

1 **FIREARM AND DANGEROUS WEAPONS AMENDMENTS**

2 2015 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Brian M. Greene**

5 Senate Sponsor: Alvin B. Jackson

7 **LONG TITLE**

8 **General Description:**

9 This bill amends provisions relating to concealed weapons.

10 **Highlighted Provisions:**

11 This bill:

- 12 ▸ eliminates the definition of concealed dangerous weapon;
- 13 ▸ amends provisions related to the penalties for carrying a concealed firearm; and
- 14 ▸ makes technical changes.

15 **Money Appropriated in this Bill:**

16 None

17 **Other Special Clauses:**

18 None

19 **Utah Code Sections Affected:**

20 **AMENDS:**

21 **53-5a-104**, as enacted by Laws of Utah 2014, Chapter 431

22 **76-10-501**, as last amended by Laws of Utah 2014, Chapter 428

23 **76-10-504**, as last amended by Laws of Utah 2013, Chapter 301

24 **76-10-507**, as enacted by Laws of Utah 1973, Chapter 196

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

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

28 **53-5a-104. Firearm transfer certification.**

29 (1) As used in this section:

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

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

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

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

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

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

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

51 (a) return the federal transfer form to the applicant within 15 calendar days; or
52 (b) if the applicant is denied, provide to the applicant the reasons for denial in writing
53 within 15 calendar days.

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

58 Governmental Immunity Act of Utah.

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

60 **76-10-501. Definitions.**

61 As used in this part:

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

63 (i) any firearm, including any firearm with a matchlock, flintlock, percussion cap, or
64 similar type of ignition system, manufactured in or before 1898; or

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

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

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

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

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

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

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

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

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

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

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

80 (A) barrel;

81 (B) bolt;

82 (C) breechblock; or

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

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

86 (3) (a) "Concealed [dangerous weapon"] firearm" means a [dangerous weapon] firearm
87 that is:

88 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
89 presence; and

90 (ii) readily accessible for immediate use.

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

93 (b) A firearm that is unloaded and securely encased is not a concealed firearm for the
94 purposes of this part.

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

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

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

102 (i) sporting use;

103 (ii) use as an offensive weapon; or

104 (iii) use as a defensive weapon;

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

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

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

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

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

111 (A) novel;

112 (B) rare; or

113 (C) bizarre; or

- 114 (ii) because of the firearm's association with an historical:
115 (A) figure;
116 (B) period; or
117 (C) event; and
118 (e) has been designated as a curio or relic firearm by the director of the United States
119 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.
120 (6) (a) "Dangerous weapon" means:
121 (i) a firearm; or
122 (ii) an object that in the manner of its use or intended use is capable of causing death or
123 serious bodily injury.
124 (b) The following factors are used in determining whether any object, other than a
125 firearm, is a dangerous weapon:
126 (i) the location and circumstances in which the object was used or possessed;
127 (ii) the primary purpose for which the object was made;
128 (iii) the character of the wound, if any, produced by the object's unlawful use;
129 (iv) the manner in which the object was unlawfully used;
130 (v) whether the manner in which the object is used or possessed constitutes a potential
131 imminent threat to public safety; and
132 (vi) the lawful purposes for which the object may be used.
133 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
134 as defined by Section [76-10-306](#).
135 (7) "Dealer" means a person who is:
136 (a) licensed under 18 U.S.C. Sec. 923; and
137 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
138 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.
139 (8) "Enter" means intrusion of the entire body.
140 (9) "Federal Firearms Licensee" means a person who:
141 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

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

143 (10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or
144 short barreled rifle, or a device that could be used as a dangerous weapon from which is
145 expelled a projectile by action of an explosive.

146 (b) As used in Sections [76-10-526](#) and [76-10-527](#), "firearm" does not include an
147 antique firearm.

148 (11) "Firearms transaction record form" means a form created by the bureau to be
149 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

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

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

156 (b) As used in Sections [76-10-520](#), [76-10-521](#), and [76-10-522](#), "handgun" and "pistol
157 or revolver" do not include an antique firearm.

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

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

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

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

168 (18) "Securely encased" means not readily accessible for immediate use, such as held
169 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other

170 storage area of a motor vehicle, not including a glove box or console box.

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

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

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

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

181 **76-10-504. Carrying concealed firearm -- Penalties.**

182 (1) Except as provided in Section [76-10-503](#) and in Subsections (2), (3), and (4), a
183 person who carries a concealed [dangerous weapon] firearm, as defined in Section [76-10-501](#),
184 including an unloaded firearm on his or her person or one that is readily accessible for
185 immediate use which is not securely encased, as defined in this part, in or on a place other than
186 the person's residence, property, a vehicle in the person's lawful possession, or a vehicle, with
187 the consent of the individual who is lawfully in possession of the vehicle, or business under the
188 person's control is guilty of a class B misdemeanor.

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

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

193 (4) If the concealed firearm is used in the commission of a violent felony as defined in
194 Section [76-3-203.5](#), and the person is a party to the offense, the person is guilty of a second
195 degree felony.

196 (5) Nothing in Subsection (1) or (2) [~~shall prohibit~~] prohibits a person engaged in the
197 lawful taking of protected or unprotected wildlife as defined in Title 23, Wildlife Resources

198 Code of Utah, from carrying a [concealed weapon or a] concealed firearm as long as the taking
199 of wildlife does not occur:

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

202 Section 4. Section **76-10-507** is amended to read:

203 **76-10-507. Possession of deadly weapon with criminal intent.**

204 Every person having upon his person any dangerous weapon with intent to [unlawfully
205 assault another] use it to commit a criminal offense is guilty of a class A misdemeanor.