

**UNIVERSAL BACKGROUND CHECKS FOR FIREARM
PURCHASERS**

2020 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Brian S. King

Senate Sponsor: _____

LONG TITLE

General Description:

This bill requires a background check for all firearm sales.

Highlighted Provisions:

This bill:

- defines terms;
- requires background checks for the transfer of a firearm between persons who are not federal firearms licensees;
- creates exceptions for family members, law enforcement agencies and officers, and others;
- allows for temporary transfers under specific circumstances; and
- sets penalties.

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 2015, Chapters 212 and 406

ENACTS:



28 **76-10-526.1**, Utah Code Annotated 1953

29
30 *Be it enacted by the Legislature of the state of Utah:*

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

32 **76-10-501. Definitions.**

33 As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

52 (A) barrel;

53 (B) bolt;

54 (C) breechblock; or

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

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

58 (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;

(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) "Dealer" means a person who is:

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

(9) "Family member" means a spouse, child or stepchild, parent or stepparent, sibling or stepsibling, grandparent, or grandchild.

~~[(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

121 state.

122 ~~[(12)]~~ (13) "Fully automatic weapon" means a firearm which fires, is designed to fire,
123 or can be readily restored to fire, automatically more than one shot without manual reloading
124 by a single function of the trigger.

125 ~~[(13)]~~ (14) (a) "Handgun" means a pistol, revolver, or other firearm of any description,
126 loaded or unloaded, from which a shot, bullet, or other missile can be discharged, the length of
127 which, not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

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

130 ~~[(14)]~~ (15) "House of worship" means a church, temple, synagogue, mosque, or other
131 building set apart primarily for the purpose of worship in which religious services are held and
132 the main body of which is kept for that use and not put to any other use inconsistent with its
133 primary purpose.

134 ~~[(15)]~~ (16) "Prohibited area" means a place where it is unlawful to discharge a firearm.

135 ~~[(16)]~~ (17) "Readily accessible for immediate use" means that a firearm or other
136 dangerous weapon is carried on the person or within such close proximity and in such a manner
137 that it can be retrieved and used as readily as if carried on the person.

138 ~~[(17)]~~ (18) "Residence" means an improvement to real property used or occupied as a
139 primary or secondary residence.

140 ~~[(18)]~~ (19) "Securely encased" means not readily accessible for immediate use, such as
141 held in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
142 storage area of a motor vehicle, not including a glove box or console box.

143 ~~[(19)]~~ (20) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a
144 barrel or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or
145 barrels of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun
146 by alteration, modification, or otherwise, if the weapon as modified has an overall length of
147 fewer than 26 inches.

148 ~~[(20)]~~ (21) "Shotgun" means a smooth bore firearm designed to fire cartridges
149 containing pellets or a single slug.

150 ~~[(21)]~~ (22) "Shoulder arm" means a firearm that is designed to be fired while braced
151 against the shoulder.

152 ~~[(22)]~~ (23) "Slug" means a single projectile discharged from a shotgun shell.

153 ~~[(23)]~~ (24) "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 (25) "Transfer" means to sell, furnish, give, lend, deliver, or otherwise provide, with or
157 without consideration.

158 (26) "Transferee" means an unlicensed person who receives a firearm from another
159 unlicensed person.

160 (27) "Transferor" means an unlicensed person who transfers a firearm to another
161 unlicensed person.

162 (28) "Unlicensed person" means a person who is not a federal firearms licensee, as
163 defined in Subsection (10).

164 ~~[(24)]~~ (29) "Violent felony" means the same as that term is defined in Section
165 76-3-203.5.

166 Section 2. Section **76-10-526.1** is enacted to read:

167 **76-10-526.1. Transfer of firearm between unlicensed persons.**

168 (1) Except as provided in Section 76-10-526, a firearm may not be transferred between
169 unlicensed persons unless a background check is completed on the transferee in compliance
170 with this section.

171 (2) A transferor and a transferee shall request a federal firearms licensee conduct a
172 background check prior to the transfer of a firearm.

173 (3) A federal firearms licensee may agree to conduct a criminal history background
174 check to facilitate the transfer of a firearm between two unlicensed persons under the following
175 conditions:

176 (a) the parties to the transfer shall appear together with the firearm at the federal
177 firearms licensee's place of business;

178 (b) the parties shall each complete, sign, and submit all federal and state forms
179 necessary to process the background check and otherwise complete the transfer pursuant to this
180 section;

181 (c) the federal firearms licensee shall indicate on the forms that the transfer is between
182 unlicensed persons;

(d) the federal firearms licensee may charge a reasonable fee, which may include the fee in Subsection 76-10-526(12), to facilitate the background check and transfer, and note the fee on the forms; and

(e) the federal firearms licensee shall process the transfer as though transferring the firearm from the licensee's own inventory to the transferee, complying with all federal and state requirements, including record-keeping.

(4) A transferor may not transfer a firearm to a transferee if the results of the background check indicate that the transferee is prohibited from possessing or receiving a firearm under state or federal law. This section does not prevent the transferor from removing the firearm from the premises of the federal firearms licensee if the results of the background check indicate that the transferee is prohibited from possessing or receiving firearms or if the sale results in a delay as described in Subsection 76-10-526(7)(d).

(5) This section does not apply to the transfer of a firearm:

(a) between family members;

(b) by or to a federal firearms licensee;

(c) by or to a law enforcement agency or any law enforcement officer, member of the armed forces, or security guard, if the officer, member, or guard is acting within the course and scope of their employment;

(d) to an executor, administrator, trustee, or personal representative of an estate or trust that occurs by operation of law upon the death of the owner of the firearm;

(e) temporarily, to a person who is not prohibited from possessing or receiving firearms under state or federal law if the transfer:

(i) is necessary to prevent imminent death or serious bodily harm; and

(ii) lasts only as long as necessary to prevent imminent death or serious bodily harm;

and

(f) temporarily, to a person who is not prohibited from possessing or receiving firearms under state or federal law if the transfer and the transferee's possession of the firearm take place exclusively in the presence of the transferor:

(i) at an established shooting range authorized by the governing body of the jurisdiction in which the range is located or, if no authorization is required, operated in conformance with local law in the jurisdiction;

214 (ii) while hunting or trapping if the hunting or trapping is legal in all places where the
215 transferee possesses the firearm and the transferee holds all licenses and permits required for
216 hunting or trapping; or

217 (iii) at a lawfully organized competition involving the use of a firearm or for
218 participation in or practice for a performance by an organized group that uses firearms as part
219 of the performance.

220 (6) An unlicensed person who transfers one or more firearms in violation of this
221 section is guilty of:

222 (a) a class A misdemeanor for the first offense; and

223 (b) a third degree felony for a second or subsequent offense.

224 (7) Except as provided in Subsection (5), a transferee who receives one or more
225 firearms in violation of this section is guilty of:

226 (a) a class A misdemeanor for the first offense; and

227 (b) a third degree felony for a second or subsequent offense.

228 (8) Each firearm transferred in violation of this section shall constitute a separate
229 offense.