

AIRPORT FIREARM POSSESSION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephanie Gricius

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill concerns possession of a firearm at an airport.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides when a firearm that was seized as part of a criminal offense at an airport may be returned to the firearm's owner;
- ▶ modifies the offense of possession of a dangerous weapon at an airport;
- ▶ restricts the ability of a prosecutor to seek the forfeiture of a firearm under certain circumstances; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

24-3-103, as last amended by Laws of Utah 2021, Chapter 230

24-4-102, as last amended by Laws of Utah 2022, Chapters 116, 274

76-10-529, as last amended by Laws of Utah 2004, Chapter 169

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

30 Section 1. Section **24-3-103** is amended to read:

31 **24-3-103. Disposition of property.**

32 (1) (a) [~~H~~] Except as provided in Subsection (1)(b), a prosecuting attorney determines
33 that seized property no longer needs to be retained for court proceedings, the prosecuting
34 attorney may:

35 [~~(a)~~] (i) petition the court to apply the property that is money towards restitution, fines,
36 fees, or monetary judgments owed by the owner of the property;

37 [~~(b)~~] (ii) petition the court for an order transferring ownership of any weapons to the
38 agency with custody for the agency's use and disposal in accordance with Section 24-3-103.5, if
39 the owner:

40 [~~(i)~~] (A) is the individual who committed the offense for which the weapon was seized;
41 or

42 [~~(ii)~~] (B) may not lawfully possess the weapon; or

43 [~~(c)~~] (iii) notify the agency with custody of the property or contraband that:

44 [~~(i)~~] (A) the property may be returned to the rightful owner if the rightful owner may
45 lawfully possess the property; or

46 [~~(ii)~~] (B) the contraband may be disposed of or destroyed.

47 (b) If a prosecuting attorney determines that a firearm seized from an individual as a
48 result of an offense committed under Section 76-10-529 no longer needs to be retained for
49 court proceedings, the prosecuting attorney shall notify the agency with custody of the firearm
50 that the property shall be returned to the individual if the individual may lawfully possess the
51 firearm.

52 (2) The agency shall exercise due diligence in attempting to notify the rightful owner of
53 the property to advise the owner that the property is to be returned.

54 (3) (a) For a computer determined to be contraband, a court may order the reasonable
55 extraction and return of specifically described personal digital data to the rightful owner.

56 (b) The law enforcement agency shall determine a reasonable cost to extract the data.

57 (c) At the time of the request to extract the data, the owner of the computer shall pay

58 the agency the cost to extract the data.

59 (4) (a) Before an agency may release seized property to a person claiming ownership of
60 the property, the person shall establish in accordance with Subsection (4)(b) that the person:

61 (i) is the rightful owner; and

62 (ii) may lawfully possess the property.

63 (b) The person shall establish ownership under Subsection (4)(a) by providing to the
64 agency:

65 (i) identifying proof or documentation of ownership of the property; or

66 (ii) a notarized statement if proof or documentation is not available.

67 (5) (a) When seized property is returned to the owner, the owner shall sign a receipt
68 listing in detail the property that is returned.

69 (b) The agency shall:

70 (i) retain a copy of the receipt; and

71 (ii) provide a copy of the receipt to the owner.

72 (6) (a) Except as provided in Subsection (6)(b), if the agency is unable to locate the
73 rightful owner of the property or the rightful owner is not entitled to lawfully possess the
74 property, the agency may:

75 (i) apply the property to a public interest use;

76 (ii) sell the property at public auction and apply the proceeds of the sale to a public
77 interest use; or

78 (iii) destroy the property if the property is unfit for a public interest use or for sale.

79 (b) If the property described in Subsection (6)(a) is a firearm, the agency shall dispose
80 of the firearm in accordance with Section [24-3-103.5](#).

81 (7) Before applying the property or the proceeds from the sale of the property to a
82 public interest use, the agency shall obtain from the legislative body of the agency's
83 jurisdiction:

84 (a) permission to apply the property or the proceeds to public interest use; and

85 (b) the designation and approval of the public interest use of the property or the

86 proceeds.

87 (8) If a peace officer seizes property that at the time of seizure is held by a pawn or
88 secondhand business in the course of the pawn or secondhand business's business, the
89 provisions of Section 13-32a-116 shall apply to the disposition of the property.

90 Section 2. Section 24-4-102 is amended to read:

91 **24-4-102. Property subject to forfeiture.**

92 (1) Except as provided in Subsection (2), (3), [or] (4), or (5), an agency may seek to
93 forfeit:

94 (a) seized property that was used to facilitate the commission of an offense that is a
95 violation of federal or state law; and

96 (b) seized proceeds.

97 (2) If seized property is used to facilitate an offense that is a violation of Section
98 76-10-1204, 76-10-1205, 76-10-1206, or 76-10-1222, an agency may not forfeit the property if
99 the forfeiture would constitute a prior restraint on the exercise of an affected party's rights
100 under the First Amendment to the Constitution of the United States or Utah Constitution,
101 Article I, Section 15, or would otherwise unlawfully interfere with the exercise of the party's
102 rights under the First Amendment to the Constitution of the United States or Utah Constitution,
103 Article I, Section 15.

104 (3) If a motor vehicle is used in an offense that is a violation of Section 41-6a-502,
105 41-6a-517, a local ordinance that complies with the requirements of Subsection 41-6a-510(1),
106 Subsection 76-5-102.1(2)(b), or Section 76-5-207, an agency may not seek forfeiture of the
107 motor vehicle, unless:

108 (a) the operator of the vehicle has previously been convicted of an offense committed
109 after May 12, 2009, that is:

110 (i) a felony driving under the influence violation under Section 41-6a-502 or
111 Subsection 76-5-102.1(2)(a);

112 (ii) a felony violation under Subsection 76-5-102.1(2)(b);

113 (iii) a violation under Section 76-5-207; or

114 (iv) operating a motor vehicle with any amount of a controlled substance in an
115 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,
116 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g); or

117 (b) the operator of the vehicle was driving on a denied, suspended, revoked, or
118 disqualified license and:

119 (i) the denial, suspension, revocation, or disqualification under Subsection (3)(b)(ii)
120 was imposed because of a violation under:

121 (A) Section 41-6a-502;

122 (B) Section 41-6a-517;

123 (C) a local ordinance that complies with the requirements of Subsection 41-6a-510(1);

124 (D) Section 41-6a-520;

125 (E) operating a motor vehicle with any amount of a controlled substance in an
126 individual's body and causing serious bodily injury or death, as codified before May 4, 2022,
127 Laws of Utah 2021, Chapter 236, Section 1, Subsection 58-37-8(2)(g);

128 (F) Section 76-5-102.1;

129 (G) Section 76-5-207; or

130 (H) a criminal prohibition as a result of a plea bargain after having been originally
131 charged with violating one or more of the sections or ordinances described in Subsections
132 (3)(b)(i)(A) through (G); or

133 (ii) the denial, suspension, revocation, or disqualification described in Subsections
134 (3)(b)(i)(A) through (H):

135 (A) is an extension imposed under Subsection 53-3-220(2) of a denial, suspension,
136 revocation, or disqualification; and

137 (B) the original denial, suspension, revocation, or disqualification was imposed
138 because of a violation described in Subsections (3)(b)(i)(A) through (H).

139 (4) If a peace officer seizes property incident to an arrest solely for possession of a
140 controlled substance under Subsection 58-37-8(2)(a)(i) but not Subsection 58-37-8(2)(b)(i), an
141 agency may not seek to forfeit the property that was seized in accordance with the arrest.

142 (5) If a peace officer seizes an individual's firearm as the result of an offense under
143 Section 76-10-529, an agency may not seek to forfeit the individual's firearm if the individual
144 may lawfully possess the firearm.

145 Section 3. Section 76-10-529 is amended to read:

146 **76-10-529. Possession of dangerous weapons, firearms, or explosives in airport**
147 **secure areas prohibited -- Penalty.**

148 (1) (a) As used in this section:

149 ~~[(a)]~~ (i) "Airport authority" has the same meaning as defined in Section 72-10-102.

150 ~~[(b)]~~ "Dangerous weapon" is the same as defined in Section 76-10-501.]

151 ~~[(c)]~~ (ii) "Explosive" is the same as defined for "explosive, chemical, or incendiary
152 device" in Section 76-10-306.

153 (iii) "Law enforcement officer" means the same as that term is defined in Section
154 53-13-103.

155 ~~[(d)]~~ "Firearm" is the same as defined in Section 76-10-501.]

156 (b) Terms defined in Sections 76-1-101.5 and 76-10-501 apply to this section.

157 (2) (a) Within a secure area of an airport established pursuant to this section, a person,
158 including a person licensed to carry a concealed firearm under Title 53, Chapter 5, Part 7,
159 Concealed Firearm Act, is guilty of:

160 (i) a class A misdemeanor if the person knowingly or intentionally possesses any
161 dangerous weapon or firearm;

162 (ii) an infraction if the person recklessly ~~[or with criminal negligence]~~ possesses any
163 dangerous weapon or firearm; or

164 (iii) a violation of Section 76-10-306 if the person transports, possesses, distributes, or
165 sells any explosive, chemical, or incendiary device.

166 (b) Subsection (2)(a) does not apply to:

167 (i) persons exempted under Section 76-10-523; and

168 (ii) members of the state or federal military forces while engaged in the performance of
169 their official duties.

- 170 (3) An airport authority, county, or municipality regulating the airport may:
- 171 (a) establish any secure area located beyond the main area where the public generally
- 172 buys tickets, checks and retrieves luggage; and
- 173 (b) use reasonable means, including mechanical, electronic, x-ray, or any other device,
- 174 to detect dangerous weapons, firearms, or explosives concealed in baggage or upon the person
- 175 of any individual attempting to enter the secure area.
- 176 (4) At least one notice shall be prominently displayed at each entrance to a secure area
- 177 in which a dangerous weapon, firearm, or explosive is restricted.
- 178 (5) Upon the discovery of any dangerous weapon, firearm, or explosive, the airport
- 179 authority, county, or municipality, the employees, or other personnel administering the secure
- 180 area may:
- 181 (a) require the individual to deliver the item to the air freight office or airline ticket
- 182 counter;
- 183 (b) require the individual to exit the secure area; or
- 184 (c) obtain possession or retain custody of the item until it is transferred to law
- 185 enforcement officers.
- 186 (6) (a) An individual who is prosecuted for a violation of this section based on the
- 187 possession of a firearm shall have the individual's firearm returned to the individual in
- 188 accordance with Subsection 24-3-103(1)(b) if the individual may lawfully possess the firearm.
- 189 (b) In accordance with Subsection 24-4-102(5), a firearm seized under this section is
- 190 not subject to forfeiture if the charged individual may lawfully possess the firearm.
- 191 (c) In a prosecution brought under this section, a prosecutor may not condition a plea
- 192 on the forfeiture of a firearm.