

CHILD FIREARM ACCESS PREVENTION

AMENDMENTS

2001 GENERAL SESSION

STATE OF UTAH

Sponsor: Paula F. Julander

This act modifies the Utah Criminal Code. The act creates a crime for negligent storage of a firearm with exceptions to this crime. The act requires a licensed firearm dealer to provide written warning of possible prosecution and civil suit for negligent storage of a firearm and provides a criminal penalty to dealers who violate this requirement. The act creates a civil cause of action for negligent storage of a firearm. The act defines terms. The act provides discretion for a prosecutor and an arresting officer. The act establishes a damage cap and provides a statute of limitation.

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

ENACTS:

76-10-509.1, Utah Code Annotated 1953

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 **76-10-509.1** is enacted to read:

76-10-509.1. Criminally negligent storage of a firearm -- Exceptions -- Penalty.

(1) A person is guilty of a class B misdemeanor if:

(a) notwithstanding the provisions of Section 76-10-502, the person keeps any firearm that has ammunition in the chamber, cylinder, or magazine in a condition that the firearm can be discharged within any premise which is under the person's custody or control;

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

28 (c) the minor obtains access to the firearm and thereby causes death or bodily injury to
29 himself or any other person.

30 (2) This section does not apply if any of the following occur:

31 (a) the minor obtains the firearm as a result of an unlawful entry to any premises by any
32 person;

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

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

37 (d) the firearm is equipped with an external locking device;

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

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

42 (g) the person who keeps a firearm on any premise which is under the person's custody or
43 control has no reasonable expectation, based on objective facts and circumstances, that a minor
44 is likely to be present on the premises.

45 Section 2. Section **76-10-527.5** is enacted to read:

46 **76-10-527.5. Dealer requirement for firearm warning -- Penalty.**

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

50 "AN ADULT CAN BE PROSECUTED AND SUED FOR LEAVING A
51 FIREARM WITHIN EASY ACCESS OF A MINOR. FIREARMS SHOULD BE
52 SECURED WITH A LOCKING DEVICE OR SECURELY STORED IN A
53 LOCKED BOX, CONTAINER, OR OTHER LOCATION."

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

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

58 Section 3. Section **78-11-6.3** is enacted to read:

59 **78-11-6.3. Negligent storage of a firearm -- Definitions -- Exceptions -- Provisions for**
60 **civil action.**

61 (1) As used in this section:

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

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

65 (c) "Firearm" means any pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off
66 rifle, or any device that could be used as a dangerous weapon, as defined in Section 76-10-601,
67 from which is expelled a projectile by action of an explosive.

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

70 (e) "Minor" means a person who is 17 years of age or less.

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

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

75 (b) is a person other than a minor:

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

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

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

81 (a) the person keeps any firearm that has ammunition in the chamber, cylinder, or
82 magazine in a condition that it can be discharged within any premise which is under the person's
83 custody or control;

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

87 (c) the minor obtains access to the firearm and thereby causes death or bodily injury to
88 himself or any other person.

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

90 (a) the minor obtains the firearm as a result of an unlawful entry to any premises by any
91 person;

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

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

96 (d) the firearm is equipped with an external locking device;

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

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

101 (g) the person who keeps a firearm on any premise which is under the person's custody or
102 control has no reasonable expectation, based on objective facts and circumstances, that a minor
103 is likely to be present on the premise.

104 (5) (a) If the person who allegedly violated this section is the parent or guardian of a child
105 who is injured or who dies as the result of an accidental shooting, the prosecuting attorney shall
106 consider, among other factors, the impact of the injury or death on the person alleged to have
107 violated this section when deciding whether to prosecute an alleged violation.

108 (b) It is the Legislature's intent that a parent or guardian of a child who is injured or who
109 dies as the result of an accidental shooting shall be prosecuted only in those instances in which the
110 parent or guardian behaved in a grossly negligent manner or where similarly egregious
111 circumstances exist.

112 (c) This Subsection (5) shall not otherwise restrict, in any manner, the factors that a
113 prosecuting attorney may consider when deciding whether to prosecute alleged violations of this
114 section.

115 (6) (a) If the person who allegedly violated this section is the parent or guardian of a child
116 who is injured or who dies as the result of an accidental shooting, no arrest of the person for the
117 alleged violation of this section shall occur until at least seven days after the date upon which the
118 accidental shooting occurred.

119 (b) In addition to the limitation contained in this Subsection (6), a law enforcement officer
120 shall consider the health status of a child who suffers great bodily injury as the result of an

121 accidental shooting prior to arresting a person for a violation of this section, if the person to be
122 arrested is the parent or guardian of the injured child. The intent of this Subsection (6) is to
123 encourage law enforcement officials to delay the arrest of a parent or guardian of a seriously
124 injured child while the child remains on life-support equipment or is in a similarly critical medical
125 condition.

126 (7) The provisions of this section do not supersede any other cause of action.

127 (8) The total amount of damages that may be awarded to any person pursuant to a cause
128 of action under this section that arises after July 1, 2001, is limited to \$500,000.

129 (9) An action based upon a cause of action under this chapter shall be commenced within
130 two years after the date of the injury.

Legislative Review Note
as of 12-11-00 11:22 AM

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

Office of Legislative Research and General Counsel