

FIREARM LAWS MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jennifer M. Seelig

Senate Sponsor: _____

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;
- ▶ provides that certain restricted persons who attempt to purchase a firearm are guilty of a third degree felony;
- ▶ 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



28 76-10-503, as last amended by Laws of Utah 2003, Chapters 203 and 235

29 76-10-526, as last amended by Laws of Utah 2010, Chapter 62



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

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

33 **63K-4-405. Prohibition of restrictions on and confiscation of a firearm or**
34 **ammunition during an emergency.**

35 (1) As used in this section:

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

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

39 (A) in self-defense;

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

41 or

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

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

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

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

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

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

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

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

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

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

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

63 (iii) for return of the confiscated firearm.

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

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

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

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

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

73 (i) dismissal, suspension, or demotion;

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

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

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

82 (b) The court shall assess the balance of the damages and civil penalty, the remaining
83 95%, [~~shall be assessed~~] against the superior officer or authority who ordered or directed the
84 confiscation in violation of this section.

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

86 **76-10-501. Definitions.**

87 As used in this part:

88 (1) (a) "Antique firearm" means:

89 (i) any firearm[-(i)-(A)], including any firearm with a matchlock, flintlock, percussion

90 cap, or similar type of ignition system[; and (B) that was], manufactured in or before 1898; or

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

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

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

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

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

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

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

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

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

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

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

106 (A) barrel;

107 (B) bolt;

108 (C) breechblock; or

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

110 (2) "Bureau" means the Bureau of Criminal Identification created in Section 53-10-201
111 within the Department of Public [~~Safety~~] Safety's Criminal Investigations and Technical
112 Services Division.

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

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

116 (ii) readily accessible for immediate use.

117 (b) A dangerous weapon [~~shall not be considered~~] is not a concealed dangerous
118 weapon if it is a firearm which is unloaded and is securely encased.

119 (4) "Criminal history background check" means a criminal background check
120 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal

121 Firearms Licensee, through the division or the local law enforcement agency where the
122 firearms dealer conducts business.

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

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

126 (i) sporting use;

127 (ii) use as an offensive weapon; or

128 (iii) use as a defensive weapon;

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

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

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

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

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

135 (A) novel;

136 (B) rare; or

137 (C) bizarre; or

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

139 (A) figure;

140 (B) period; or

141 (C) event; and

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

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

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

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

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

151 (iii) the manner in which the instrument, object, or thing was used; and

152 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

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

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

156 (a) licensed under ~~[crimes and criminal procedure,]~~ 18 U.S.C. Sec. 923; and

157 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
158 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

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

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

161 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

162 (b) is engaged in the activities authorized by the specific category of license held.

163 ~~[(9)]~~ (10) (a) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
164 sawed-off rifle, or a device that could be used as a dangerous weapon from which is expelled a
165 projectile by action of an explosive.

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

168 ~~[(10)]~~ (11) "Firearms transaction record form" means a form created by the division to
169 be completed by a person purchasing, selling, or transferring a handgun from a dealer in the
170 state.

171 ~~[(11)]~~ (12) "Fully automatic weapon" means ~~[any]~~ a firearm which fires, is designed to
172 fire, or can be readily restored to fire, automatically more than one shot without manual
173 reloading by a single function of the trigger.

174 ~~[(12)]~~ (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description,
175 loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of
176 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

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

179 ~~[(13)]~~ (14) "House of worship" means a church, temple, synagogue, mosque, or other
180 building set apart primarily for the purpose of worship in which religious services are held and
181 the main body of which is kept for that use and not put to any other use inconsistent with its
182 primary purpose.

183 [~~(14)~~] (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

184 [~~(15)~~] (16) "Readily accessible for immediate use" means that a firearm or other
185 dangerous weapon is carried on the person or within such close proximity and in such a manner
186 that it can be retrieved and used as readily as if carried on the person.

187 [~~(16)~~] (17) "Residence" means an improvement to real property used or occupied as a
188 primary or secondary residence.

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

194 [~~(18)~~] (19) "Securely encased" means not readily accessible for immediate use, such as
195 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
196 storage area of a motor vehicle, not including a glove box or console box.

197 [~~(19)~~] (20) "State entity" means a department, commission, board, council, agency,
198 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
199 unit, bureau, panel, or other administrative unit of the state.

200 [~~(20)~~] (21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

201 Section 3. Section **76-10-503** is amended to read:

202 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
203 **dangerous weapons by certain persons.**

204 (1) For purposes of this section:

205 (a) A Category I restricted person is a person who:

206 (i) has been convicted of [~~any~~] a violent felony as defined in Section 76-3-203.5;

207 (ii) is on probation or parole for [~~any~~] a felony;

208 (iii) is on parole from a secure facility as defined in Section 62A-7-101; or

209 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
210 committed by an adult would have been a violent felony as defined in Section 76-3-203.5.

211 (b) A Category II restricted person is a person who:

212 (i) has been convicted of or is under indictment for [~~any~~] a felony;

213 (ii) within the last seven years has been adjudicated delinquent for an offense which if

214 committed by an adult would have been a felony;

215 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

216 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in

217 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

218 (v) has been found not guilty by reason of insanity for a felony offense;

219 (vi) has been found mentally incompetent to stand trial for a felony offense;

220 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun

221 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed

222 to a mental institution;

223 (viii) is an alien who is illegally or unlawfully in the United States;

224 (ix) has been dishonorably discharged from the armed forces; or

225 (x) has renounced [~~his~~] the person's citizenship after having been a citizen of the

226 United States.

227 (2) A Category I restricted person who intentionally or knowingly agrees, consents,

228 offers, or arranges to purchase, transfer, possess, use, or have under [~~his~~] the person's custody

229 or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under

230 [~~his~~] the person's custody or control:

231 (a) [~~any~~] a firearm is guilty of a second degree felony; or

232 (b) [~~any~~] a dangerous weapon other than a firearm is guilty of a third degree felony.

233 (3) A Category II restricted person who attempts to purchase, purchases, transfers,

234 possesses, uses, or has under [~~his~~] the person's custody or control:

235 (a) [~~any~~] a firearm is guilty of a third degree felony; or

236 (b) [~~any~~] a dangerous weapon other than a firearm is guilty of a class A misdemeanor.

237 (4) A person may be subject to the restrictions of both categories at the same time.

238 (5) If a higher penalty than is prescribed in this section is provided in another section

239 for one who purchases, transfers, possesses, uses, or has under this custody or control [~~any~~] a

240 dangerous weapon, the penalties of that section control.

241 (6) (a) It is an affirmative defense to a charge based on the definition in Subsection

242 (1)(b)(iv) that the person was:

243 [~~(a)~~] (i) in possession of a controlled substance pursuant to a lawful order of a

244 practitioner for use of a member of the person's household or for administration to an animal

245 owned by the person or a member of the person's household; or

246 ~~[(b)]~~ (ii) otherwise authorized by law to possess the substance.

247 (b) A challenge or amendment to the determination that an attempted purchaser was a
248 prohibited individual under Subsection 76-10-526(10) is an affirmative defense to a
249 prosecution under this section for an attempt to purchase a firearm from a dealer.

250 Section 4. Section **76-10-526** is amended to read:

251 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**
252 **Exemption for concealed firearm permit holders.**

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

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

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

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

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

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

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

268 (i) the dealer identification number;

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

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

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

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

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

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

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

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

287 (b) inform the dealer that:

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

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

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

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

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

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

302 (9) If the criminal history background check discloses information indicating that the
303 individual attempting to purchase the firearm is prohibited from purchasing, possessing, or
304 transferring a firearm, the bureau shall inform the law enforcement agency and the Bureau of
305 Alcohol, Tobacco, Firearms and Explosives office in the jurisdiction where the [person]
306 individual resides of the attempted purchase.

307 (10) If an individual is denied the right to purchase a firearm under this section, the
308 individual may review the individual's criminal history information and may challenge or
309 amend the information as provided in Section 53-10-108.

310 (11) The bureau shall make rules [~~as provided~~] in accordance with Title 63G, Chapter
311 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of
312 all records provided by the division [~~pursuant to~~] under this part are in conformance with the
313 requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat.
314 1536 (1993).

315 (12) (a) (i) A dealer shall collect a criminal history background check fee [~~related to~~] of
316 \$7.50 for the sale of a firearm under this section[~~, which is \$7.50~~].

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

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

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

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

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

329 (b) the dealer verifies with the division that the individual's concealed firearm permit is
330 valid.

Legislative Review Note
as of 2-2-11 11:17 AM

Office of Legislative Research and General Counsel