

FIREARMS AND DOMESTIC VIOLENCE MODIFICATIONS

2017 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lee B. Perry

Senate Sponsor: Curtis S. Bramble

LONG TITLE

General Description:

This bill modifies the requirements for disposition of criminal domestic violence cases, modifies notification requirements when a prohibited person attempts to purchase a firearm, and modifies weapons law exemptions.

Highlighted Provisions:

This bill:

- ▶ states that certain concealed carry prohibitions do not apply to an individual 21 years of age or older who may lawfully possess a firearm;
- ▶ requires a court to impose a protective order on a perpetrator of domestic violence as a condition of probation or plea in abeyance that puts the perpetrator on notice that the perpetrator is prohibited from possessing a firearm under state and federal law, among other requirements;
- ▶ requires the Bureau of Criminal Identification to inform local law enforcement when a prohibited person attempts to purchase a weapon from a firearms dealer;
- ▶ enhances the level of offense for domestic violence when the perpetrator is in possession of a dangerous weapon to a class A misdemeanor; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **76-10-523**, as last amended by Laws of Utah 2014, Chapter 248

32 **76-10-526**, as last amended by Laws of Utah 2014, Chapter 226

33 **77-36-1.1**, as last amended by Laws of Utah 2015, Chapter 426

34 **77-36-5.1**, as last amended by Laws of Utah 2010, Chapter 384

35

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

37 Section 1. Section **76-10-523** is amended to read:

38 **76-10-523. Persons exempt from weapons laws.**

39 (1) Except for Sections **76-10-506**, **76-10-508**, and **76-10-508.1**, this part and Title 53,
40 Chapter 5, Part 7, Concealed Firearm Act, do not apply to any of the following:

- 41 (a) a United States marshal;
- 42 (b) a federal official required to carry a firearm;
- 43 (c) a peace officer of this or any other jurisdiction;
- 44 (d) a law enforcement official as defined and qualified under Section **53-5-711**;
- 45 (e) a judge as defined and qualified under Section **53-5-711**; or
- 46 (f) a common carrier while engaged in the regular and ordinary transport of firearms as
47 merchandise.

48 (2) The provisions of Subsections **76-10-504**(1) and (2), and Section **76-10-505** do not
49 apply to any person to whom a permit to carry a concealed firearm has been issued:

- 50 (a) pursuant to Section **53-5-704**; or
- 51 (b) by another state or county.

52 (3) Except for Sections **76-10-503**, **76-10-506**, **76-10-508**, and **76-10-508.1**, this part
53 and Title 53, Chapter 5, Part 7, Concealed Firearm Act, do not apply to a nonresident traveling
54 in or through the state, provided that any firearm is:

- 55 (a) unloaded; and
- 56 (b) securely encased as defined in Section **76-10-501**.

57 (4) Subsection **76-10-504**(1) does not apply to a person 21 years of age or older who
58 may lawfully possess a firearm.

59 Section 2. Section **76-10-526** is amended to read:

60 **76-10-526. Criminal background check before purchase of a firearm -- Fee --**
61 **Exemption for concealed firearm permit holders and law enforcement officers.**

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

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

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

70 (3) (a) A criminal history background check is required for the sale of a firearm by a
71 licensed firearm dealer in the state.

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

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

76 (b) The form shall contain the following information:

77 (i) the dealer identification number;

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

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

81 (iv) the Social Security number or any other identification number of the individual
82 receiving the firearm.

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

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

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

90 inquiry by telephone or other electronic means.

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

93 (a) review the criminal history files, including juvenile court records, to determine if
94 the individual is prohibited from purchasing, possessing, or transferring a firearm by state or
95 federal law;

96 (b) inform the dealer that:

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

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

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

100 (d) provide a response to the requesting dealer during the call for a criminal
101 background check, or by return call, or other electronic means, without delay, except in case of
102 electronic failure or other circumstances beyond the control of the bureau, the bureau shall
103 advise the dealer of the reason for the delay and give the dealer an estimate of the length of the
104 delay.

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

109 (b) [~~However,~~] Notwithstanding Subsection (8)(a), the bureau shall maintain a log of
110 requests containing the dealer's federal firearms number, the transaction number, and the
111 transaction date for a period of 12 months.

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

115 (a) within 30 minutes of determining the purchaser is prohibited from purchasing,
116 possessing, or transferring a firearm, and before informing the dealer as described in
117 Subsection (7)(b), notify the law enforcement agency with jurisdiction where the dealer is
118 located; and

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

120 (10) If an individual is denied the right to purchase a firearm under this section, the

121 individual may review the individual's criminal history information and may challenge or
122 amend the information as provided in Section 53-10-108.

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

127 (12) (a) (i) A dealer shall collect a criminal history background check fee of \$7.50 for
128 the sale of a firearm under this section.

129 (ii) This fee remains in effect until changed by the bureau through the process under
130 Section 63J-1-504.

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

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

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

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

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

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

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

150 (15) (a) A dealer may participate in the redeemable coupon program described in this
151 Subsection (15) and Subsection 53-10-202(18).

152 (b) A participating dealer shall:

153 (i) accept the redeemable coupon only from the individual whose name is on the
154 coupon and apply it only toward the purchase of a gun safe;

155 (ii) collect the receipts from the purchase of gun safes using the redeemable coupon
156 and send them to the Bureau of Criminal Identification for redemption; and

157 (iii) make the firearm safety brochure described in Subsection 53-10-202(18) available
158 to customers free of charge.

159 Section 3. Section 77-36-1.1 is amended to read:

160 **77-36-1.1. Enhancement of offense and penalty for subsequent domestic violence**
161 **offenses.**

162 (1) For purposes of this section, "qualifying domestic violence offense" means:

163 (a) a domestic violence offense in Utah; or

164 (b) an offense in any other state, or in any district, possession, or territory of the United
165 States, that would be a domestic violence offense under Utah law.

166 (2) A person who is convicted of a domestic violence offense is:

167 (a) guilty of a class B misdemeanor if:

168 (i) the domestic violence offense described in this Subsection (2) is designated by law
169 as a class C misdemeanor; and

170 (ii) (A) the domestic violence offense described in this Subsection (2) is committed
171 within five years after the person is convicted of a qualifying domestic violence offense; or

172 (B) the person is convicted of the domestic violence offense described in this
173 Subsection (2) within five years after the person is convicted of a qualifying domestic violence
174 offense;

175 (b) guilty of a class A misdemeanor if:

176 (i) the domestic violence offense described in this Subsection (2) is designated by law
177 as a class B misdemeanor; and

178 (ii) (A) the domestic violence offense described in this Subsection (2) is committed
179 within five years after the person is convicted of a qualifying domestic violence offense; [or]

180 (B) the person is convicted of the domestic violence offense described in this
181 Subsection (2) within five years after the person is convicted of a qualifying domestic violence
182 offense; ~~or~~ [or] ~~and~~

183 (C) the domestic violence was committed while the perpetrator was $\hat{H}\rightarrow$ ~~in possession of~~ :
 183a carrying $\leftarrow\hat{H}$ a
 184 firearm or dangerous weapon $\hat{H}\rightarrow$ as defined in Section 76-10-501 $\leftarrow\hat{H}$; or
 184a $\hat{H}\rightarrow$ (D) a conviction for the domestic violence will subject the defendant to the prohibitions
 184b of 18 U.S.C. Sec. 922(g); or $\leftarrow\hat{H}$

185 (c) guilty of a felony of the third degree if:

186 (i) the domestic violence offense described in this Subsection (2) is designated by law
 187 as a class A misdemeanor; and

188 (ii) (A) the domestic violence offense described in this Subsection (2) is committed
 189 within five years after the person is convicted of a qualifying domestic violence offense; or

190 (B) the person is convicted of the domestic violence offense described in this
 191 Subsection (2) within five years after the person is convicted of a qualifying domestic violence
 192 offense.

193 Section 4. Section 77-36-5.1 is amended to read:

194 **77-36-5.1. Conditions of probation for person convicted of domestic violence**
 195 **offense.**

196 (1) Before any perpetrator who has been convicted of a domestic violence offense may
 197 be placed on probation, the court shall consider the safety and protection of the victim and any
 198 member of the victim's family or household.

199 (2) The court [~~may~~] shall condition probation or a plea in abeyance on the perpetrator's
 200 compliance with one or more orders of the court, which $\hat{H}\rightarrow$ [~~may~~] shall $\leftarrow\hat{H}$ include a
 200a sentencing protective
 201 order:

202 (a) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other
 203 specified weapon;

204 (b) requiring the perpetrator to:

205 (i) surrender or dispose of any $\hat{H}\rightarrow$ [~~weapons~~] **firearm, specified weapon,**
 205a **or ammunition** $\leftarrow\hat{H}$ the perpetrator owns or possesses, so the
 206 perpetrator no longer has possession or control of a $\hat{H}\rightarrow$ **firearm, specified** $\leftarrow\hat{H}$ weapon $\hat{H}\rightarrow$, $\leftarrow\hat{H}$
 206a or ammunition; and

207 (ii) certify compliance with Subsection (2)(b)(i) by affidavit filed in the court within 72
 208 hours of the imposition of the court's order; and

209 (c) $\hat{H}\rightarrow$ **if a conviction in the case will subject the defendant to the prohibitions of 18**
 209a **U.S.C. Sec. 922(g), $\leftarrow\hat{H}$ notifying the perpetrator that the perpetrator is subject to 18 U.S.C. Sec.**
 209b **922(g) and**
 210 may not:

211 (i) lawfully ship or transport in interstate or foreign commerce, or possess in or
 212 affecting commerce, any firearm or ammunition; or

213 (ii) receive any firearm or ammunition that has been shipped or transported in interstate

214 or foreign commerce.

215 (3) In addition to the conditions described in Subsection (2), the court may also issue
 216 an order:

217 (a) enjoining the perpetrator from threatening to commit or committing acts of
 218 domestic violence against the victim or other family or household member;

219 (b) prohibiting the perpetrator from harassing, telephoning, contacting, or otherwise
 220 communicating with the victim, directly or indirectly;

221 (c) requiring the perpetrator to stay away from the victim's residence, school, place of
 222 employment, and the premises of any of these, or a specified place frequented regularly by the
 223 victim or any designated family or household member;

224 (d) prohibiting the perpetrator from possessing or consuming alcohol or controlled
 225 substances;

226 ~~Ĥ→ [(e) prohibiting the perpetrator from purchasing, using, or possessing a firearm or other~~
 227 ~~specified weapon;~~

228 ~~———— [(f) directing the perpetrator to surrender any weapons the perpetrator owns or~~
 229 ~~possesses;~~

230 ~~———— [(g) (e) ←Ĥ~~ directing the perpetrator to participate in and complete, to the satisfaction of the
 231 court, a program of intervention for perpetrators, treatment for alcohol or substance abuse, or
 232 psychiatric or psychological treatment;

233 ~~Ĥ→ [(h) (f) ←Ĥ~~ directing the perpetrator to pay restitution to the victim; and

234 ~~Ĥ→ [(i) (g) ←Ĥ~~ imposing any other condition necessary to protect the victim and any other
 235 designated family or household member or to rehabilitate the perpetrator.

236 ~~[(3)] (4)~~ The perpetrator is responsible for the costs of any condition of probation,
 237 according to the perpetrator's ability to pay.

238 ~~[(4)] (5)~~ (a) Adult Probation and Parole, or other provider, shall immediately report to
 239 the court and notify the victim of any offense involving domestic violence committed by the
 240 perpetrator, the perpetrator's failure to comply with any condition imposed by the court, and
 241 any violation of any sentencing criminal protective order issued by the court.

242 (b) Notification of the victim under Subsection ~~[(4)] (5)~~(a) shall consist of a good faith
 243 reasonable effort to provide prompt notification, including mailing a copy of the notification to
 244 the last-known address of the victim.

245 [~~5~~] (6) The court shall transmit all dismissals, terminations, and expirations of
246 pretrial and sentencing criminal protective orders issued by the court to the statewide domestic
247 violence network.

Legislative Review Note
Office of Legislative Research and General Counsel