

FIREARMS AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions of the Utah Criminal Code related to firearms.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "securely encased";
- ▶ modifies the criminal penalties provisions related to carrying a concealed firearm without a valid permit to apply to places other than a person's residence or real property;
- ▶ allows for the possession of a loaded firearm, concealed firearm, or loaded and concealed firearm at a person's residence or on the person's real property; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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



28

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

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

31 **76-10-501. Definitions.**

32 As used in this part:

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

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

35 and

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

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

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

39 ammunition; or

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

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

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

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

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

45 ammunition.

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

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

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

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

50 by replacing the:

51 (A) barrel;

52 (B) bolt;

53 (C) breechblock; or

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

55 (2) (a) "Concealed dangerous weapon" means a dangerous weapon that is covered,

56 hidden, or secreted in a manner that the public would not be aware of its presence and is readily

57 accessible for immediate use.

58 (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a

59 firearm which is unloaded and is securely encased.

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

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

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

66 (i) sporting use;

67 (ii) use as an offensive weapon; or

68 (iii) use as a defensive weapon;

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

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

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

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

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

75 (A) novel;

76 (B) rare; or

77 (C) bizarre; or

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

79 (A) figure;

80 (B) period; or

81 (C) event; and

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

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

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

89 (ii) the character of the wound produced, if any;

90 (iii) the manner in which the instrument, object, or thing was used; and
91 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

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

94 (6) "Dealer" means every person who is licensed under crimes and criminal procedure,
95 18 U.S.C. Sec. 923 and engaged in the business of selling, leasing, or otherwise transferring a
96 handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

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

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

100 (9) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
101 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
102 a projectile by action of an explosive.

103 (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an
104 antique firearm.

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

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

110 (12) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
111 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of
112 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

113 (b) As used in Sections 76-10-520, 76-10-521, and 76-10-522, "handgun" and "pistol
114 or revolver" do not include an antique firearm.

115 (13) "House of worship" means a church, temple, synagogue, mosque, or other
116 building set apart primarily for the purpose of worship in which religious services are held and
117 the main body of which is kept for that use and not put to any other use inconsistent with its
118 primary purpose.

119 (14) "Prohibited area" means ~~any~~ a place where it is unlawful to discharge a firearm.

120 (15) "Readily accessible for immediate use" means that a firearm or other dangerous

121 weapon is carried on the person or within such close proximity and in such a manner that it can
122 be retrieved and used as readily as if carried on the person.

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

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

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

133 (19) "State entity" means each department, commission, board, council, agency,
134 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
135 unit, bureau, panel, or other administrative unit of the state.

136 (20) "Violent felony" means the same as defined in Section 76-3-203.5.

137 Section 2. Section **76-10-504** is amended to read:

138 **76-10-504. Carrying concealed dangerous weapon -- Penalties.**

139 (1) Except as provided in Section 76-10-503 and in Subsections (2) and (3) and for
140 persons described in 18 U.S.C. Sec. 922(g):

141 (a) a person who carries a concealed dangerous weapon, as defined in Section
142 76-10-501, which is not a firearm on his person or one that is readily accessible for immediate
143 use which is not securely encased, as defined in this part, in a place other than ~~[his]~~ the person's
144 residence, property, or business under [his] the person's control is guilty of a class B
145 misdemeanor; and

146 (b) a person without a valid concealed firearm permit who carries a concealed
147 dangerous weapon which is a firearm ~~[and that contains no ammunition is guilty of a class B~~
148 ~~misdemeanor, but if the firearm contains ammunition the person is guilty of a class A~~
149 ~~misdemeanor.]~~ in a place other than the person's residence or real property:

150 (i) is guilty of a class B misdemeanor if the firearm contains no ammunition; and

151 (ii) is guilty of a class A misdemeanor if the firearm contains ammunition.

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

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

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

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

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

163 Section 3. Section **76-10-511** is amended to read:

164 **76-10-511. Possession of loaded weapon at residence or on real property**
165 **authorized.**

166 Except for persons described in Section 76-10-503 and 18 U.S.C. Sec. 922(g), a person
167 may have a loaded firearm [~~at his~~], concealed firearm, or loaded and concealed firearm:

168 (1) at the person's place of residence, including any temporary residence or camp[-]; or

169 (2) on the person's real property.

Legislative Review Note
as of 2-9-09 8:35 AM

Office of Legislative Research and General Counsel

H.B. 357 - Firearms Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
