

HB0087S01 compared with HB0087

~~deleted text~~ shows text that was in HB0087 but was deleted in HB0087S01.

Inserted text shows text that was not in HB0087 but was inserted into HB0087S01.

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Representative Elizabeth Weight proposes the following substitute bill:

SAFE STORAGE OF FIREARMS AMENDMENTS

2019 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Elizabeth Weight

Senate Sponsor: _____

LONG TITLE

General Description:

This bill relates to firearm storage.

Highlighted Provisions:

This bill:

- ▶ modifies definitions;
- ▶ makes it a criminal offense ~~to store~~ if a firearm is stored in a place that the firearm owner knows or has reason to believe a minor or person legally restricted from possessing a firearm has access and a person is injured by a minor or restricted person using the firearm;
- ▶ requires a firearm dealer to post written notice of possible prosecution for negligent storage of a firearm and provides a penalty for failure to post the notice; and
- ▶ makes technical changes.

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Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-5-704, as last amended by Laws of Utah 2013, Chapter 280

53-5-705, as last amended by Laws of Utah 2010, Chapter 62

76-10-501, as last amended by Laws of Utah 2015, Chapters 212 and 406

76-10-523, as last amended by Laws of Utah 2014, Chapter 248

ENACTS:

76-10-527.5, Utah Code Annotated 1953

76-10-533, Utah Code Annotated 1953

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

Section 1. Section **53-5-704** is amended to read:

53-5-704. Bureau duties -- Permit to carry concealed firearm -- Certification for concealed firearms instructor -- Requirements for issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.

(1) (a) The bureau shall issue a permit to carry a concealed firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days after receiving an application, unless the bureau finds proof that the applicant does not meet the qualifications set forth in Subsection (2).

(b) The permit is valid throughout the state for five years, without restriction, except as otherwise provided by Section 53-5-710.

(c) ~~[The]~~ Except as provided in Section 76-10-533, the provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not apply to a person issued a permit under Subsection (1)(a).

(d) Subsection (4)(a) does not apply to a nonresident:

(i) active duty service member, who present to the bureau orders requiring the active duty service member to report for duty in this state; or

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(ii) an active duty service member's spouse, stationed with the active duty service member, who presents to the bureau the active duty service member's orders requiring the service member to report for duty in this state.

(2) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if the applicant or permit holder:

(i) has been or is convicted of a felony;

(ii) has been or is convicted of a crime of violence;

(iii) has been or is convicted of an offense involving the use of alcohol;

(iv) has been or is convicted of an offense involving the unlawful use of narcotics or other controlled substances;

(v) has been or is convicted of an offense involving moral turpitude;

(vi) has been or is convicted of an offense involving domestic violence;

(vii) has been or is adjudicated by a state or federal court as mentally incompetent, unless the adjudication has been withdrawn or reversed; and

(viii) is not qualified to purchase and possess a firearm pursuant to Section 76-10-503 and federal law.

(b) In determining whether an applicant or permit holder meets the qualifications set forth in Subsection (2)(a), the bureau shall consider mitigating circumstances.

(3) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if it has reasonable cause to believe that the applicant or permit holder has been or is a danger to self or others as demonstrated by evidence, including:

(i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

(ii) past participation in incidents involving unlawful violence or threats of unlawful violence; or

(iii) conviction of an offense in violation of Title 76, Chapter 10, Part 5, Weapons.

(b) The bureau may not deny, suspend, or revoke a concealed firearm permit solely for a single conviction of an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

(c) In determining whether the applicant or permit holder has been or is a danger to self or others, the bureau may inspect:

(i) expunged records of arrests and convictions of adults as provided in Section 77-40-109; and

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(ii) juvenile court records as provided in Section 78A-6-209.

(4) (a) In addition to meeting the other qualifications for the issuance of a concealed firearm permit under this section, a nonresident applicant who resides in a state that recognizes the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law shall:

(i) hold a current concealed firearm or concealed weapon permit issued by the appropriate permitting authority of the nonresident applicant's state of residency; and

(ii) submit a photocopy or electronic copy of the nonresident applicant's current concealed firearm or concealed weapon permit referred to in Subsection (4)(a)(i).

(b) A nonresident applicant who knowingly and willfully provides false information to the bureau under Subsection (4)(a) is prohibited from holding a Utah concealed firearm permit for a period of 10 years.

(c) Subsection (4)(a) applies to all applications for the issuance of a concealed firearm permit that are received by the bureau after May 10, 2011.

(d) Beginning January 1, 2012, Subsection (4)(a) also applies to an application for renewal of a concealed firearm permit by a nonresident.

(5) The bureau shall issue a concealed firearm permit to a former peace officer who departs full-time employment as a peace officer, in an honorable manner, within five years of that departure if the officer meets the requirements of this section.

(6) Except as provided in Subsection (7), the bureau shall also require the applicant to provide:

(a) the address of the applicant's permanent residence;

(b) one recent dated photograph;

(c) one set of fingerprints; and

(d) evidence of general familiarity with the types of firearms to be concealed as defined in Subsection (8).

(7) An applicant who is a law enforcement officer under Section 53-13-103 may provide a letter of good standing from the officer's commanding officer in place of the evidence required by Subsection (6)(d).

(8) (a) General familiarity with the types of firearms to be concealed includes training in:

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(i) the safe loading, unloading, storage, and carrying of the types of firearms to be concealed; and

(ii) current laws defining lawful use of a firearm by a private citizen, including lawful self-defense, use of force by a private citizen, including use of deadly force, transportation, and concealment.

(b) An applicant may satisfy the general familiarity requirement of Subsection (8)(a) by one of the following:

(i) completion of a course of instruction conducted by a national, state, or local firearms training organization approved by the bureau;

(ii) certification of general familiarity by a person who has been certified by the bureau, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor; or

(iii) equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service.

(c) Instruction taken by a student under this Subsection (8) shall be in person and not through electronic means.

(9) (a) An applicant for certification as a Utah concealed firearms instructor shall:

(i) be at least 21 years of age;

(ii) be currently eligible to possess a firearm under Section 76-10-503;

(iii) have:

(A) completed a firearm instruction training course from the National Rifle Association or the Department of Public Safety, Division of Peace Officer Safety Standards and Training; or

(B) received training equivalent to one of the courses referred to in Subsection (9)(a)(iii)(A) as determined by the bureau;

(iv) have taken a course of instruction and passed a certification test as described in Subsection (9)(c); and

(v) possess a Utah concealed firearm permit.

(b) An instructor's certification is valid for three years from the date of issuance, unless revoked by the bureau.

(c) (i) In order to obtain initial certification or renew a certification, an instructor shall

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attend an instructional course and pass a test under the direction of the bureau.

(ii) (A) The bureau shall provide or contract to provide the course referred to in Subsection (9)(c)(i) twice every year.

(B) The course shall include instruction on current Utah law related to firearms, including concealed carry statutes and rules, and the use of deadly force by private citizens.

(d) (i) Each applicant for certification under this Subsection (9) shall pay a fee of \$50.00 at the time of application for initial certification.

(ii) The renewal fee for the certificate is \$25.

(iii) The bureau may use a fee paid under Subsections (9)(d)(i) and (ii) as a dedicated credit to cover the cost incurred in maintaining and improving the instruction program required for concealed firearm instructors under this Subsection (9).

(10) A certified concealed firearms instructor shall provide each of the instructor's students with the required course of instruction outline approved by the bureau.

(11) (a) (i) A concealed firearms instructor shall provide a signed certificate to a person successfully completing the offered course of instruction.

(ii) The instructor shall sign the certificate with the exact name indicated on the instructor's certification issued by the bureau under Subsection (9).

(iii) (A) The certificate shall also have affixed to it the instructor's official seal, which is the exclusive property of the instructor and may not be used by any other person.

(B) The instructor shall destroy the seal upon revocation or expiration of the instructor's certification under Subsection (9).

(C) The bureau shall determine the design and content of the seal to include at least the following:

(I) the instructor's name as it appears on the instructor's certification;

(II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my certification expires on (the instructor's certification expiration date)"; and

(III) the instructor's business or residence address.

(D) The seal shall be affixed to each student certificate issued by the instructor in a manner that does not obscure or render illegible any information or signatures contained in the document.

(b) The applicant shall provide the certificate to the bureau in compliance with

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Subsection (6)(d).

(12) The bureau may deny, suspend, or revoke the certification of an applicant or a concealed firearms instructor if it has reason to believe the applicant or the instructor has:

- (a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or
- (b) knowingly and willfully provided false information to the bureau.

(13) An applicant for certification or a concealed firearms instructor has the same appeal rights as set forth in Subsection (16).

(14) In providing instruction and issuing a permit under this part, the concealed firearms instructor and the bureau are not vicariously liable for damages caused by the permit holder.

(15) An individual who knowingly and willfully provides false information on an application filed under this part is guilty of a class B misdemeanor, and the application may be denied, or the permit may be suspended or revoked.

(16) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or permit holder may file a petition for review with the board within 60 days from the date the denial, suspension, or revocation is received by the applicant or permit holder by certified mail, return receipt requested.

(b) The bureau's denial of a permit shall be in writing and shall include the general reasons for the action.

(c) If an applicant or permit holder appeals the denial to the review board, the applicant or permit holder may have access to the evidence upon which the denial is based in accordance with Title 63G, Chapter 2, Government Records Access and Management Act.

(d) On appeal to the board, the bureau has the burden of proof by a preponderance of the evidence.

(e) (i) Upon a ruling by the board on the appeal of a denial, the board shall issue a final order within 30 days stating the board's decision.

(ii) The final order shall be in the form prescribed by Subsection 63G-4-203(1)(i).

(iii) The final order is final bureau action for purposes of judicial review under Section 63G-4-402.

(17) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this chapter.

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Section 2. Section **53-5-705** is amended to read:

53-5-705. Temporary permit to carry concealed firearm -- Denial, suspension, or revocation -- Appeal.

(1) The bureau or its designated agent may issue a temporary permit to carry a concealed firearm to a person who:

- (a) has applied for a permit under Section 53-5-704;
- (b) has applied for a temporary permit under this section; and
- (c) meets the criteria required in Subsections (2) and (3).

(2) To receive a temporary permit under this section, the applicant shall demonstrate in writing to the satisfaction of the bureau extenuating circumstances that would justify issuing a temporary permit.

(3) A temporary permit may not be issued under this section until preliminary record checks regarding the applicant have been made with the National Crime Information Center and the bureau to determine any criminal history.

(4) (a) A temporary permit is valid only for a maximum of 90 days or any lesser period specified by the bureau, or until a permit under Section 53-5-704 is issued to the holder of the temporary permit, whichever period is shorter.

(b) ~~[The]~~ Except as provided in Section 76-10-533, the provisions of Subsections 76-10-504(1) and (2) and Section 76-10-505 do not apply to a person issued a temporary permit under this section during the time period for which the temporary permit is valid.

(5) The bureau may deny, suspend, or revoke a temporary permit prior to expiration if the commissioner determines:

- (a) the circumstances justifying the temporary permit no longer exist; or
- (b) the holder of the temporary permit does not meet the requirements for a permit

under Section 53-5-704.

(6) (a) The denial, suspension, or revocation of a temporary permit shall be in writing and shall include the reasons for the action.

(b) The bureau's decision to deny, suspend, or revoke a temporary permit may not be appealed to the board.

(c) Denial, suspension, or revocation under this subsection is final action for purposes of judicial review under Section 63G-4-402.

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Section 3. Section 76-10-501 is amended to read:

76-10-501. Definitions.

As used in this part:

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

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

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

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

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

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

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

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

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

(b) "Antique firearm" does not include:

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

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

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

(A) barrel;

(B) bolt;

(C) breechblock; or

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

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

(3) (a) "Concealed firearm" means a firearm that is:

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

(ii) readily accessible for immediate use.

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

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

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

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

(i) sporting use;

(ii) use as an offensive weapon; or

(iii) use as a defensive weapon;

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

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

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

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

(i) from the fact that the firearm is:

(A) novel;

(B) rare; or

(C) bizarre; or

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

(A) figure;

(B) period; or

(C) event; and

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

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

(i) a firearm; or

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

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(b) The following factors are used in determining whether any object, other than a firearm, is a dangerous weapon:

- (i) the location and circumstances in which the object was used or possessed;
- (ii) the primary purpose for which the object was made;
- (iii) the character of the wound, if any, produced by the object's unlawful use;
- (iv) the manner in which the object was unlawfully used;
- (v) whether the manner in which the object is used or possessed constitutes a potential imminent threat to public safety; and
- (vi) the lawful purposes for which the object may be used.

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

(7) [~~"Dealer"~~] (a) Except as provided in Subsection (7)(b), "dealer" means a person who is:

~~[(a)]~~ (i) licensed under 18 U.S.C. Sec. 923; and

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

(b) As used in Section 76-10-527.5, "dealer" means a person who is:

(i) licensed under 18 U.S.C. Sec. 923; and

(ii) engaged in the business of selling, leasing, or otherwise transferring a firearm, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) As used in Section 76-10-533, "securely encased" means held in a locked case, container, safe, lock box, or other device or storage area, not including a trunk, glove box, or other storage area of a motor vehicle, that may be unlocked only by means of a key, a combination, a biometric reader, or other similar means.

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

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(20) "Shotgun" means a smooth bore firearm designed to fire cartridges containing pellets or a single slug.

(21) "Shoulder arm" means a firearm that is designed to be fired while braced against the shoulder.

(22) "Slug" means a single projectile discharged from a shotgun shell.

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

(24) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

Section 4. Section **76-10-523** is amended to read:

76-10-523. Persons exempt from weapons laws.

(1) Except for Sections 76-10-506, 76-10-508, [~~and~~] 76-10-508.1, and 76-10-533, this part and Title 53, Chapter 5, Part 7, Concealed Firearm Act, do not apply to any of the following:

- (a) a United States marshal;
- (b) a federal official required to carry a firearm;
- (c) a peace officer of this or any other jurisdiction;
- (d) a law enforcement official as defined and qualified under Section 53-5-711;
- (e) a judge as defined and qualified under Section 53-5-711; or
- (f) a common carrier while engaged in the regular and ordinary transport of firearms as merchandise.

(2) [~~The~~] Except as provided in Section 76-10-533, the provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not apply to any person to whom a permit to carry a concealed firearm has been issued:

- (a) pursuant to Section 53-5-704 or 53-5-705; or
- (b) by another state or county.

(3) Except for Sections 76-10-503, 76-10-506, 76-10-508, and 76-10-508.1, this part and Title 53, Chapter 5, Part 7, Concealed Firearm Act, do not apply to a nonresident traveling in or through the state, provided that any firearm is:

- (a) unloaded; and
- (b) securely encased as defined in Section 76-10-501.

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Section 5. Section **76-10-527.5** is enacted to read:

76-10-527.5. Dealer requirement for storage warning -- Penalty.

(1) (a) A dealer shall conspicuously post the following written warning at a purchase counter:

"AN ADULT MAY BE PROSECUTED FOR LEAVING A FIREARM IN A PLACE EASILY ACCESSIBLE BY A MINOR **OR A PERSON RESTRICTED BY SECTION 76-10-503 IF A PERSON IS INJURED BY A MINOR OR RESTRICTED PERSON USING AN UNSECURED FIREARM.** A FIREARM SHOULD BE SECURED WITH A LOCKING DEVICE OR STORED IN A LOCKED CONTAINER OR LOCATION."

(b) A dealer shall print the written warning described in Subsection (1)(a) on yellow paper in black, capital letters using Arial, Calibri, Cambria, or Times New Roman in no smaller than 35-point font.

(2) A retail or wholesale dealer who violates Subsection (1) is guilty of a class C misdemeanor.

Section 6. Section **76-10-533** is enacted to read:

76-10-533. Criminally negligent storage of a firearm.

(1) As used in this section, "firearm safety device" means a device:

(a) installed on a firearm and designed to prevent the firearm from being operated without first deactivating the device; or

(b) incorporated into the design of a firearm and designed to prevent operation of the firearm by a person unauthorized to operate the firearm.

(2) Notwithstanding any other provision of this part, it is unlawful for an owner of a firearm to store a loaded firearm in a place the owner knows or has reason to believe a minor under 18 years of age or a person restricted from possessing a firearm under Section 76-10-503 has access, unless the firearm is:

(a) securely encased;

(b) disabled or rendered inoperable by a firearm safety device; or

(c) readily accessible for immediate use by the owner.

(3) A violation of Subsection (2) is a class B misdemeanor **if a minor under 18 years of age or a person restricted from possessing a firearm under Section 76-10-503 accesses a firearm and a person is injured by the firearm as a result of the minor's or restricted person's**

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unauthorized access.

(4) This section does not prohibit a minor from possessing a firearm in accordance with Section 76-10-509 or 76-10-512.

(5) A person issued a permit to carry a concealed firearm under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is not exempt from this section.