

1 **RESTORATION OF CIVIL RIGHTS FOR NONVIOLENT**
2 **FELONS**

3 2014 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Curtis Oda**

6 Senate Sponsor: Mark B. Madsen

8 **LONG TITLE**

9 **General Description:**

10 This bill exempts nonviolent felons from the categories of restricted persons who are
11 prohibited from possessing a dangerous weapon.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ exempts persons convicted of certain nonviolent felonies and who have had felonies
15 expunged from the categories of restricted persons prohibited from possessing a
16 dangerous weapon.

17 **Money Appropriated in this Bill:**

18 None

19 **Other Special Clauses:**

20 None

21 **Utah Code Sections Affected:**

22 AMENDS:

23 **76-10-503**, as last amended by Laws of Utah 2012, Chapter 317

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

26 Section 1. Section **76-10-503** is amended to read:

27 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
28 **dangerous weapons by certain persons.**

29 (1) For purposes of this section:

- 30 (a) A Category I restricted person is a person who:
- 31 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;
- 32 (ii) is on probation or parole for any felony;
- 33 (iii) is on parole from a secure facility as defined in Section 62A-7-101;
- 34 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
- 35 committed by an adult would have been a violent felony as defined in Section 76-3-203.5; or
- 36 (v) is an alien who is illegally or unlawfully in the United States.
- 37 (b) A Category II restricted person is a person who:
- 38 (i) has been convicted of any felony;
- 39 (ii) within the last seven years has been adjudicated delinquent for an offense which if
- 40 committed by an adult would have been a felony;
- 41 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;
- 42 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
- 43 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;
- 44 (v) has been found not guilty by reason of insanity for a felony offense;
- 45 (vi) has been found mentally incompetent to stand trial for a felony offense;
- 46 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
- 47 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
- 48 to a mental institution;
- 49 (viii) has been dishonorably discharged from the armed forces; or
- 50 (ix) has renounced his citizenship after having been a citizen of the United States.
- 51 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
- 52 an offense which would be a felony if committed by an adult does not include:
- 53 (i) a conviction or adjudication of delinquency for an offense pertaining to antitrust
- 54 violations, unfair trade practices, restraint of trade, or other similar offenses relating to the
- 55 regulation of business practices not involving theft or fraud; or
- 56 (ii) a conviction or adjudication of delinquency which, according to the law of the
- 57 jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by

58 court order, pardoned or regarding which the person's civil rights have been restored unless the
59 pardon, reduction, expungement, or restoration of civil rights expressly provides that the person
60 may not ship, transport, possess, or receive firearms.

61 (d) It is the burden of the defendant in a criminal case to provide evidence that a
62 conviction or adjudication of delinquency is subject to an exception provided in Subsection
63 (1)(c), after which it is the burden of the state to prove beyond a reasonable doubt that the
64 conviction or adjudication of delinquency is not subject to that exception.

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

- 69 (a) any firearm is guilty of a second degree felony; or
- 70 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.

71 (3) A Category II restricted person who purchases, transfers, possesses, uses, or has
72 under the person's custody or control:

- 73 (a) any firearm is guilty of a third degree felony; or
- 74 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.
- 75 (4) A person may be subject to the restrictions of both categories at the same time.

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

79 (6) It is an affirmative defense to a charge based on the definition in Subsection
80 (1)(b)(iv) that the person was:

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

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

85 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon

86 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

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

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

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

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

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

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

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

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

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

103 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous
104 weapon other than a firearm, is guilty of a third degree felony;

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

107 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
108 weapon other than a firearm, is guilty of a class A misdemeanor.

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

112 (b) A person may not provide to a dealer or other person what the person knows to be
113 materially false information with intent to deceive the dealer or other person about the legality

114 of a sale, transfer or other disposition of a firearm or dangerous weapon.

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

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

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

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