

Senator Mark B. Madsen proposes the following substitute bill:

WEAPONS AMENDMENTS

2006 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Utah Criminal Code dealing with the possession and carrying of weapons.

Highlighted Provisions:

This bill:

- ▶ creates an exception to penalty provisions related to the carrying of a concealed dangerous weapon, which is not a firearm, to include carrying a concealed dangerous weapon in or on a vehicle lawfully under a person's control;
- ▶ amends the definition of "securely encased";
- ▶ removes the prohibition from carrying a loaded firearm in or on a vehicle, conditioned on the vehicle being lawfully under the person's control; and
- ▶ provides that a person may have a loaded firearm at the person's residence, on the person's property, in or on a vehicle legally under the person's control, and at a business under the person's control.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **76-10-501**, as last amended by Chapter 111, Laws of Utah 2001

29 **76-10-504**, as last amended by Chapter 2, Laws of Utah 2005

30 **76-10-505**, as last amended by Chapter 328, Laws of Utah 1990

31 **76-10-511**, as last amended by Chapter 234, Laws of Utah 1993

32

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

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

35 **76-10-501. Definitions.**

36 As used in this part:

37 (1) (a) "Antique firearm" means any firearm:

38 (i) (A) with a matchlock, flintlock, percussion cap, or similar type of ignition system;

39 and

40 (B) that was manufactured in or before 1898; or

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

42 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed

43 ammunition; or

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

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

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

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

48 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed

49 ammunition.

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

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

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

53 (iii) any muzzle loading weapon that can be readily converted to fire fixed ammunition

54 by replacing the:

55 (A) barrel;

56 (B) bolt;

57 (C) breechblock; or

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

59 (2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered,
60 hidden, or secreted in a manner that the public would not be aware of its presence and is readily
61 accessible for immediate use.

62 (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a
63 firearm which is unloaded and is securely encased.

64 (3) "Criminal history background check" means a criminal background check
65 conducted by a licensed firearms dealer on every purchaser of a handgun through the division
66 or the local law enforcement agency where the firearms dealer conducts business.

67 (4) "Curio or relic firearm" means any firearm that:

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

70 (i) sporting use;

71 (ii) use as an offensive weapon; or

72 (iii) use as a defensive weapon;

73 (b) (i) was manufactured at least 50 years prior to the current date; and

74 (ii) is not a replica of a firearm described in Subsection (4)(b)(i);

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

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

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

79 (A) novel;

80 (B) rare; or

81 (C) bizarre; or

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

83 (A) figure;

84 (B) period; or

85 (C) event; and

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

88 (5) (a) "Dangerous weapon" means any item that in the manner of its use or intended
89 use is capable of causing death or serious bodily injury. The following factors shall be used in
90 determining whether a knife, or any other item, object, or thing not commonly known as a
91 dangerous weapon is a dangerous weapon:

- 92 (i) the character of the instrument, object, or thing;
- 93 (ii) the character of the wound produced, if any;
- 94 (iii) the manner in which the instrument, object, or thing was used; and
- 95 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

96 (b) "Dangerous weapon" does not include any explosive, chemical, or incendiary
97 device as defined by Section 76-10-306.

98 (6) "Dealer" means every person who is licensed under crimes and criminal procedure,
99 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a
100 handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

101 (7) "Division" means the Criminal Investigations and Technical Services Division of
102 the Department of Public Safety, created in Section 53-10-103.

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

104 (9) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
105 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
106 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 (10) "Firearms transaction record form" means a form created by the division to be
110 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

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

114 (12) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
115 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of
116 which, 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 (13) "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 (14) "Prohibited area" means any place where it is unlawful to discharge a firearm.

124 (15) "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 (16) "Residence" means an improvement to real property used or occupied as a primary
128 or secondary residence.

129 (17) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
130 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of
131 fewer than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by
132 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer
133 than 26 inches.

134 (18) "Securely encased" means not readily accessible for immediate use, such as held
135 in a gun rack, or in a closed case or container, whether or not locked~~[, or in a trunk or other~~
136 ~~storage area of a motor vehicle, not including a glove box or console box].~~

137 (19) "State entity" means each 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 (20) "Violent felony" means the same 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) and (3):

144 (a) a person who carries a concealed dangerous weapon, as defined in Section
145 76-10-501, which is not a firearm on his person or one that is readily accessible for immediate
146 use which is not securely encased, as defined in this part, in or on a place other than ~~[his]~~ the
147 person's residence, real property, a vehicle in the person's lawful possession, or a vehicle under
148 the person's lawful control, or in or on a vehicle with the consent of the person lawfully in
149 control or possession of the vehicle, or business under ~~[his]~~ the person's control is guilty of a

150 class B misdemeanor; and

151 (b) a person without a valid concealed firearm permit who carries a concealed
152 dangerous weapon in or on a place other than the person's residence, real property, a vehicle in
153 the person's lawful possession, a vehicle under the person's lawful control, or in or on a vehicle
154 with the consent of the person lawfully in control or possession of the vehicle, or business
155 under the person's control, which is a firearm and that contains no ammunition is guilty of a
156 class B misdemeanor, but if the firearm contains ammunition the person is guilty of a class A
157 misdemeanor.

158 (2) A person who carries concealed a sawed-off shotgun or a sawed-off rifle is guilty of
159 a second degree felony.

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

163 (4) Nothing in Subsection (1) [~~shall prohibit~~] prohibits a person engaged in the lawful
164 taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources Code,
165 from carrying a concealed weapon or a concealed firearm with a barrel length of four inches or
166 greater as long as the taking of wildlife does not occur:

167 (a) within the limits of a municipality in violation of that municipality's ordinances; or

168 (b) upon the highways of the state as defined in Section 41-6a-102.

169 Section 3. Section **76-10-505** is amended to read:

170 **76-10-505. Carrying loaded firearm in a vehicle, on a street, or in a posted**
171 **prohibited area.**

172 (1) Unless otherwise authorized by law, a person may not carry a loaded firearm:

173 (a) in or on a vehicle, unless the vehicle is in the person's lawful possession or under
174 the person's lawful control, or the person is carrying a loaded firearm in a vehicle with the
175 consent of the person lawfully in control or possession of the vehicle;

176 (b) outside a vehicle on [any] a public street, sidewalk, or pathway; or

177 (c) in a posted prohibited area.

178 (2) A violation of this section is a class B misdemeanor.

179 Section 4. Section **76-10-511** is amended to read:

180 **76-10-511. Possession of loaded weapon authorized at specific locations.**

181 Except for persons described in Section 76-10-503, a person may have a loaded firearm,
182 concealed firearm, or loaded and concealed firearm:

183 (1) at [~~his~~] the person's place of residence, including any temporary residence or
184 camp;

185 (2) on the person's real property;

186 (3) in or on a vehicle lawfully in the person's lawful possession, or a vehicle under the
187 person's lawful control, or a vehicle with the consent of the person lawfully in control or
188 possession of the vehicle; or

189 (4) at a business under the person's control.