

CRIMINAL LAW AMENDMENTS

2015 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: J. Stuart Adams

House Sponsor: Eric K. Hutchings

LONG TITLE

General Description:

This bill modifies code provisions regarding criminal offenses and criminal penalties that were amended in HB 348, "Criminal Justice Programs and Amendments," 2015 General Session.

Highlighted Provisions:

This bill:

- ▶ amends the definition of a Category I restricted person regarding a conviction for the possession of certain scheduled controlled substances; and
- ▶ amends the penalty regarding the offense of failure to provide notice regarding damage to an unattended vehicle.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

41-6a-401.7 as last amended by Laws of Utah 2015, Chapter 412

76-10-503, as last amended by Laws of Utah 2015, Chapter 412

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



28 Section 1. Section 41-6a-401.7 is amended to read:

29 **41-6a-401.7. Accident involving injury, death, or property damage -- Duties of**
30 **operator, occupant, and owner -- Exchange of information -- Notification of law**
31 **enforcement -- Penalties.**

32 (1) The operator of a vehicle involved in an accident under Section 41-6a-401.3 or
33 41-6a-401.5 shall:

34 (a) give to the persons involved:

35 (i) the operator's name, address, and the registration number of the vehicle being
36 operated; and

37 (ii) the name of the insurance provider covering the vehicle being operated including
38 the phone number of the agent or provider;

39 (b) upon request and if available, exhibit the operator's license to:

40 (i) any investigating peace officer present;

41 (ii) the person struck;

42 (iii) the operator, occupant of, or person attending the vehicle or other property
43 damaged in the accident; and

44 (iv) the owner of property damaged in the accident, if present; and

45 (c) render to any person injured in the accident reasonable assistance, including
46 transporting or making arrangements for transporting, of the injured person to a physician or
47 hospital for medical treatment if:

48 (i) it is apparent that treatment is necessary; or

49 (ii) transportation is requested by the injured person.

50 (2) The operator of a vehicle involved in an accident under Section 41-6a-401.3 or
51 41-6a-401.5 shall immediately and by the quickest means of communication available give
52 notice or cause to give notice of the accident to the nearest office of a law enforcement agency.

53 (3) The occupant of a vehicle involved in an accident under Section 41-6a-401.3 or
54 41-6a-401.5 who is not the operator of the vehicle shall give or cause to give the immediate
55 notice required under Subsection (2) if:

56 (a) the operator of a vehicle involved in an accident is physically incapable of giving
57 the notice; and

58 (b) the occupant is capable of giving an immediate notice.

59 (4) Except as provided under Subsection (5), if a vehicle or other property damaged in
60 the accident is unattended, the operator of the vehicle involved in the accident shall:

61 (a) locate and notify the operator or owner of the vehicle or the owner of other property
62 damaged in the accident of the operator's name, address, and the registration number of the
63 vehicle causing the damage; or

64 (b) attach securely in a conspicuous place on the vehicle or other property a written
65 notice giving the operator's name, address, and the registration number of the vehicle causing
66 the damage.

67 (5) The operator of a vehicle that provides the information required under this section
68 to an investigating peace officer at the scene of the accident is exempt from providing the
69 information to other persons required under this section.

70 (6) A violation of [~~this section is a class C misdemeanor~~] Subsection (4) is an
71 infraction.

72 Section 2. Section **76-10-503** is amended to read:

73 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
74 **dangerous weapons by certain persons -- Exceptions.**

75 (1) For purposes of this section:

76 (a) A Category I restricted person is a person who:

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

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

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

80 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
81 committed by an adult would have been a violent felony as defined in Section [76-3-203.5](#);

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

83 (vi) is on probation for a conviction of possessing:

84 (A) a substance classified in [Section 58-37-4](#) as a Schedule I [~~or II in Section 58-37-8~~;
85 ~~or~~] controlled substance other than marijuana, or as a Schedule II controlled substance;

86 (B) a controlled substance analog; or

87 (C) a substance listed in Section [58-37-4.2](#).

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

89 (i) has been convicted of any felony;

90 (ii) within the last seven years has been adjudicated delinquent for an offense which if
91 committed by an adult would have been a felony;

92 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

93 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
94 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

95 (v) has been found not guilty by reason of insanity for a felony offense;

96 (vi) has been found mentally incompetent to stand trial for a felony offense;

97 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
98 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
99 to a mental institution;

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

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

102 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
103 an offense which would be a felony if committed by an adult does not include:

104 (i) a conviction or adjudication of delinquency for an offense pertaining to antitrust
105 violations, unfair trade practices, restraint of trade, or other similar offenses relating to the
106 regulation of business practices not involving theft or fraud; or

107 (ii) a conviction or adjudication of delinquency which, according to the law of the
108 jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by
109 court order, pardoned or regarding which the person's civil rights have been restored unless the
110 pardon, reduction, expungement, or restoration of civil rights expressly provides that the person
111 may not ship, transport, possess, or receive firearms.

112 (d) It is the burden of the defendant in a criminal case to provide evidence that a
113 conviction or adjudication of delinquency is subject to an exception provided in Subsection
114 (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the
115 conviction or adjudication of delinquency is not subject to that exception.

116 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
117 offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or
118 control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
119 the person's custody or control:

120 (a) any firearm is guilty of a second degree felony; or

- 121 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.
- 122 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
- 123 possesses, uses, or has under the person's custody or control:
 - 124 (a) any firearm is guilty of a third degree felony; or
 - 125 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.
- 126 (4) A person may be subject to the restrictions of both categories at the same time.
- 127 (5) If a higher penalty than is prescribed in this section is provided in another section
- 128 for one who purchases, transfers, possesses, uses, or has under this custody or control any
- 129 dangerous weapon, the penalties of that section control.
- 130 (6) It is an affirmative defense to a charge based on the definition in Subsection
- 131 (1)(b)(iv) that the person was:
 - 132 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner
 - 133 for use of a member of the person's household or for administration to an animal owned by the
 - 134 person or a member of the person's household; or
 - 135 (b) otherwise authorized by law to possess the substance.
- 136 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
- 137 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:
 - 138 (i) was possessed by the person or was under the person's custody or control before the
 - 139 person became a restricted person;
 - 140 (ii) was not used in or possessed during the commission of a crime or subject to
 - 141 disposition under Section [24-3-103](#);
 - 142 (iii) is not being held as evidence by a court or law enforcement agency;
 - 143 (iv) was transferred to a person not legally prohibited from possessing the weapon; and
 - 144 (v) unless a different time is ordered by the court, was transferred within 10 days of the
 - 145 person becoming a restricted person.
- 146 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
- 147 of a firearm or other dangerous weapon by a restricted person.
- 148 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
- 149 dangerous weapon to any person, knowing that the recipient is a person described in
- 150 Subsection (1)(a) or (b).
- 151 (b) A person who violates Subsection (8)(a) when the recipient is:

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

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

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

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

162 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
163 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
164 circumstances which the person knows would be a violation of the law.

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

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

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

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

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

175 **Section 3. Effective date.**

176 If approved by two-thirds of all the members elected to each house, this bill takes effect
177 upon approval by the governor, or the day following the constitutional time limit of Utah
178 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
179 the date of veto override.

Legislative Review Note
as of 8-17-15 3:56 PM

Office of Legislative Research and General Counsel