

FIREARM LAWS MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: Karen Mayne

LONG TITLE

General Description:

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

Highlighted Provisions:

This bill:

- ▶ defines Federal Firearms Licensee as related to the sale of a firearm by a licensed firearm dealer and required criminal history background checks;
- ▶ conforms state law with federal firearms laws regarding the identification and transfer of firearms among Federal Firearms License holders; and
- ▶ makes certain technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

63K-4-405, as enacted by Laws of Utah 2008, Chapter 262

76-10-501, as last amended by Laws of Utah 2010, Chapter 62

76-10-526, as last amended by Laws of Utah 2010, Chapter 62

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

Section 1. Section **63K-4-405** is amended to read:

30 **63K-4-405. Prohibition of restrictions on and confiscation of a firearm or**
31 **ammunition during an emergency.**

32 (1) As used in this section:

33 (a) (i) "Confiscate" means for an individual in Utah to intentionally deprive another of
34 a privately owned firearm.

35 (ii) "Confiscate" does not include the taking of a firearm from an individual:

36 (A) in self-defense;

37 (B) possessing a firearm while the individual is committing a felony or misdemeanor;

38 or

39 (C) who may not, under state or federal law, possess the firearm.

40 (b) "Firearm" has the same meaning as defined in [~~Subsection~~] Section 76-10-501[~~(9)~~].

41 (2) During a declared state of emergency or local emergency under this chapter:

42 (a) neither the governor nor an agency of a governmental entity or political subdivision
43 of the state may impose restrictions, which were not in force [~~prior to~~] before the declared state
44 of emergency, on the lawful possession, transfer, sale, transport, storage, display, or use of a
45 firearm or ammunition; and

46 (b) an individual, while acting or purporting to act on behalf of the state or a political
47 subdivision of the state, may not confiscate a privately owned firearm of another individual.

48 (3) A law or regulation passed during a declared state of emergency that does not relate
49 specifically to the lawful possession or use of a firearm and that has attached criminal penalties
50 may not be used to justify the confiscation of a firearm from an individual acting in defense of
51 self, property, or others when on:

52 (a) the individual's private property; or

53 (b) the private property of another as an invitee.

54 (4) (a) An individual who has a firearm confiscated in violation of Subsection (2) may
55 bring a civil action in a court having the appropriate jurisdiction:

56 (i) for damages, in the maximum amount of \$10,000, against a person who violates
57 Subsection (2);

58 (ii) for a civil penalty, in the amount of \$5,000 per violation, against a person who
59 violates Subsection (2); and

60 (iii) for return of the confiscated firearm.

61 (b) As used in this Subsection (4), "person" means an individual, the governmental
62 entity on whose behalf the individual is acting or purporting to act, or both the individual and
63 the governmental entity.

64 (5) (a) A law enforcement officer [~~shall~~] is not [~~be~~] subject to disciplinary action for
65 refusing to confiscate a firearm under this section if:

66 (i) ordered or directed to do so by a superior officer; and

67 (ii) by obeying the order or direction, the law enforcement officer would be committing
68 a violation of this section.

69 (b) For purposes of this Subsection (5), disciplinary action might include:

70 (i) dismissal, suspension, or demotion;

71 (ii) loss of or decrease in benefits, pay, privileges or conditions of employment; and

72 (iii) any type of written or electronic indication, permanent or temporary, on the
73 officer's personnel record of the officer's refusal to obey the unlawful order.

74 (6) (a) If a law enforcement officer commits a violation of this section, the officer's
75 liability in an action brought under Subsection (4)(a) is limited to 5% of the damages and civil
76 penalty allowed under Subsection (4)(a) if the officer can show by clear and convincing
77 evidence that the officer was obeying a direct and unlawful order from a superior officer or
78 authority.

79 (b) The court shall assess the balance of the damages and civil penalty, the remaining
80 95%, [~~shall be assessed~~] against the superior officer or authority who ordered or directed the
81 confiscation in violation of this section.

82 Section 2. Section **76-10-501** is amended to read:

83 **76-10-501. Definitions.**

84 As used in this part:

85 (1) (a) "Antique firearm" means;

86 (i) any firearm~~[-(i)-(A)]~~, including any firearm with a matchlock, flintlock, percussion
87 cap, or similar type of ignition system~~[-and (B) that was]~~, manufactured in or before 1898; or

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

90 (A) is not designed or redesigned for using rimfire or conventional centerfire fixed
91 ammunition; or

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

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

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

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

96 (B) is designed to use black powder, or a black powder substitute, and cannot use fixed
97 ammunition.

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

99 (i) ~~[any]~~ a weapon that incorporates a firearm frame or receiver;

100 (ii) ~~[any]~~ a firearm that is converted into a muzzle loading weapon; or

101 (iii) ~~[any]~~ a muzzle loading weapon that can be readily converted to fire fixed
102 ammunition by replacing the:

103 (A) barrel;

104 (B) bolt;

105 (C) breechblock; or

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

107 (2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201
108 within the Department of Public Safety.

109 (3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

110 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
111 presence; and ~~[is]~~

112 (ii) readily accessible for immediate use.

113 (b) A dangerous weapon ~~[shall not be considered]~~ is not a concealed dangerous

114 weapon if it is a firearm which is unloaded and is securely encased.

115 (4) "Criminal history background check" means a criminal background check
116 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal
117 Firearms Licensee, through the [~~division~~] bureau or the local law enforcement agency where
118 the firearms dealer conducts business.

119 (5) "Curio or relic firearm" means [~~any~~] a firearm that:

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

122 (i) sporting use;

123 (ii) use as an offensive weapon; or

124 (iii) use as a defensive weapon;

125 (b) (i) was manufactured at least 50 years [~~prior to~~] before the current date; and

126 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);

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

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

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

131 (A) novel;

132 (B) rare; or

133 (C) bizarre; or

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

135 (A) figure;

136 (B) period; or

137 (C) event; and

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

140 (6) (a) "Dangerous weapon" means [~~any~~] an item that in the manner of its use or
141 intended use is capable of causing death or serious bodily injury.

142 (b) The following factors shall be used in determining whether a knife, or [~~any other~~]
143 another item, object, or thing not commonly known as a dangerous weapon is a dangerous
144 weapon:

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

149 (c) "Dangerous weapon" does not include [~~any~~] an explosive, chemical, or incendiary
150 device as defined by Section 76-10-306.

151 (7) "Dealer" means a person who is:

- 152 (a) licensed under [~~crimes and criminal procedure,~~] 18 U.S.C. Sec. 923; and
- 153 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
154 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

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

156 (9) "Federal Firearms Licensee" means a person who:

- 157 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and
- 158 (b) is engaged in the activities authorized by the specific category of license held.

159 [~~(9)~~] (10) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
160 sawed-off rifle, or a device that could be used as a dangerous weapon from which is expelled a
161 projectile by action of an explosive.

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

164 [~~(10)~~] (11) "Firearms transaction record form" means a form created by the [~~division~~]
165 bureau to be completed by a person purchasing, selling, or transferring a handgun from a dealer
166 in the state.

167 [~~(11)~~] (12) "Fully automatic weapon" means [~~any~~] a firearm which fires, is designed to
168 fire, or can be readily restored to fire, automatically more than one shot without manual
169 reloading by a single function of the trigger.

170 ~~[(12)]~~ (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description,
171 loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of
172 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

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

175 ~~[(13)]~~ (14) "House of worship" means a church, temple, synagogue, mosque, or other
176 building set apart primarily for the purpose of worship in which religious services are held and
177 the main body of which is kept for that use and not put to any other use inconsistent with its
178 primary purpose.

179 ~~[(14)]~~ (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

180 ~~[(15)]~~ (16) "Readily accessible for immediate use" means that a firearm or other
181 dangerous weapon is carried on the person or within such close proximity and in such a manner
182 that it can be retrieved and used as readily as if carried on the person.

183 ~~[(16)]~~ (17) "Residence" means an improvement to real property used or occupied as a
184 primary or secondary residence.

185 ~~[(17)]~~ (18) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel
186 or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels
187 of fewer than 16 inches in length, or ~~[any]~~ a dangerous weapon made from a rifle or shotgun by
188 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer
189 than 26 inches.

190 ~~[(18)]~~ (19) "Securely encased" means not readily accessible for immediate use, such as
191 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
192 storage area of a motor vehicle, not including a glove box or console box.

193 ~~[(19)]~~ (20) "State entity" means a department, commission, board, council, agency,
194 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
195 unit, bureau, panel, or other administrative unit of the state.

196 ~~[(20)]~~ (21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

197 Section 3. Section **76-10-526** is amended to read:

198 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**
199 **Exemption for concealed firearm permit holders.**

200 (1) For purposes of this section, "valid permit to carry a concealed firearm" does not
201 include a temporary permit issued [~~pursuant to~~] under Section 53-5-705.

202 (2) (a) To establish personal identification and residence in this state for purposes of
203 this part, a dealer shall require an individual receiving a firearm to present one photo
204 identification on a form issued by a governmental agency of the state.

205 (b) A dealer may not accept a driving privilege card issued [~~in accordance with~~] under
206 Section 53-3-207 as proof of identification for the purpose of establishing personal
207 identification and residence in this state as required under this Subsection (2).

208 (3) (a) A criminal history background check is required for the sale of a firearm by a
209 licensed firearm dealer in the state.

210 (b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms
211 Licensee.

212 (4) (a) An individual[~~, except a dealer,~~] purchasing a firearm from a dealer shall
213 consent in writing to a criminal background check, on a form provided by the bureau.

214 (b) The form shall contain the following information:

215 (i) the dealer identification number;

216 (ii) the name and address of the individual receiving the firearm;

217 (iii) the date of birth, height, weight, eye color, and hair color of the individual
218 receiving the firearm; and

219 (iv) the Social Security number or any other identification number of the individual
220 receiving the firearm.

221 (5) (a) The dealer shall send the [~~form~~] information required by Subsection (4) to the
222 bureau immediately upon its [~~completion~~] receipt by the dealer.

223 (b) A dealer may not sell or transfer a firearm to an individual until the dealer has
224 provided the bureau with the information in Subsection (4) and has received approval from the
225 bureau under Subsection (7).

226 (6) The dealer shall make a request for criminal history background information by
227 telephone or other electronic means to the bureau and shall receive approval or denial of the
228 inquiry by telephone or other electronic means.

229 (7) When the dealer calls for or requests a criminal history background check, the
230 bureau shall:

231 (a) review the criminal history files, including juvenile court records, to determine if
232 the individual is prohibited from purchasing, possessing, or transferring a firearm by state or
233 federal law;

234 (b) inform the dealer that:

235 (i) the records indicate the individual is ~~[so]~~ prohibited; or

236 (ii) the individual is approved for purchasing, possessing, or transferring a firearm;

237 (c) provide the dealer with a unique transaction number for that inquiry; and

238 (d) provide a response to the requesting dealer during the call for a criminal
239 background, or by return call, or other electronic means, without delay, except in case of
240 electronic failure or other circumstances beyond the control of the bureau, the bureau shall
241 advise the dealer of the reason for the delay and give the dealer an estimate of the length of the
242 delay.

243 (8) (a) The bureau may not maintain any records of the criminal history background
244 check longer than 20 days from the date of the dealer's request, if the bureau determines that
245 the individual receiving the ~~[gun]~~ firearm is not prohibited from purchasing, possessing, or
246 transferring the firearm under state or federal law.

247 (b) However, the bureau shall maintain a log of requests containing the dealer's federal
248 firearms number, the transaction number, and the transaction date for a period of 12 months.

249 (9) If the criminal history background check discloses information indicating that the
250 individual attempting to purchase the firearm is prohibited from purchasing, possessing, or
251 transferring a firearm, the bureau shall inform the law enforcement agency in the jurisdiction
252 where the ~~[person]~~ individual resides.

253 (10) If an individual is denied the right to purchase a firearm under this section, the

254 individual may review the individual's criminal history information and may challenge or
255 amend the information as provided in Section 53-10-108.

256 (11) The bureau shall make rules [~~as provided~~] in accordance with Title 63G, Chapter
257 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of
258 all records provided by the [~~division pursuant to~~] bureau under this part are in conformance
259 with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159,
260 107 Stat. 1536 (1993).

261 (12) (a) (i) A dealer shall collect a criminal history background check fee [~~related to~~] of
262 \$7.50 for the sale of a firearm under this section[~~, which is \$7.50~~].

263 (ii) This fee remains in effect until changed by the bureau through the process under
264 Section 63J-1-504.

265 (b) (i) The dealer shall forward at one time all fees collected for criminal history
266 background checks performed during the month to the bureau by the last day of the month
267 following the sale of a firearm.

268 (ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover
269 the cost of administering and conducting the criminal history background check program.

270 (13) An individual with a concealed firearm permit issued [~~pursuant to~~] under Title 53,
271 Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and
272 corresponding fee required in this section for the purchase of a firearm if:

273 (a) the individual presents the individual's concealed firearm permit to the dealer prior
274 to purchase of the firearm; and

275 (b) the dealer verifies with the [~~division~~] bureau that the individual's concealed firearm
276 permit is valid.