

# HB0268S01 compared with HB0268

~~text~~ shows text that was in HB0268 but was deleted in HB0268S01.

inserted text shows text that was not in HB0268 but was inserted into HB0268S01.

**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 bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Brian M. Greene proposes the following substitute bill:

## DANGEROUS WEAPONS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

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

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### LONG TITLE

#### General Description:

This bill redefines dangerous weapon and exempts archery equipment from the definition ~~of dangerous weapon~~.

#### Highlighted Provisions:

This bill:

- ▶ defines dangerous weapon as a firearm or an object which is used unlawfully to inflict serious bodily injury;
- ▶ exempts archery equipment, including crossbows, from the definition of dangerous weapon ~~when being used for hunting or recreation~~; and
- ▶ makes technical corrections.

#### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**76-10-501**, as last amended by Laws of Utah 2013, Chapters 278 and 301

**76-10-503**, as last amended by Laws of Utah 2012, Chapter 317

**76-10-509.7**, as enacted by Laws of Utah 1993, Second Special Session, Chapter 10

**76-10-512**, as last amended by Laws of Utah 2000, Chapter 303

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

Section 1. 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, including any firearm with a matchlock, flintlock, percussion cap, or similar type of ignition system, 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) a weapon that incorporates a firearm frame or receiver;

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

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

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- (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.

(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

(ii) readily accessible for immediate use.

(b) A dangerous weapon 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 bureau or the local law enforcement agency where the firearms dealer conducts business.

(5) "Curio or relic firearm" means 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 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

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(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. 478.11.

(6) (a) "Dangerous weapon" means:

(i) a firearm; or

(ii) an item that in the manner of its unlawful use or intended unlawful use is capable of causing death or serious bodily injury.

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

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

(ii) the character of the wound if any, produced ~~[, if any]~~ by its unlawful use;

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

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

~~[(c)]~~ (c) Unless specifically identified elsewhere in this code, nothing other than a firearm is considered a de facto dangerous weapon, and a determination made pursuant to Subsection (6)(b) may be made only after an instrument, object or thing is used in an unlawful manner.

~~[(e)]~~ (d) "Dangerous weapon" does not include ~~[(~~

~~(i)]~~ an explosive, chemical, or incendiary device as defined by Section 76-10-306 ~~[(~~ or

~~(ii)]~~ archery equipment when being used for hunting or recreation.

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

(a) licensed under 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:

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(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.

(10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or short barreled 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.

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

(12) "Fully automatic weapon" means 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.

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

(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.

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

(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.

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

(18) "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) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a barrel

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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 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.

(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.

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

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### Legislative Review Note

~~as of 1-15-14 6:42 AM~~

~~Office of Legislative Research and General Counsel;~~ Section 2. Section 76-10-503 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:

(i) has been convicted of any violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for any felony;

(iii) is on parole from a secure facility as defined in Section 62A-7-101;

(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; or

(v) is an alien who is illegally or unlawfully in the United States.

(b) A Category II restricted person is a person who:

(i) has been convicted of any 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;

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(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) has been dishonorably discharged from the armed forces; or

(ix) has renounced his citizenship after having been a citizen of the United States.

(2) A Category I restricted person who intentionally or knowingly:

(a) agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control[:(a)] any firearm is guilty of a second degree felony; or

(b) physically possesses, uses, or has under the person's immediate custody or control any dangerous weapon other than a firearm while committing any felony or other violent criminal offense is guilty of a third degree felony.

(3) A Category II restricted person who intentionally or knowingly:

(a) purchases, transfers, possesses, uses, or has under the person's custody or control[:(a)] any firearm is guilty of a third degree felony; or

(b) physically possesses, uses, or has under the person's immediate custody or control any dangerous weapon other than a firearm while committing any felony or other violent criminal offense is guilty of a class A misdemeanor.

(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 dangerous weapon, the penalties of that section control.

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

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner

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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) otherwise authorized by law to possess the substance.

(7) (a) It is an affirmative defense to transferring a firearm [or other dangerous weapon] by a person restricted under Subsection (2) or (3) that the firearm [or dangerous weapon]:

(i) was possessed by the person or was under the person's custody or control before the person became a restricted person;

(ii) was not used in or possessed during the commission of a crime or subject to disposition under Section 76-10-525;

(iii) is not being held as evidence by a court or law enforcement agency;

(iv) was transferred to a person not legally prohibited from possessing the weapon; and

(v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.

(b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person of a firearm or other dangerous weapon by a restricted person.

(8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or (b).

(b) A person who violates Subsection (8)(a) when the recipient is:

(i) a person described in Subsection (1)(a) and the transaction involves a firearm, is guilty of a second degree felony;

(ii) a person described in Subsection (1)(a) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a third degree felony;

(iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is guilty of a third degree felony; or

(iv) a person described in Subsection (1)(b) and the transaction involves any dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

(9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under



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circumstances which the person knows would be a violation of the law.

(b) A person may not provide to a dealer or other person [what] any information that the person knows to be materially false information with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm or dangerous weapon.

(c) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

(d) A person who violates this Subsection (9) is guilty of:

(i) a third degree felony if the transaction involved a firearm; or

(ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a firearm.

Section 3. Section 76-10-509.7 is amended to read:

**76-10-509.7. Parent or guardian knowing of minor's possession of dangerous weapon.**

Any parent or guardian of a minor who knows that the minor is in possession of a dangerous weapon in violation of Section 76-10-509 or a firearm in violation of Section 76-10-509.4 and fails to make reasonable efforts to remove the dangerous weapon or firearm from the minor's possession is guilty of a class B misdemeanor.

Section 4. Section 76-10-512 is amended to read:

**76-10-512. Target concessions, shooting ranges, competitions, and hunting excepted from prohibitions.**

(1) The provisions of Section 76-10-509 and Subsection 76-10-509.4(1) regarding possession of handguns by minors [shall] do not apply to any of the following:

[~~(1)~~] (a) Patrons firing at lawfully operated target concessions at amusement parks, piers, and similar locations provided that the firearms to be used are firmly chained or affixed to the counters.

[~~(2)~~] (b) Any person in attendance at a hunter's safety course or a firearms safety course.

[~~(3)~~] (c) Any person engaging in practice or any other lawful use of a firearm at an established range or any other area where the discharge of a firearm is not prohibited by state or local law.

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~~[(4)]~~ (d) Any person engaging in an organized competition involving the use of a firearm, or participating in or practicing for such competition.

~~[(5)]~~ (e) Any minor under 18 years of age who is on real property with the permission of the owner, licensee, or lessee of the property and who has the permission of a parent or legal guardian or the owner, licensee, or lessee to possess a firearm not otherwise in violation of law.

~~[(6)]~~ (f) Any resident or nonresident hunters with a valid hunting license or other persons who are lawfully engaged in hunting.

~~[(7)]~~ (g) Any person traveling to or from any activity described in Subsection ~~[(2), (3), (4), (5), or (6)]~~ (1)(b), (c), (d), (e), or (f) with an unloaded firearm in his possession.

(2) It is not a violation of this chapter for a person to own, possess, or have under the person's custody or control, archery equipment, including crossbows, for the purpose of lawful hunting or target shooting.