

**NEGLIGENT STORAGE OF LOADED FIREARM**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: Robert C. Steiner**

AN ACT RELATING TO THE CRIMINAL CODE AND THE JUDICIAL CODE; REQUIRING A DEALER TO PROVIDE WRITTEN WARNING OF POSSIBLE SUIT FOR NEGLIGENT STORAGE; PROVIDING A CRIMINAL PENALTY; CREATING A CIVIL CAUSE OF ACTION FOR NEGLIGENT STORAGE OF A FIREARM; PROVIDING DEFINITIONS; ESTABLISHING A DAMAGE CAP; AND PROVIDING A STATUTE OF LIMITATION.

This act affects sections of Utah Code Annotated 1953 as follows:

ENACTS:

**76-10-527.5**, Utah Code Annotated 1953

**78-11-6.3**, Utah Code Annotated 1953

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

Section 1. Section **76-10-527.5** is enacted to read:

**76-10-527.5. Dealer requirement for firearm warning -- Penalty.**

(1) Upon the retail sale or transfer of any firearm, the retail dealer or his employee shall deliver to the purchaser or transferee the following written warning, printed in block letters not less than 1/4 of an inch in height:

"AN ADULT CAN BE SUED FOR LEAVING A FIREARM WITHIN EASY ACCESS OF A MINOR. FIREARMS SHOULD BE SECURED WITH A TRIGGER LOCK OR SECURELY STORED IN A LOCKED BOX, CONTAINER, OR OTHER LOCATION."

(2) Every wholesale and retail dealer of firearms shall conspicuously post at each purchase counter the same warning as provided in Subsection (1).

(3) Any retail or wholesale dealer of firearms who violates this section is guilty of a class B misdemeanor.

Section 2. Section **78-11-6.3** is enacted to read:

**78-11-6.3. Negligent storage of a firearm -- Definitions -- Exceptions -- Provisions for civil action.**

(1) As used in this part:

(a) "Bodily injury" means any physical injury as defined in Section 76-1-601.

(b) "External locking device" means a device which temporarily prevents the firearm from functioning.

(c) "Loaded firearm" means any pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off rifle, or any device that could be used as a dangerous weapon, as defined in Section 76-10-501, from which is expelled a projectile by a force when:

(i) there is an unexpended cartridge, shell, or projectile in the firing position; or

(ii) the manual operation of any mechanism would cause the unexpended cartridge, shell, or projectile to be fired.

(d) "Locked container" means a secure container which is fully enclosed and locked by a padlock, key lock, combination lock, or similar locking device.

(e) "Minor" means a person who is 15 years of age or less.

(2) As provided in Section 78-11-6, when death or bodily injury is caused by the negligent storage of a loaded firearm by another person and the dead or injured person:

(a) is a minor, an action for the death or bodily injury of the minor may be maintained by the minor's parent or legal guardian; or

(b) is a person other than a minor:

(i) the injured person may maintain an action for his bodily injury; or

(ii) the heirs or the personal representative of the person may maintain an action for the death of the person.

(3) Except as provided in Subsection (4), a person commits the act of negligent storage of a firearm if:

(a) he keeps any loaded firearm within any premise which is under his custody or control;

(b) he knows or reasonably should know that a minor is likely to gain access to the loaded firearm without the permission of the minor's parent, legal guardian, or property owner where the loaded firearm is stored; and

(c) the minor obtains access to the loaded firearm and thereby causes death or bodily injury

1 to himself or any other person.

2 (4) Subsection (3) does not apply if any of the following occur:

3 (a) the minor obtains the loaded firearm as a result of an unlawful entry to any premises  
4 by any person;

5 (b) the loaded firearm is kept in a locked container or in a location which a reasonable  
6 person would believe to be secure;

7 (c) the loaded firearm is carried on the person or within a close proximity so that the  
8 individual can readily retrieve and use the firearm as if carried on the person;

9 (d) the loaded firearm is equipped with an external locking device, unless the manufacturer  
10 of the firearm recommends that a safety device not be used with the loaded firearm;

11 (e) the person is authorized to possess a weapon under Sections 53A-3-502 and 76-10-523  
12 and the minor obtains the loaded firearm during, or incidental to, the performance of the person's  
13 duties;

14 (f) the minor obtains, or obtains and discharges, the loaded firearm in a lawful act of  
15 self-defense or defense of another person; or

16 (g) the person who keeps a loaded firearm on any premise which is under his custody or  
17 control has no reasonable expectation, based on objective facts and circumstances, that a minor  
18 is likely to be present on the premise.

19 (5) The provisions of this section do not supersede any other cause of action.

20 (6) The total amount of damages that may be awarded to any person pursuant to a cause  
21 of action under this chapter that arises after July 1, 1998, is limited to \$500,000.

22 (7) An action based upon a cause of action under this chapter shall be commenced within  
23 two years after the date of the injury.

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## **Legislative Review Note**

**as of 12-31-97 11:09 AM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**