c concealment in a purse, handbag, briefcase, or similar object carried by the permittee, if
 84d carrying it in or on the grounds of a public or private postsecondary institution under
 84e Subsection 76-10-505.5(3)(a).

84f (ii) Violation of Subsection (3)(b)(i) is an infraction, except that it is not a violation of
84g Subsection(3)(b)(i) or Subsection 76-10-505.5(3)(a) if a permittee
84h inadvertently, unintentionally, incidentally, or accidentally exposes the firearm while carrying
84i it in or on the grounds of a public or private postsecondary institution ←H .

85 [~~3~~] (4) "Criminal history background check" means a criminal background check
86 conducted by a licensed firearms dealer on every purchaser of a handgun through the division
87 or the local law enforcement agency where the firearms dealer conducts business.

88 [~~4~~] (5) "Curio or relic firearm" means any firearm that:

89 (a) is of special interest to a collector because of a quality that is not associated with

90 firearms intended for:

91 (i) sporting use;

92 (ii) use as an offensive weapon; or

93 (iii) use as a defensive weapon;

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

95 (ii) is not a replica of a firearm described in Subsection [~~4~~] 5(b)(i);

96 (c) is certified by the curator of a municipal, state, or federal museum that exhibits

97 firearms to be a curio or relic of museum interest;

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

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

100 (A) novel;

101 (B) rare; or

102 (C) bizarre; or

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

104 (A) figure;

105 (B) period; or

106 (C) event; and

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

109 [~~5~~] 6 (a) "Dangerous weapon" means any item that in the manner of its use or
110 intended use is capable of causing death or serious bodily injury. The following factors shall
111 be used in determining whether a knife, or any other item, object, or thing not commonly
112 known as a dangerous weapon is a dangerous weapon:

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

114 (ii) the character of the wound produced, if any;

115 (iii) the manner in which the instrument, object, or thing was used; and

116 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

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

119 [~~6~~] 7 "Dealer" means every person who is licensed under crimes and criminal
120 procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise

121 transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or
122 otherwise.

123 ~~[(7)]~~ (8) "Division" means the Criminal Investigations and Technical Services Division
124 of the Department of Public Safety, created in Section 53-10-103.

125 ~~[(8)]~~ (9) "Enter" means intrusion of the entire body.

126 ~~[(9)]~~ (10) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
127 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
128 a projectile by action of an explosive.

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

131 ~~[(10)]~~ (11) "Firearms transaction record form" means a form created by the division to
132 be completed by a person purchasing, selling, or transferring a handgun from a dealer in the
133 state.

134 ~~[(11)]~~ (12) "Fully automatic weapon" means any firearm which fires, is designed to
135 fire, or can be readily restored to fire, automatically more than one shot without manual
136 reloading by a single function of the trigger.

137 ~~[(12)]~~ (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description,
138 loaded or unloaded, from which any shot, bullet, or other missile can be discharged, the length
139 of which, not including any revolving, detachable, or magazine breech, does not exceed 12
140 inches.

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

143 ~~[(13)]~~ (14) "House of worship" means a church, temple, synagogue, mosque, or other
144 building set apart primarily for the purpose of worship in which religious services are held and
145 the main body of which is kept for that use and not put to any other use inconsistent with its
146 primary purpose.

147 ~~[(14)]~~ (15) "Prohibited area" means any place where it is unlawful to discharge a
148 firearm.

149 ~~[(15)]~~ (16) "Readily accessible for immediate use" means that a firearm or other
150 dangerous weapon is carried on the person or within such close proximity and in such a manner
151 that it can be retrieved and used as readily as if carried on the person.

152 [~~(16)~~] (17) "Residence" means an improvement to real property used or occupied as a
153 primary or secondary residence.

154 [~~(17)~~] (18) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel
155 or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels
156 of fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by
157 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer
158 than 26 inches.

159 [~~(18)~~] (19) "Securely encased" means not readily accessible for immediate use, such as
160 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
161 storage area of a motor vehicle, not including a glove box or console box.

162 [~~(19)~~] (20) "State entity" means each department, commission, board, council, agency,
163 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
164 unit, bureau, panel, or other administrative unit of the state.

165 [~~(20)~~] (21) "Violent felony" means the same as defined in Section 76-3-203.5.

Legislative Review Note
as of 2-7-08 8:01 AM

Office of Legislative Research and General Counsel

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Fiscal Note

2008 General Session
State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
