

## HB0075S01 compared with HB0075

~~text~~ shows text that was in HB0075 but was deleted in HB0075S01.

text shows text that was not in HB0075 but was inserted into HB0075S01.

**DISCLAIMER:** This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

Representative Curtis Oda proposes the following substitute bill:

### RESTORATION OF CIVIL RIGHTS FOR NONVIOLENT FELONS

2014 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Curtis Oda**

Senate Sponsor: \_\_\_\_\_

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#### LONG TITLE

##### General Description:

This bill exempts nonviolent felons from the categories of restricted persons who are prohibited from possessing a dangerous weapon.

##### Highlighted Provisions:

This bill:

- ▶ exempts persons convicted of certain nonviolent felonies and who have had felonies expunged from the categories of restricted persons prohibited from possessing a dangerous weapon.

##### Money Appropriated in this Bill:

None

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### Other Special Clauses:

None

### Utah Code Sections Affected:

AMENDS:

**76-10-503**, as last amended by Laws of Utah 2012, Chapter 317

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

Section 1. Section **76-10-503** is amended to read:

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

- (1) For purposes of this section:
- (a) A Category I restricted person is a person who:
- (i) has been convicted of any violent felony as defined in Section 76-3-203.5;
  - (ii) is on probation or parole for any felony;
  - (iii) is on parole from a secure facility as defined in Section 62A-7-101;
  - (iv) within the last 10 years has been adjudicated delinquent for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5; or
  - (v) is an alien who is illegally or unlawfully in the United States.
- (b) A Category II restricted person is a person who:
- (i) has been convicted of any felony;
  - (ii) within the last seven years has been adjudicated delinquent for an offense which if committed by an adult would have been a felony;
  - (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;
  - (iv) is in possession of a dangerous weapon and is knowingly and intentionally in unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;
  - (v) has been found not guilty by reason of insanity for a felony offense;
  - (vi) has been found mentally incompetent to stand trial for a felony offense;
  - (vii) has been adjudicated as mentally defective as provided in the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed to a mental institution;
  - (viii) has been dishonorably discharged from the armed forces; or

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(ix) has renounced his citizenship after having been a citizen of the United States.

(c) ~~{A person is not a restricted person if:~~

~~(i) the person was convicted of a felony}~~ As used in this section, a conviction of a felony or adjudication of delinquency for an offense which would be a felony if committed by an adult does not include:

(i) a conviction or adjudication of delinquency for an offense pertaining to antitrust violations, unfair trade practices, ~~{restraints}~~ restraint of trade, or other similar offenses relating to the regulation of business practices{; or

~~(ii) the person's felony conviction}~~ not involving theft or fraud; or

(ii) a conviction or adjudication of delinquency which, according to the law of the jurisdiction in which it occurred, has been expunged, set aside, ~~{or}~~ reduced to a misdemeanor by court order, ~~{the person has been } pardoned{;}~~ or regarding which the person's civil rights have been restored~~{ according to the law of the state in which the conviction occurred,}~~ unless the pardon, reduction, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

(d) It is the burden of the defendant in a criminal case to provide evidence that a conviction or adjudication of delinquency is subject to an exception provided in Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the conviction or adjudication of delinquency is not subject to that exception.

(2) A Category I restricted person who intentionally or knowingly agrees, consents, offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a second degree felony; or

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

(3) A Category II restricted person who purchases, transfers, possesses, uses, or has under the person's custody or control:

(a) any firearm is guilty of a third degree felony; or

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

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

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

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for one who purchases, transfers, possesses, uses, or has under this custody or control any dangerous weapon, the penalties of that section control.

(6) It is an affirmative defense to a charge based on the definition in Subsection (1)(b)(iv) that the person was:

(a) in possession of a controlled substance pursuant to a lawful order of a practitioner for use of a member of the person's household or for administration to an animal owned by the person or a member of the person's household; or

(b) otherwise authorized by law to possess the substance.

(7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

(i) was possessed by the person or was under the person's custody or control before the person became a restricted person;

(ii) was not used in or possessed during the commission of a crime or subject to disposition under Section 76-10-525;

(iii) is not being held as evidence by a court or law enforcement agency;

(iv) was transferred to a person not legally prohibited from possessing the weapon; and

(v) unless a different time is ordered by the court, was transferred within 10 days of the person becoming a restricted person.

(b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person of a firearm or other dangerous weapon by a restricted person.

(8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or (b).

(b) A person who violates Subsection (8)(a) when the recipient is:

(i) a person described in Subsection (1)(a) and the transaction involves a firearm, is guilty of a second degree felony;

(ii) a person described in Subsection (1)(a) and the transaction involves any dangerous weapon other than a firearm, is guilty of a third degree felony;

(iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is guilty of a third degree felony; or

(iv) a person described in Subsection (1)(b) and the transaction involves any dangerous

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weapon other than a firearm, is guilty of a class A misdemeanor.

(9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under circumstances which the person knows would be a violation of the law.

(b) A person may not provide to a dealer or other person what the person knows to be materially false information with intent to deceive the dealer or other person about the legality of a sale, transfer or other disposition of a firearm or dangerous weapon.

(c) "Materially false information" means information that portrays an illegal transaction as legal or a legal transaction as illegal.

(d) A person who violates this Subsection (9) is guilty of:

(i) a third degree felony if the transaction involved a firearm; or

(ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a firearm.

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**Legislative Review Note**

~~as of 1-20-14 12:15 PM~~

~~Office of Legislative Research and General Counsel~~