

# HB0169S01 compared with HB0169

~~{deleted text}~~ shows text that was in HB0169 but was deleted in HB0169S01.

inserted text shows text that was not in HB0169 but was inserted into HB0169S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will not be completely accurate. Therefore, you need to read the actual bill. This automatically generated document could experience abnormalities caused by: limitations of the compare program; bad input data; the timing of the compare; and other potential causes.

Representative Jennifer M. Seelig proposes the following substitute bill:

## FIREARM LAWS MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Jennifer M. Seelig**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies provisions of the Utah Criminal Code dealing with the purchase and possession of weapons.

#### Highlighted Provisions:

This bill:

- ▶ defines Federal Firearms Licensee as related to the sale of a firearm by a licensed firearm dealer and required criminal history background checks;
- ~~{~~ → provides that certain restricted persons who attempt to purchase a firearm are guilty of a third degree felony;
- ~~}~~ ▶ conforms state law with federal firearms laws regarding the identification and transfer of firearms among Federal Firearms License holders; and
- ▶ makes certain technical changes.

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### Money Appropriated in this Bill:

None

### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**63K-4-405**, as enacted by Laws of Utah 2008, Chapter 262

**76-10-501**, as last amended by Laws of Utah 2010, Chapter 62

~~† **76-10-503**, as last amended by Laws of Utah 2003, Chapters 203 and 235~~

† **76-10-526**, as last amended by Laws of Utah 2010, Chapter 62

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

Section 1. Section **63K-4-405** is amended to read:

**63K-4-405. Prohibition of restrictions on and confiscation of a firearm or ammunition during an emergency.**

(1) As used in this section:

(a) (i) "Confiscate" means for an individual in Utah to intentionally deprive another of a privately owned firearm.

(ii) "Confiscate" does not include the taking of a firearm from an individual:

(A) in self-defense;

(B) possessing a firearm while the individual is committing a felony or misdemeanor;

or

(C) who may not, under state or federal law, possess the firearm.

(b) "Firearm" has the same meaning as defined in ~~[Subsection]~~ Section 76-10-501~~[(9)]~~.

(2) During a declared state of emergency or local emergency under this chapter:

(a) neither the governor nor an agency of a governmental entity or political subdivision of the state may impose restrictions, which were not in force ~~[prior to]~~ before the declared state of emergency, on the lawful possession, transfer, sale, transport, storage, display, or use of a firearm or ammunition; and

(b) an individual, while acting or purporting to act on behalf of the state or a political subdivision of the state, may not confiscate a privately owned firearm of another individual.

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(3) A law or regulation passed during a declared state of emergency that does not relate specifically to the lawful possession or use of a firearm and that has attached criminal penalties may not be used to justify the confiscation of a firearm from an individual acting in defense of self, property, or others when on:

- (a) the individual's private property; or
- (b) the private property of another as an invitee.

(4) (a) An individual who has a firearm confiscated in violation of Subsection (2) may bring a civil action in a court having the appropriate jurisdiction:

(i) for damages, in the maximum amount of \$10,000, against a person who violates Subsection (2);

(ii) for a civil penalty, in the amount of \$5,000 per violation, against a person who violates Subsection (2); and

(iii) for return of the confiscated firearm.

(b) As used in this Subsection (4), "person" means an individual, the governmental entity on whose behalf the individual is acting or purporting to act, or both the individual and the governmental entity.

(5) (a) A law enforcement officer [~~shall~~] is not [~~be~~] subject to disciplinary action for refusing to confiscate a firearm under this section if:

(i) ordered or directed to do so by a superior officer; and

(ii) by obeying the order or direction, the law enforcement officer would be committing a violation of this section.

(b) For purposes of this Subsection (5), disciplinary action might include:

(i) dismissal, suspension, or demotion;

(ii) loss of or decrease in benefits, pay, privileges or conditions of employment; and

(iii) any type of written or electronic indication, permanent or temporary, on the officer's personnel record of the officer's refusal to obey the unlawful order.

(6) (a) If a law enforcement officer commits a violation of this section, the officer's liability in an action brought under Subsection (4)(a) is limited to 5% of the damages and civil penalty allowed under Subsection (4)(a) if the officer can show by clear and convincing evidence that the officer was obeying a direct and unlawful order from a superior officer or authority.

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(b) The court shall assess the balance of the damages and civil penalty, the remaining 95%, [~~shall be assessed~~] against the superior officer or authority who ordered or directed the confiscation in violation of this section.

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

### **76-10-501. Definitions.**

As used in this part:

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

(i) any firearm[~~:(i)-(A)~~], including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system[~~; and (B) that was~~], manufactured in or before 1898; or

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

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

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

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

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

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

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

(b) "Antique firearm" does not include:

(i) [~~any~~] a weapon that incorporates a firearm frame or receiver;

(ii) [~~any~~] a firearm that is converted into a muzzle loading weapon; or

(iii) [~~any~~] a muzzle loading weapon that can be readily converted to fire fixed ammunition by replacing the:

(A) barrel;

(B) bolt;

(C) breechblock; or

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

(2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201 within the Department of Public ~~{ } Safety { }~~ [Safety's Criminal Investigations and Technical Services Division](#).

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(3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

(i) covered, hidden, or secreted in a manner that the public would not be aware of its presence; and [is]

(ii) readily accessible for immediate use.

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

(4) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal Firearms Licensee, through the [~~division~~] bureau or the local law enforcement agency where the firearms dealer conducts business.

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

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

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

(b) (i) was manufactured at least 50 years [~~prior to~~] before the current date; and

(ii) is not a replica of a firearm described in Subsection (5)(b)(i);

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

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

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

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

(A) figure;

(B) period; or

(C) event; and

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

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(6) (a) "Dangerous weapon" means [~~any~~] an item that in the manner of its use or intended use is capable of causing death or serious bodily injury.

(b) The following factors shall be used in determining whether a knife, or [~~any other~~] another item, object, or thing not commonly known as a dangerous weapon is a dangerous weapon:

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

(c) "Dangerous weapon" does not include [~~any~~] an explosive, chemical, or incendiary device as defined by Section 76-10-306.

(7) "Dealer" means a person who is:

(a) licensed under [~~crimes and criminal procedure;~~] 18 U.S.C. Sec. 923; and

(b) engaged in the business of selling, leasing, or otherwise transferring a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

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

(9) "Federal Firearms Licensee" means a person who:

(a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

(b) is engaged in the activities authorized by the specific category of license held.

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

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

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

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

~~(12)~~ (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description,

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loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

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

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

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

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

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

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

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

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

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

Section 3. Section ~~{76-10-503}~~76-10-526 is amended to read:

~~{~~ ~~76-10-503. Restrictions on possession, purchase, transfer, and ownership of dangerous weapons by certain persons:~~

~~\_\_\_\_\_~~ (1) For purposes of this section:

~~\_\_\_\_\_~~ (a) A Category I restricted person is a person who:

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- ~~—— (i) has been convicted of [any] a violent felony as defined in Section 76-3-203.5;~~
- ~~—— (ii) is on probation or parole for [any] a felony;~~
- ~~—— (iii) is on parole from a secure facility as defined in Section 62A-7-101; or~~
- ~~—— (iv) within the last 10 years has been adjudicated delinquent for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5.~~
- ~~—— (b) A Category II restricted person is a person who:~~
  - ~~—— (i) has been convicted of or is under indictment for [any] a felony;~~
  - ~~—— (ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;~~
  - ~~—— (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;~~
  - ~~—— (iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;~~
  - ~~—— (v) has been found not guilty by reason of insanity for a felony offense;~~
  - ~~—— (vi) has been found mentally incompetent to stand trial for a felony offense;~~
  - ~~—— (vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;~~
  - ~~—— (viii) is an alien who is illegally or unlawfully in the United States;~~
  - ~~—— (ix) has been dishonorably discharged from the armed forces; or~~
  - ~~—— (x) has renounced [his] the person's citizenship after having been a citizen of the United States.~~
- ~~—— (2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under [his] the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under [his] the person's custody or control:~~
  - ~~—— (a) [any] a firearm is guilty of a second degree felony; or~~
  - ~~—— (b) [any] a dangerous weapon other than a firearm is guilty of a third degree felony.~~
- ~~—— (3) A Category II restricted person who attempts to purchase, purchases, transfers, possesses, uses, or has under [his] the person's custody or control:~~
  - ~~—— (a) [any] a firearm is guilty of a third degree felony; or~~
  - ~~—— (b) [any] a dangerous weapon other than a firearm is guilty of a class A misdemeanor.~~

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~~———— (4) A person may be subject to the restrictions of both categories at the same time.~~

~~———— (5) If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control [any] a dangerous weapon, the penalties of that section control.~~

~~———— (6) (a) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:~~

~~———— [(a)] (i) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or~~

~~———— [(b)] (ii) otherwise authorized by law to possess the substance.~~

~~———— (b) A challenge or amendment to the determination that an attempted purchaser was a prohibited individual under Subsection 76-10-526(10) is an affirmative defense to a prosecution under this section for an attempt to purchase a firearm from a dealer.~~

~~———— Section 4. Section 76-10-526 is amended to read:~~

‡ **76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders.**

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued [~~pursuant to~~] under Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept a driving privilege card issued [~~in accordance with~~] under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).

(3) (a) A criminal history background check is required for the sale of a firearm by a licensed firearm dealer in the state.

(b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.

(4) (a) An individual [~~, except a dealer,~~] purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

(b) The form shall contain the following information:

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- (i) the dealer identification number;
- (ii) the name and address of the individual receiving the firearm;
- (iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and
- (iv) the Social Security number or any other identification number of the individual receiving the firearm.

(5) (a) The dealer shall send the [~~form~~] information required by Subsection (4) to the bureau immediately upon its [~~completion~~] receipt by the dealer.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is [~~so~~] prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background, or by return call, or other electronic means, without delay, except in case of electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that the individual receiving the [~~gun~~] firearm is not prohibited from purchasing, possessing, or

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transferring the firearm under state or federal law.

(b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall inform the law enforcement agency ~~{and the Bureau of Alcohol, Tobacco, Firearms and Explosives office }~~ in the jurisdiction where the ~~[person]~~ individual resides ~~{ of the attempted purchase }~~.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules ~~[as provided]~~ in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the ~~[division {}] pursuant to~~ bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) (i) A dealer shall collect a criminal history background check fee ~~[related to]~~ of \$7.50 for the sale of a firearm under this section ~~[, which is \$7.50]~~.

(ii) This fee remains in effect until changed by the bureau through the process under Section 63J-1-504.

(b) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued ~~[pursuant to]~~ under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the ~~[division]~~ bureau that the individual's concealed firearm

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permit is valid.

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**Legislative Review Note**

~~as of 2-2-11 11:17 AM~~

~~Office of Legislative Research and General Counsel}~~