

**FIREARM AND DANGEROUS WEAPONS AMENDMENTS**

2015 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Brian M. Greene**

Senate Sponsor: Alvin B. Jackson

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**LONG TITLE**

**General Description:**

This bill amends provisions relating to concealed weapons.

**Highlighted Provisions:**

This bill:

▶ ~~H→ [redefines a]~~ eliminates the definition of ~~←H~~ concealed dangerous weapon ~~H→ [to~~  
12a ~~include only concealed firearms]~~ ~~←H~~ ;

- ▶ amends provisions related to the penalties for carrying a concealed firearm; and
- ▶ makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-5a-104**, as enacted by Laws of Utah 2014, Chapter 431

**76-10-501**, as last amended by Laws of Utah 2014, Chapter 428

**76-10-504**, as last amended by Laws of Utah 2013, Chapter 301

~~H→~~ **76-10-507**, as enacted by Laws of Utah 1973, Chapter 196 ~~←H~~

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

Section 1. Section **53-5a-104** is amended to read:

**53-5a-104. Firearm transfer certification.**



28 (1) As used in this section:

29 (a) "Certification" means the participation and assent of the chief law enforcement  
30 officer necessary under federal law for the approval of the application to transfer or make a  
31 firearm.

32 (b) "Chief law enforcement officer" means any official the Bureau of Alcohol,  
33 Tobacco, Firearms and Explosives, or any successor agency, identifies by regulation or  
34 otherwise as eligible to provide any required certification for the making or transfer of a  
35 firearm.

36 (c) "Firearm" [~~has the same meaning as provided~~] means the same as that term is  
37 defined in the National Firearms Act, [6] 26 U.S.C. Sec. 5845(a).

38 (2) A chief law enforcement officer may not make a certification under this section that  
39 the chief law enforcement officer knows to be untrue. The chief law enforcement officer may  
40 not refuse to provide certification based on a generalized objection to private persons or entities  
41 making, possessing, or receiving firearms or any certain type of firearm, the possession of  
42 which is not prohibited by law.

43 (3) Upon receiving a federal firearm transfer form a chief law enforcement officer or  
44 the chief law enforcement officer's designee shall provide certification if the applicant:

45 (a) is not prohibited by law from receiving or possessing the firearm; or

46 (b) is not the subject of a proceeding that could result in the applicant being prohibited  
47 by law from receiving or possessing the firearm.

48 (4) The chief law enforcement officer, the chief law enforcement officer's designee, or  
49 official signing the federal transfer form shall:

50 (a) return the federal transfer form to the applicant within 15 calendar days; or

51 (b) if the applicant is denied, provide to the applicant the reasons for denial in writing  
52 within 15 calendar days.

53 (5) Chief law enforcement officers and their employees who act in good faith when  
54 acting within the scope of their duties are immune from liability arising from any act or  
55 omission in making a certification as required by this section. Any action taken against a chief  
56 law enforcement officer or an employee shall be in accordance with Title 63G, Chapter 7,  
57 Governmental Immunity Act of Utah.

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

59           **76-10-501. Definitions.**

60           As used in this part:

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

62           (i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or  
63 similar type of ignition system, manufactured in or before 1898; or64           (ii) a firearm that is a replica of any firearm described in this Subsection (1)(a), if the  
65 replica:66           (A) is not designed or redesigned for using rimfire or conventional centerfire fixed  
67 ammunition; or

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

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

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

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

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

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

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

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

77           (iii) a muzzle loading weapon that can be readily converted to fire fixed ammunition by  
78 replacing the:

79           (A) barrel;

80           (B) bolt;

81           (C) breechblock; or

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

83           (2) "Bureau" means the Bureau of Criminal Identification created in Section [53-10-201](#)  
84 within the Department of Public Safety.85           (3) ~~Ĥ→ [Ĥ] (a) [Ĥ] ←Ĥ~~ "Concealed [~~dangerous weapon~~] firearm" means a [~~dangerous~~  
85a ~~weapon~~]86 firearm that is:87           ~~Ĥ→ [Ĥ] (i) [Ĥ] [~~a~~] ←Ĥ~~ covered, hidden, or secreted in a manner that the public would  
87a not be aware of

88 its presence; and

89           ~~Ĥ→ [Ĥ] (ii) [Ĥ] [~~b~~] ←Ĥ~~ readily accessible for immediate use.

90           ~~[(b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which~~  
91 ~~is unloaded and is securely encased.]~~

91a       ~~Ĥ~~→ **(b) A firearm that is unloaded and securely encased is not a concealed firearm for the**  
91b **purposes of this part.** ←~~Ĥ~~

92           (4) "Criminal history background check" means a criminal background check  
93 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal  
94 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms  
95 dealer conducts business.

96           (5) "Curio or relic firearm" means a firearm that:

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

99           (i) sporting use;

100          (ii) use as an offensive weapon; or

101          (iii) use as a defensive weapon;

102          (b) (i) was manufactured at least 50 years before the current date; and

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

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

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

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

108           (A) novel;

109           (B) rare; or

110           (C) bizarre; or

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

112           (A) figure;

113           (B) period; or

114           (C) event; and

115          (e) has been designated as a curio or relic firearm by the director of the United States  
116 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

117          (6) (a) "Dangerous weapon" means:

118           (i) a firearm; or

119           (ii) an object that in the manner of its use or intended use is capable of causing death or  
120 serious bodily injury.

- 121 (b) The following factors are used in determining whether any object, other than a  
122 firearm, is a dangerous weapon:
- 123 (i) the location and circumstances in which the object was used or possessed;
  - 124 (ii) the primary purpose for which the object was made;
  - 125 (iii) the character of the wound, if any, produced by the object's unlawful use;
  - 126 (iv) the manner in which the object was unlawfully used;
  - 127 (v) whether the manner in which the object is used or possessed constitutes a potential  
128 imminent threat to public safety; and
  - 129 (vi) the lawful purposes for which the object may be used.
- 130 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device  
131 as defined by Section [76-10-306](#).
- 132 (7) "Dealer" means a person who is:
- 133 (a) licensed under 18 U.S.C. Sec. 923; and
  - 134 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,  
135 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.
- 136 (8) "Enter" means intrusion of the entire body.
- 137 (9) "Federal Firearms Licensee" means a person who:
- 138 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and
  - 139 (b) is engaged in the activities authorized by the specific category of license held.
- 140 (10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or  
141 short barreled rifle, or a device that could be used as a dangerous weapon from which is  
142 expelled a projectile by action of an explosive.
- 143 (b) As used in Sections [76-10-526](#) and [76-10-527](#), "firearm" does not include an  
144 antique firearm.
- 145 (11) "Firearms transaction record form" means a form created by the bureau to be  
146 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.
- 147 (12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can  
148 be readily restored to fire, automatically more than one shot without manual reloading by a  
149 single function of the trigger.
- 150 (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded  
151 or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which,

152 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

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

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

159 (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

160 (16) "Readily accessible for immediate use" means that a firearm or other dangerous  
161 weapon is carried on the person or within such close proximity and in such a manner that it can  
162 be retrieved and used as readily as if carried on the person.

163 (17) "Residence" means an improvement to real property used or occupied as a primary  
164 or secondary residence.

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

168 (19) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a barrel  
169 or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels  
170 of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by  
171 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer  
172 than 26 inches.

173 (20) "State entity" means a department, commission, board, council, agency,  
174 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,  
175 unit, bureau, panel, or other administrative unit of the state.

176 (21) "Violent felony" has the same meaning as defined in Section 76-3-203.5.

177 Section 3. Section 76-10-504 is amended to read:

178 **76-10-504. Carrying concealed firearm -- Penalties.**

179 (1) Except as provided in Section 76-10-503 and in Subsections (2), (3), and (4), a  
180 person who carries a concealed [~~dangerous weapon~~] firearm, as defined in Section 76-10-501,  
181 including an unloaded firearm on his or her person or one that is readily accessible for  
182 immediate use which is not securely encased, as defined in this part, in or on a place other than

183 the person's residence, property, a vehicle in the person's lawful possession, or a vehicle, with  
 184 the consent of the individual who is lawfully in possession of the vehicle, or business under the  
 185 person's control is guilty of a class B misdemeanor.

186 (2) A person who carries a concealed [~~dangerous weapon which~~] firearm that is a  
 187 loaded firearm in violation of Subsection (1) is guilty of a class A misdemeanor.

188 (3) A person who carries concealed an unlawfully possessed short barreled shotgun or  
 189 a short barreled rifle is guilty of a second degree felony.

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

193 (5) Nothing in Subsection (1) or (2) [~~shall prohibit~~] prohibits a person engaged in the  
 194 lawful taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources  
 195 Code of Utah, from carrying a [~~concealed weapon or a~~] concealed firearm as long as the taking  
 196 of wildlife does not occur:

- 197 (a) within the limits of a municipality in violation of that municipality's ordinances; or
- 198 (b) upon the highways of the state as defined in Section 41-6a-102.

198a **Ĥ→ Section 4. Section 76-10-507 is amended to read:**

198b **76-10-507. Possession of deadly weapon with criminal intent.**

198c **Every person having upon his person [any] a dangerous weapon with intent to [~~unlawfully~~**  
 198d **assault another] use it to commit a criminal offense is guilty of a class A misdemeanor. ←Ĥ**

**Legislative Review Note**  
**as of 1-23-15 9:39 AM**

**Office of Legislative Research and General Counsel**