

DANGEROUS WEAPONS AMENDMENTS

2014 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian M. Greene

Senate Sponsor: Mark B. Madsen

LONG TITLE

General Description:

This bill redefines dangerous weapon, clarifies restrictions relating to dangerous weapons, and establishes exemptions for the use of archery equipment for hunting and target shooting.

Highlighted Provisions:

This bill:

- ▶ defines dangerous weapon as a firearm or an object which is used unlawfully to inflict serious bodily injury;
- ▶ clarifies the criminal culpability of transferring a dangerous weapon to a restricted person;
- ▶ provides that a restricted person may own, possess, or have under the person's custody or control, archery equipment, including crossbows, for the purpose of lawful hunting and target shooting; and
- ▶ makes technical corrections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-10-501, as last amended by Laws of Utah 2013, Chapters 278 and 301

76-10-503, as last amended by Laws of Utah 2012, Chapter 317

30 **76-10-509.7**, as enacted by Laws of Utah 1993, Second Special Session, Chapter 10

31 **76-10-512**, as last amended by Laws of Utah 2000, Chapter 303

32

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

34 Section 1. Section **76-10-501** is amended to read:

35 **76-10-501. Definitions.**

36 As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

55 (A) barrel;

56 (B) bolt;

57 (C) breechblock; or

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

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

61 (3) (a) "Concealed dangerous weapon" means a dangerous weapon that is:

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

64 (ii) readily accessible for immediate use.

65 (b) A dangerous weapon is not a concealed dangerous weapon if it is a firearm which is
66 unloaded and is securely encased.

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

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

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

74 (i) sporting use;

75 (ii) use as an offensive weapon; or

76 (iii) use as a defensive weapon;

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

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

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

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

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

83 (A) novel;

84 (B) rare; or

85 (C) bizarre; or

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

87 (A) figure;

88 (B) period; or

89 (C) event; and

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

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

93 (i) a firearm; or

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

96 (b) The following factors [~~shall be~~] are used in determining whether [~~a knife, or~~
97 ~~another item,]~~ any object, [~~or thing not commonly known as a dangerous weapon]~~ other than a
98 firearm, is a dangerous weapon:

99 (i) the [character of the instrument,] location and circumstances in which the object[~~, or~~
100 thing] was used or possessed;

101 (ii) the primary purpose for which the object was made;

102 [~~(ii)~~] (iii) the character of the wound, if any, produced[~~, if any~~] by the object's unlawful
103 use;

104 [~~(iii)~~] (iv) the manner in which the [instrument,] object[~~, or thing~~] was unlawfully used;
105 [and]

106 (v) whether the manner in which the object is used or possessed constitutes a potential
107 imminent threat to public safety; and

108 [~~(iv)~~] (vi) the [other] lawful purposes for which the [instrument,] object[~~, or thing~~] may
109 be used.

110 [~~(c)~~] (d) "Dangerous weapon" does not include an explosive, chemical, or incendiary
111 device as defined by Section [76-10-306](#).

112 (7) "Dealer" means a person who is:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

140 (16) "Readily accessible for immediate use" means that a firearm or other dangerous
141 weapon is carried on the person or within such close proximity and in such a manner that it can

142 be retrieved and used as readily as if carried on the person.

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

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

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

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

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

157 Section 2. Section 76-10-503 is amended to read:

158 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
159 **dangerous weapons by certain persons.**

160 (1) For purposes of this section:

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

162 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;

163 (ii) is on probation or parole for any felony;

164 (iii) is on parole from a secure facility as defined in Section 62A-7-101;

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

167 (v) is an alien who is illegally or unlawfully in the United States.

168 (b) A Category II restricted person is a person who:

169 (i) has been convicted of any felony;

170 (ii) within the last seven years has been adjudicated delinquent for an offense which if
171 committed by an adult would have been a felony;

172 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

173 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
174 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

175 (v) has been found not guilty by reason of insanity for a felony offense;

176 (vi) has been found mentally incompetent to stand trial for a felony offense;

177 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
178 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
179 to a mental institution;

180 (viii) has been dishonorably discharged from the armed forces; or

181 (ix) has renounced his citizenship after having been a citizen of the United States.

182 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
183 offers, or arranges to purchase, transfer, possess, use, or have under the person's custody or
184 control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
185 the person's custody or control:

186 (a) any firearm is guilty of a second degree felony; or

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

188 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
189 possesses, uses, or has under the person's custody or control:

190 (a) any firearm is guilty of a third degree felony; or

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

192 (4) A person may be subject to the restrictions of both categories at the same time.

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

196 (6) It is an affirmative defense to a charge based on the definition in Subsection

197 (1)(b)(iv) that the person was:

198 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner
199 for use of a member of the person's household or for administration to an animal owned by the
200 person or a member of the person's household; or

201 (b) otherwise authorized by law to possess the substance.

202 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
203 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

204 (i) was possessed by the person or was under the person's custody or control before the
205 person became a restricted person;

206 (ii) was not used in or possessed during the commission of a crime or subject to
207 disposition under Section 76-10-525;

208 (iii) is not being held as evidence by a court or law enforcement agency;

209 (iv) was transferred to a person not legally prohibited from possessing the weapon; and

210 (v) unless a different time is ordered by the court, was transferred within 10 days of the
211 person becoming a restricted person.

212 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
213 of a firearm or other dangerous weapon by a restricted person.

214 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or
215 dangerous weapon to any person, knowing that the recipient is a person described in
216 Subsection (1)(a) or (b).

217 (b) A person who violates Subsection (8)(a) when the recipient is:

218 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is
219 guilty of a second degree felony;

220 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous
221 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
222 the weapon for any unlawful purpose, is guilty of a third degree felony;

223 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is
224 guilty of a third degree felony; or

225 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous

226 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
227 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

228 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
229 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
230 circumstances which the person knows would be a violation of the law.

231 (b) A person may not provide to a dealer or other person [~~what~~] any information that
232 the person knows to be materially false information with intent to deceive the dealer or other
233 person about the legality of a sale, transfer or other disposition of a firearm or dangerous
234 weapon.

235 (c) "Materially false information" means information that portrays an illegal transaction
236 as legal or a legal transaction as illegal.

237 (d) A person who violates this Subsection (9) is guilty of:

238 (i) a third degree felony if the transaction involved a firearm; or

239 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
240 firearm.

241 Section 3. Section **76-10-509.7** is amended to read:

242 **76-10-509.7. Parent or guardian knowing of minor's possession of dangerous**
243 **weapon.**

244 Any parent or guardian of a minor who knows that the minor is in possession of a
245 dangerous weapon in violation of Section **76-10-509** or a firearm in violation of Section
246 **76-10-509.4** and fails to make reasonable efforts to remove the dangerous weapon or firearm
247 from the minor's possession is guilty of a class B misdemeanor.

248 Section 4. Section **76-10-512** is amended to read:

249 **76-10-512. Target concessions, shooting ranges, competitions, and hunting**
250 **excepted from prohibitions.**

251 (1) The provisions of Section **76-10-509** and Subsection **76-10-509.4(1)** regarding
252 possession of handguns by minors [~~shall~~] do not apply to any of the following:

253 [~~(1) Patrons~~] (a) patrons firing at lawfully operated target concessions at amusement

254 parks, piers, and similar locations provided that the firearms to be used are firmly chained or
255 affixed to the counters[-];

256 ~~[(2) Any]~~ (b) any person in attendance at a hunter's safety course or a firearms safety
257 course[-];

258 ~~[(3) Any]~~ (c) any person engaging in practice or any other lawful use of a firearm at an
259 established range or any other area where the discharge of a firearm is not prohibited by state or
260 local law[-];

261 ~~[(4) Any]~~ (d) any person engaging in an organized competition involving the use of a
262 firearm, or participating in or practicing for such competition[-];

263 ~~[(5) Any]~~ (e) any minor under 18 years of age who is on real property with the
264 permission of the owner, licensee, or lessee of the property and who has the permission of a
265 parent or legal guardian or the owner, licensee, or lessee to possess a firearm not otherwise in
266 violation of law[-];

267 ~~[(6) Any]~~ (f) any resident or nonresident hunters with a valid hunting license or other
268 persons who are lawfully engaged in hunting[-]; or

269 ~~[(7) Any]~~ (g) any person traveling to or from any activity described in Subsection [(2),
270 (3), (4), (5), or (6)] (1)(b), (c), (d), (e), or (f) with an unloaded firearm in [his] the person's
271 possession.

272 (2) It is not a violation of Subsection 76-10-503(2) or (3) for a restricted person defined
273 in Subsection 76-10-503(1) to own, possess, or have under the person's custody or control,
274 archery equipment, including crossbows, for the purpose of lawful hunting and lawful target
275 shooting.

276 (3) Notwithstanding Subsection (2), the possession of archery equipment, including
277 crossbows, by a restricted person defined in Subsection 76-10-503(1) may be prohibited by:

278 (a) a court, as a condition of pre-trial release or probation; or

279 (b) the Board of Pardons and Parole, as a condition of parole.