

# HB0225S01 compared with HB0225

~~deleted text~~ shows text that was in HB0225 but was deleted in HB0225S01.

inserted text shows text that was not in HB0225 but was inserted into HB0225S01.

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Representative Ryan D. Wilcox proposes the following substitute bill:

## FIREARM POSSESSION AMENDMENTS

2023 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Ryan D. Wilcox**

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

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### LONG TITLE

#### General Description:

This bill addresses provisions regarding firearm restrictions.

#### Highlighted Provisions:

This bill:

- ▶ requires agencies to run a background check when returning a firearm to an individual from evidence;
- ▶ requires a court that reports criminal information to the Criminal Investigations and Technical Service Division to provide the relationship between the victim and the perpetrator in certain circumstances;
- ▶ amends the definition of a "restricted person";
- ▶ classifies an alien in the state on a nonimmigrant visa in certain circumstances as a restricted person not able to possess, own, or purchase a firearm;

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- ▶ requires the Bureau of Criminal Identification to inform the local law enforcement agency with jurisdiction over a firearms dealer when a restricted person attempts to purchase a firearm from that dealer;
- ▶ clarifies that a restricted person may not use an antique firearm for an activity regulated under the Wildlife Resources Code of Utah; and
- ▶ makes technical changes.

### Money Appropriated in this Bill:

None

### Other Special Clauses:

~~{ None }~~ This bill provides a coordination clause.

### Utah Code Sections Affected:

AMENDS:

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

**53-10-208.1**, as last amended by Laws of Utah 2021, Chapter 159

**53-10-213**, as last amended by Laws of Utah 2020, Chapter 142

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

**76-10-503**, as last amended by Laws of Utah 2021, Chapter 262

**76-10-526**, as last amended by Laws of Utah 2021, Chapters 166, 277

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

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

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

(1) If a prosecuting attorney determines that seized property no longer needs to be retained for court proceedings, the prosecuting attorney may:

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

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

(i) is the individual who committed the offense for which the weapon was seized; or

(ii) may not lawfully possess the weapon; or

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(c) notify the agency with custody of the property or contraband that:

(i) the property may be returned to the rightful owner if the rightful owner may lawfully possess the property; or

(ii) the contraband may be disposed of or destroyed.

(2) Before returning a firearm to an individual, the agency returning the firearm shall confirm, through the Bureau of Criminal Identification, that the individual is eligible to lawfully possess and receive firearms.

~~[(2)]~~ (3) The agency shall exercise due diligence in attempting to notify the rightful owner of the property to advise the owner that the property is to be returned.

~~[(3)]~~ (4) (a) For a computer determined to be contraband, a court may order the reasonable extraction and return of specifically described personal digital data to the rightful owner.

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

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

~~[(4)]~~ (5) (a) Before an agency may release seized property to a person claiming ownership of the property, the person shall establish in accordance with Subsection ~~[(4)(b)]~~ (5)(b) that the person:

- (i) is the rightful owner; and
- (ii) may lawfully possess the property.

(b) The person shall establish ownership under Subsection ~~[(4)(a)]~~ (5)(a) by providing to the agency:

- (i) identifying proof or documentation of ownership of the property; or
- (ii) a notarized statement if proof or documentation is not available.

~~[(5)]~~ (6) (a) When seized property is returned to the owner, the owner shall sign a receipt listing in detail the property that is returned.

(b) The agency shall:

- (i) retain a copy of the receipt; and
- (ii) provide a copy of the receipt to the owner.

~~[(6)]~~ (7) (a) Except as provided in Subsection ~~[(6)(b)]~~ (7)(b), if the agency is unable to locate the rightful owner of the property or the rightful owner is not entitled to lawfully possess

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the property, the agency may:

- (i) apply the property to a public interest use;
- (ii) sell the property at public auction and apply the proceeds of the sale to a public

interest use; or

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

(b) If the property described in Subsection [~~(6)~~(a)] (7)(a) is a firearm, the agency shall dispose of the firearm in accordance with Section 24-3-103.5.

[~~(7)~~] (8) Before applying the property or the proceeds from the sale of the property to a public interest use, the agency shall obtain from the legislative body of the agency's jurisdiction:

- (a) permission to apply the property or the proceeds to public interest use; and
- (b) the designation and approval of the public interest use of the property or the

proceeds.

[~~(8)~~] (9) If a peace officer seizes property that at the time of seizure is held by a pawn or secondhand business in the course of the pawn or secondhand business's business, the provisions of Section 13-32a-116 shall apply to the disposition of the property.

Section 2. Section **53-10-208.1** is amended to read:

### **53-10-208.1. Magistrates and court clerks to supply information.**

(1) Every magistrate or clerk of a court responsible for court records in this state shall, within 30 days after the day of the disposition and on forms and in the manner provided by the division, furnish the division with information pertaining to:

- (a) all dispositions of criminal matters, including:
  - (i) guilty pleas;
  - (ii) convictions;
  - (iii) dismissals;
  - (iv) acquittals;
  - (v) pleas **[held]** in abeyance;
  - (vi) judgments of not guilty by reason of insanity;
  - (vii) judgments of guilty with a mental illness;
  - (viii) finding of mental incompetence to stand trial; and
  - (ix) probations granted;

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(b) orders of civil commitment under the terms of Section 62A-15-631;  
(c) the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78B-6-303, within one day of the action and in a manner provided by the division; and

(d) protective orders issued after notice and hearing, pursuant to:

(i) Title 77, Chapter 36, Cohabitant Abuse Procedures Act;

(ii) Title 78B, Chapter 7, Part 4, Dating Violence Protective Orders;

(iii) Title 78B, Chapter 7, Part 5, Sexual Violence Protective Orders;

(iv) Title 78B, Chapter 7, Part 6, Cohabitant Abuse Protective Orders; or

(v) Title 78B, Chapter 7, Part 8, Criminal Protective Orders.

(2) When transmitting information on a criminal matter under Subsection (1)(a)(i), ~~if the criminal matter is the result of~~ (ii), (v), or (vii) for a conviction of misdemeanor assault under Section 76-5-102, the magistrate or clerk of a court shall ~~as~~ include available information regarding whether the conviction for assault resulted from an assault against an individual:

(a) who is included in at least one of the relationship categories described in Subsection 76-10-503(1)(b)(xi) ~~include information regarding whether the assault committed by the perpetrator was against an individual:~~

~~— (a) who is the perpetrator's current or former spouse, parent, or guardian;~~

~~— (b) with whom the perpetrator shares a child in common;~~

~~— (c) who is cohabitating or has cohabitated with the perpetrator as a spouse, parent, or guardian;~~

~~— (d) similarly situated to a spouse, parent, or guardian of the perpetrator;~~

~~— (e) involved in a dating relationship, as defined in Section 76-10-501, with the perpetrator within the last five years; or~~

~~(b)~~ with whom none of the relationships described in ~~Subsections~~ Subsection 76-10-503(2)(1)(a) through (c)(xi) apply.

(3) The court in the county where a determination or finding was made shall transmit a record of the determination or finding to the bureau no later than 48 hours after the determination is made, excluding Saturdays, Sundays, and legal holidays, if an individual is:

(a) adjudicated as a mental defective; or

(b) involuntarily committed to a mental institution in accordance with Subsection

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62A-15-631(16).

~~[(3)]~~ (4) The record described in Subsection ~~[(2)]~~ (3) shall include:

- (a) an agency record identifier;
- (b) the individual's name, sex, race, and date of birth; and
- (c) the individual's social security number, government issued driver license or identification number, alien registration number, government passport number, state identification number, or FBI number.

Section 3. Section **53-10-213** is amended to read:

### **53-10-213. Reporting requirements.**

(1) The bureau shall submit the record received from the court in accordance with Subsection 78B-7-603(5)(e) to the National Crime Information Center within 48 hours of receipt, excluding Saturdays, Sundays, and legal holidays.

(2) The bureau shall submit the record received from the court in accordance with Subsection ~~[53-10-208.1(2)]~~ 53-10-208.1(3) to the National Instant Criminal Background Check System within 48 hours of receipt, excluding Saturdays, Sundays, and legal holidays.

Section 4. 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.

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(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.

(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;

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(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.

(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) (a) "Dating relationship" means a romantic or intimate relationship between individuals.

(b) "Dating relationship" does not include a casual acquaintanceship or ordinary fraternization in a business or social context.

~~(7)~~ (8) "Dealer" means a person who is:



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

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

~~[(8)]~~ (9) "Enter" means intrusion of the entire body.

~~[(9)]~~ (10) "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)]~~ (11) (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)]~~ (12) "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.

~~[(12)]~~ (13) "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)]~~ (14) (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)]~~ (15) "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)]~~ (16) "Prohibited area" means a place where it is unlawful to discharge a firearm.

~~[(16)]~~ (17) "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.

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~~[(17)]~~ (18) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

~~[(18)]~~ (19) "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.

~~[(19)]~~ (20) "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.

~~[(20)]~~ (21) "Shotgun" means a smooth bore firearm designed to fire cartridges containing pellets or a single slug.

~~[(21)]~~ (22) "Shoulder arm" means a firearm that is designed to be fired while braced against the shoulder.

~~[(22)]~~ (23) "Slug" means a single projectile discharged from a shotgun shell.

~~[(23)]~~ (24) "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)]~~ (25) "Violent felony" means the same as that term is defined in Section 76-3-203.5.

Section 5. Section **76-10-503** is amended to read:

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

(1) For purposes of this section:

(a) A Category I restricted person is a person who:

(i) has been convicted of ~~[any]~~ a violent felony as defined in Section 76-3-203.5;

(ii) is on probation or parole for ~~[any]~~ a felony;

(iii) is on parole from secure care, as defined in Section 80-1-102;

(iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense which if committed by an adult would have been a violent felony as defined in Section 76-3-203.5;

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- (v) is an alien who is illegally or unlawfully in the United States; or
- (vi) is on probation for a conviction of possessing:
  - (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;
  - (B) a controlled substance analog; or
  - (C) a substance listed in Section 58-37-4.2.
- (b) A Category II restricted person is a person who:
  - (i) has been convicted of [~~any~~] a 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;
  - (ix) has renounced the individual's citizenship after having been a citizen of the United States;
  - (x) is a respondent or defendant subject to a protective order or child protective order that is issued after a hearing for which the respondent or defendant received actual notice and at which the respondent or defendant has an opportunity to participate, that restrains the respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate partner, and that:
    - (A) includes a finding that the respondent or defendant represents a credible threat to the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C. Sec. 921 or the child of the individual; or
    - (B) explicitly prohibits the use, attempted use, or threatened use of physical force that

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would reasonably be expected to cause bodily harm against an intimate partner or the child of an intimate partner; [or]

(xi) except as provided in Subsection (1)(d), has been convicted of the commission or attempted commission of assault under Section 76-5-102 or aggravated assault under Section 76-5-103 against an individual:

(A) who is a current or former spouse, parent, or guardian[;];

(B) [~~individual~~] with whom the restricted person shares a child in common[;];

(C) [~~individual~~] who is cohabitating or has cohabitated with the restricted person as a spouse, parent, or guardian[;];

(D) involved in a dating relationship with the restricted person within the last five years; or

(E) [~~against an individual~~] similarly situated to a spouse, parent, or guardian of the restricted person; or

(xii) is an alien who has been admitted to the United States under a nonimmigrant visa as defined in 8 U.S.C. Sec. 1101(a)(26).

(c) (i) 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:

[(+)] (A) a conviction or an adjudication under Section 80-6-701 for an offense pertaining to antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to the regulation of business practices not involving theft or fraud; or

[(+)] (B) a conviction or an adjudication under Section 80-6-701 which, [~~according to~~] in accordance with the law of the jurisdiction in which [it] the conviction or adjudication occurred, has been expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the person's civil rights have been restored unless the pardon, reduction, expungement, or restoration of civil rights expressly provides that the person may not ship, transport, possess, or receive firearms.

[(+)] (i) It is the burden of the defendant in a criminal case to provide evidence that a conviction or an adjudication under Section 80-6-701 is subject to an exception provided in Subsection (1)(c)(i), after which it is the burden of the state to prove beyond a reasonable doubt that the conviction or the adjudication is not subject to that exception.

(d) A person is not a restricted person for a conviction under Subsection (1)(b)(xi)(D)

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if:

(i) five years have elapsed from the later of:

(A) the day on which the conviction is entered;

(B) the day on which the person is released from incarceration following the conviction; or

(C) the day on which the person's probation for the conviction is successfully terminated;

(ii) the person only has a single conviction for assault as described in Subsection (1)(b)(xi)(D); and

(iii) the person is not otherwise a restricted person under Subsection (1)(a) or (b).

(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~~] a firearm is guilty of a second degree felony; or

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

(3) [~~A~~] Except as provided in Subsection (4), a Category II restricted person who intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's custody or control:

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

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

(4) A Category II restricted person may possess, use, or have under the person's control a firearm or dangerous weapon if:

(a) the person is a Category II restricted person solely due to Subsection (1)(b)(xii);

(b) the person has been admitted to the United States under a nonimmigrant visa solely for lawful hunting or sporting purposes;

(c) the person is in possession of a valid hunting license or permit; and

(d) the possession, use, or control of the firearm or dangerous weapon is directly related to the lawful hunting or sporting purposes described in Subsection (4)(b).

[~~(4)~~] (5) A person may be subject to the restrictions of both categories at the same time.

(6) A Category I or Category II restricted person may not use an antique firearm for an

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### activity regulated under Title 23, Wildlife Resources Code of Utah.

~~[(5)]~~ ~~(~~6~~~~7~~)~~ If a higher penalty than is prescribed in this section is provided in another section for one who purchases, transfers, possesses, uses, or has under this custody or control ~~[any]~~ a dangerous weapon, the penalties of that section control.

~~[(6)]~~ ~~(~~7~~~~8~~)~~ 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)]~~ ~~(~~8~~~~9~~)~~ (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 24-3-103;

(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)]~~ ~~(~~8~~~~9~~)~~(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)]~~ ~~(~~9~~~~10~~)~~ (a) A person may not sell, transfer, or otherwise dispose of ~~[any]~~ a firearm or dangerous weapon to ~~[any]~~ a person, knowing that the recipient is a person described in Subsection (1)(a) or (b).

(b) A person who violates Subsection ~~[(8)(a)]~~ ~~(~~9~~~~10~~)~~(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]~~ a dangerous weapon other than a firearm, and the transferor has knowledge that the recipient

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intends to use the weapon for any unlawful purpose, 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]~~ a dangerous weapon other than a firearm, and the transferor has knowledge that the recipient intends to use the weapon for ~~[any]~~ an unlawful purpose, is guilty of a class A misdemeanor.

~~[(9)]~~ ~~(~~10~~;11)~~ (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 ~~[any]~~ information that 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)]~~ ~~(~~10~~;11)~~ 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.

Section 6. Section **76-10-526** is amended to read:

### **76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders and law enforcement officers.**

(1) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued under Section 53-5-705.

(2) (a) To establish personal identification and residence in this state for purposes of this part, a dealer shall require an individual receiving a firearm to present one photo identification on a form issued by a governmental agency of the state.

(b) A dealer may not accept a driving privilege card issued under Section 53-3-207 as proof of identification for the purpose of establishing personal identification and residence in this state as required under this Subsection (2).

(3) (a) A criminal history background check is required for the sale of a firearm by a

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licensed firearm dealer in the state.

(b) Subsection (3)(a) does not apply to the sale of a firearm to a Federal Firearms Licensee.

(4) (a) An individual purchasing a firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the bureau.

(b) The form shall contain the following information:

(i) the dealer identification number;

(ii) the name and address of the individual receiving the firearm;

(iii) the date of birth, height, weight, eye color, and hair color of the individual receiving the firearm; and

(iv) the social security number or any other identification number of the individual receiving the firearm.

(5) (a) The dealer shall send the information required by Subsection (4) to the bureau immediately upon its receipt by the dealer.

(b) A dealer may not sell or transfer a firearm to an individual until the dealer has provided the bureau with the information in Subsection (4) and has received approval from the bureau under Subsection (7).

(6) The dealer shall make a request for criminal history background information by telephone or other electronic means to the bureau and shall receive approval or denial of the inquiry by telephone or other electronic means.

(7) When the dealer calls for or requests a criminal history background check, the bureau shall:

(a) review the criminal history files, including juvenile court records, and the temporary restricted file created under Section 53-5c-301, to determine if the individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal law;

(b) inform the dealer that:

(i) the records indicate the individual is prohibited; or

(ii) the individual is approved for purchasing, possessing, or transferring a firearm;

(c) provide the dealer with a unique transaction number for that inquiry; and

(d) provide a response to the requesting dealer during the call for a criminal background check, or by return call, or other electronic means, without delay, except in case of



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electronic failure or other circumstances beyond the control of the bureau, the bureau shall advise the dealer of the reason for the delay and give the dealer an estimate of the length of the delay.

(8) (a) The bureau may not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request, if the bureau determines that the individual receiving the firearm is not prohibited from purchasing, possessing, or transferring the firearm under state or federal law.

(b) However, the bureau shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

(9) (a) If the criminal history background check discloses information indicating that the individual attempting to purchase the firearm is prohibited from purchasing, possessing, or transferring a firearm, the bureau shall:

(i) within 24 hours after determining that the purchaser is prohibited from purchasing, possessing, or transferring a firearm, notify the law enforcement agency in the jurisdiction where the dealer is located; and

(ii) inform the law enforcement agency in the jurisdiction where the individual resides.

(b) Subsection (9)(a) does not apply to an individual prohibited from purchasing a firearm solely due to placement on the temporary restricted list under Section 53-5c-301.

(c) A law enforcement agency that receives information from the bureau under Subsection (9)(a) shall provide a report before August 1 of each year to the bureau that includes:

(i) based on the information the bureau provides to the law enforcement agency under Subsection (9)(a), the number of cases that involve an individual who is prohibited from purchasing, possessing, or transferring a firearm as a result of a conviction for an offense involving domestic violence; and

(ii) of the cases described in Subsection (9)(c)(i):

(A) the number of cases the law enforcement agency investigates; and

(B) the number of cases the law enforcement agency investigates that result in a criminal charge.

(d) The bureau shall:

(i) compile the information from the reports described in Subsection (9)(c);

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(ii) omit or redact any identifying information in the compilation; and

(iii) submit the compilation to the Law Enforcement and Criminal Justice Interim Committee before November 1 of each year.

(10) If an individual is denied the right to purchase a firearm under this section, the individual may review the individual's criminal history information and may challenge or amend the information as provided in Section 53-10-108.

(11) The bureau shall make rules in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the bureau under this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

(12) (a) A dealer shall collect a criminal history background check fee for the sale of a firearm under this section.

(b) The fee described under Subsection (12)(a) remains in effect until changed by the bureau through the process described in Section 63J-1-504.

(c) (i) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the bureau by the last day of the month following the sale of a firearm.

(ii) The bureau shall deposit the fees in the General Fund as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(13) An individual with a concealed firearm permit issued under Title 53, Chapter 5, Part 7, Concealed Firearm Act, is exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the individual presents the individual's concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the bureau that the individual's concealed firearm permit is valid.

(14) (a) A law enforcement officer, as defined in Section 53-13-103, is exempt from the background check fee required in this section for the purchase of a personal firearm to be carried while off-duty if the law enforcement officer verifies current employment by providing a letter of good standing from the officer's commanding officer and current law enforcement photo identification.

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(b) Subsection (14)(a) may only be used by a law enforcement officer to purchase a personal firearm once in a 24-month period.

(15) A dealer engaged in the business of selling, leasing, or otherwise transferring [any] a firearm shall:

(a) make the firearm safety brochure described in Subsection 62A-15-103(3) available to a customer free of charge; and

(b) at the time of purchase, distribute a cable-style gun lock provided to the dealer under Subsection 62A-15-103(3) to a customer purchasing a shotgun, short barreled shotgun, short barreled rifle, rifle, or another firearm that federal law does not require be accompanied by a gun lock at the time of purchase.

### Section 7. Coordinating H.B. 225 with H.B. 120 -- Technical and substantive amendment.

If this H.B. 225 and H.B. 120, Weapon Possession Amendments, both pass and become law, it is the intent of the Legislature that the Office of Legislative Research and General Counsel prepare the Utah Code database for publication by amending Subsection 76-10-503(1)(d)(ii) in this H.B. 225 to read:

"(ii) the person only has a single conviction for misdemeanor assault as described in Subsection (1)(b)(xi)(D); and".