

1 **TECHNICAL AMENDMENTS-WEAPONS**

2 2013 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Ken Ivory**

5 Senate Sponsor: Mark B. Madsen

7 **LONG TITLE**

8 **General Description:**

9 This bill makes technical changes to conform to the federal definition of a short
10 barreled shotgun and short barreled rifle.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ changes the terms "sawed-off" and "short barrel" to "short barreled" to conform to
14 the federal nomenclature.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 **AMENDS:**

21 **76-10-501**, as last amended by Laws of Utah 2012, Chapter 114

22 **76-10-504**, as last amended by Laws of Utah 2012, Chapter 114

23 **76-10-505.5**, as last amended by Laws of Utah 2011, Chapter 91

24 **76-10-509.4**, as last amended by Laws of Utah 1995, Chapter 80

25 **76-10-509.5**, as last amended by Laws of Utah 1994, Chapter 94

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

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

29 **76-10-501. Definitions.**

30 As used in this part:

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

32 (i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or
33 similar type of ignition system, manufactured in or before 1898; or

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

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

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

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

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

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

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

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

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

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

47 (iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by
48 replacing the:

49 (A) barrel;

50 (B) bolt;

51 (C) breechblock; or

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

53 (2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201
54 within the Department of Public Safety.

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

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

58 (ii) readily accessible for immediate use.

59 (b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is
60 unloaded and is securely encased.

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

65 (5) "Curio or relic firearm" means a firearm that:

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

68 (i) sporting use;

69 (ii) use as an offensive weapon; or

70 (iii) use as a defensive weapon;

71 (b) (i) was manufactured at least 50 years before the current date; and

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

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

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

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

77 (A) novel;

78 (B) rare; or

79 (C) bizarre; or

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

81 (A) figure;

82 (B) period; or

83 (C) event; and

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

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

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

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

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

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

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

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

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

97 (a) licensed under 18 U.S.C. Sec. 923; and

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

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

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

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

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

104 (10) (a) "Firearm" means a pistol, revolver, shotgun, short [~~barrel~~] barreled shotgun,
105 rifle or short [~~barrel~~] barreled rifle, or a device that could be used as a dangerous weapon from
106 which is expelled a projectile by action of an explosive.

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

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

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

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

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

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

123 (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

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

127 (17) "Residence" means an improvement to real property used or occupied as a primary
128 or secondary residence.

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, not including a glove box or console box.

132 (19) "Short ~~[barrel]~~ barreled shotgun" or "short ~~[barrel]~~ barreled rifle" means a shotgun
133 having a barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a
134 barrel or barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or
135 shotgun by alteration, modification, or otherwise, if the weapon as modified has an overall
136 length of fewer than 26 inches.

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

140 (21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

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

142 **76-10-504. Carrying concealed dangerous weapon -- Penalties.**

143 (1) Except as provided in Section 76-10-503 and in Subsections (2), (3), and (4), a
144 person who carries a concealed dangerous weapon, as defined in Section 76-10-501, including
145 an unloaded firearm on his or her person or one that is readily accessible for immediate use
146 which is not securely encased, as defined in this part, in or on a place other than the person's
147 residence, property, a vehicle in the person's lawful possession, or a vehicle, with the consent
148 of the individual who is lawfully in possession of the vehicle, or business under the person's
149 control is guilty of a class B misdemeanor.

150 (2) A person who carries a concealed dangerous weapon which is a loaded firearm in
151 violation of Subsection (1) is guilty of a class A misdemeanor.

152 (3) A person who carries concealed an unlawfully possessed short [~~barrel~~] barreled
153 shotgun or a short [~~barrel~~] barreled rifle is guilty of a second degree felony.

154 (4) If the concealed firearm is used in the commission of a violent felony as defined in
155 Section 76-3-203.5, and the person is a party to the offense, the person is guilty of a second
156 degree felony.

157 (5) Nothing in Subsection (1) or (2) shall prohibit a person engaged in the lawful
158 taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources Code of
159 Utah, from carrying a concealed weapon or a concealed firearm as long as the taking of wildlife
160 does not occur:

- 161 (a) within the limits of a municipality in violation of that municipality's ordinances; or
- 162 (b) upon the highways of the state as defined in Section 41-6a-102.

163 Section 3. Section **76-10-505.5** is amended to read:

164 **76-10-505.5. Possession of a dangerous weapon, firearm, or short barreled**
165 **shotgun on or about school premises -- Penalties.**

166 (1) As used in this section, "on or about school premises" means:

- 167 (a) (i) in a public or private elementary or secondary school; or
- 168 (ii) on the grounds of any of those schools;
- 169 (b) (i) in a public or private institution of higher education; or

- 170 (ii) on the grounds of a public or private institution of higher education; and
- 171 (iii) (A) inside the building where a preschool or child care is being held, if the entire
- 172 building is being used for the operation of the preschool or child care; or
- 173 (B) if only a portion of a building is being used to operate a preschool or child care, in
- 174 that room or rooms where the preschool or child care operation is being held.

175 (2) A person may not possess any dangerous weapon, firearm, or ~~[sawed-off]~~ short

176 barreled shotgun, as those terms are defined in Section 76-10-501, at a place that the person

177 knows, or has reasonable cause to believe, is on or about school premises as defined in this

178 section.

179 (3) (a) Possession of a dangerous weapon on or about school premises is a class B

180 misdemeanor.

181 (b) Possession of a firearm or ~~[sawed-off]~~ short barreled shotgun on or about school

182 premises is a class A misdemeanor.

183 (4) This section does not apply if:

184 (a) the person is authorized to possess a firearm as provided under Section 53-5-704,

185 53-5-705, 76-10-511, or 76-10-523, or as otherwise authorized by law;

186 (b) the possession is approved by the responsible school administrator;

187 (c) the item is present or to be used in connection with a lawful, approved activity and

188 is in the possession or under the control of the person responsible for its possession or use; or

189 (d) the possession is:

190 (i) at the person's place of residence or on the person's property; or

191 (ii) in any vehicle lawfully under the person's control, other than a vehicle owned by

192 the school or used by the school to transport students.

193 (5) This section does not prohibit prosecution of a more serious weapons offense that

194 may occur on or about school premises.

195 Section 4. Section **76-10-509.4** is amended to read:

196 **76-10-509.4. Prohibition of possession of certain weapons by minors.**

197 (1) A minor under 18 years of age may not possess a handgun.

198 (2) Except as provided by federal law, a minor under 18 years of age may not possess
199 the following:

200 (a) a [~~sawed-off~~] short barreled rifle or [~~sawed-off~~] short barreled shotgun; or

201 (b) a fully automatic weapon.

202 (3) Any person who violates Subsection (1) is guilty of:

203 (a) a class B misdemeanor upon the first offense; and

204 (b) a class A misdemeanor for each subsequent offense.

205 (4) Any person who violates Subsection (2) is guilty of a third degree felony.

206 Section 5. Section **76-10-509.5** is amended to read:

207 **76-10-509.5. Penalties for providing certain weapons to a minor.**

208 (1) Any person who provides a handgun to a minor when the possession of the
209 handgun by the minor is a violation of Section 76-10-509.4 is guilty of:

210 (a) a class B misdemeanor upon the first offense; and

211 (b) a class A misdemeanor for each subsequent offense.

212 (2) Any person who transfers in violation of applicable state or federal law a
213 [~~sawed-off~~] short barreled rifle, [~~sawed-off~~] short barreled shotgun, or fully automatic weapon
214 to a minor is guilty of a third degree felony.