

1 **UNIVERSAL BACKGROUND CHECKS FOR FIREARM**

2 **PURCHASES**

3 2021 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Brian S. King**

6 Senate Sponsor: _____

7

8 **LONG TITLE**

9 **General Description:**

10 This bill requires a background check for certain firearm sales.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ defines terms;
- 14 ▶ requires background checks for the transfer of a firearm between persons who are
- 15 not federal firearms licensees;
- 16 ▶ creates exceptions for family members, law enforcement agencies and officers, and
- 17 others;
- 18 ▶ allows for temporary transfers under specific circumstances;
- 19 ▶ provides criminal penalties for a violation of the provisions of this bill; and
- 20 ▶ makes technical changes.

21 **Money Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 AMENDS:

27 **76-10-501**, as last amended by Laws of Utah 2015, Chapters 212 and 406



28 ENACTS:

29 [76-10-526.1](#), Utah Code Annotated 1953

30

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

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

33 **76-10-501. Definitions.**

34 As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

53 (A) barrel;

54 (B) bolt;

55 (C) breechblock; or

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

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

- 59 (3) (a) "Concealed firearm" means a firearm that is:
60 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
61 presence; and
62 (ii) readily accessible for immediate use.
- 63 (b) A firearm that is unloaded and securely encased is not a concealed firearm for the
64 purposes of this part.
- 65 (4) "Criminal history background check" means a criminal background check
66 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal
67 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms
68 dealer conducts business.
- 69 (5) "Curio or relic firearm" means a firearm that:
70 (a) is of special interest to a collector because of a quality that is not associated with
71 firearms intended for:
72 (i) sporting use;
73 (ii) use as an offensive weapon; or
74 (iii) use as a defensive weapon;
- 75 (b) (i) was manufactured at least 50 years before the current date; and
76 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);
- 77 (c) is certified by the curator of a municipal, state, or federal museum that exhibits
78 firearms to be a curio or relic of museum interest;
- 79 (d) derives a substantial part of its monetary value:
80 (i) from the fact that the firearm is:
81 (A) novel;
82 (B) rare; or
83 (C) bizarre; or
84 (ii) because of the firearm's association with an historical:
85 (A) figure;
86 (B) period; or
87 (C) event; and
- 88 (e) has been designated as a curio or relic firearm by the director of the United States
89 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

- 90 (6) (a) "Dangerous weapon" means:
- 91 (i) a firearm; or
- 92 (ii) an object that in the manner of its use or intended use is capable of causing death or
- 93 serious bodily injury.
- 94 (b) The following factors are used in determining whether any object, other than a
- 95 firearm, is a dangerous weapon:
- 96 (i) the location and circumstances in which the object was used or possessed;
- 97 (ii) the primary purpose for which the object was made;
- 98 (iii) the character of the wound, if any, produced by the object's unlawful use;
- 99 (iv) the manner in which the object was unlawfully used;
- 100 (v) whether the manner in which the object is used or possessed constitutes a potential
- 101 imminent threat to public safety; and
- 102 (vi) the lawful purposes for which the object may be used.
- 103 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
- 104 as defined by Section [76-10-306](#).
- 105 (7) "Dealer" means a person who is:
- 106 (a) licensed under 18 U.S.C. Sec. 923; and
- 107 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
- 108 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.
- 109 (8) "Enter" means intrusion of the entire body.
- 110 (9) "Family member" means a spouse, child or stepchild, parent or stepparent, sibling
- 111 or stepsibling, grandparent, or grandchild.
- 112 [~~9~~] (10) "Federal Firearms Licensee" means a person who:
- 113 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and
- 114 (b) is engaged in the activities authorized by the specific category of license held.
- 115 [~~10~~] (11) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle
- 116 or short barreled rifle, or a device that could be used as a dangerous weapon from which is
- 117 expelled a projectile by action of an explosive.
- 118 (b) As used in Sections [76-10-526](#) and [76-10-527](#), "firearm" does not include an
- 119 antique firearm.
- 120 [~~H~~] (12) "Firearms transaction record form" means a form created by the bureau to

121 be completed by a person purchasing, selling, or transferring a handgun from a dealer in the
122 state.

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

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

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

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

135 ~~[(15)]~~ (16) "Prohibited area" means a place where it is unlawful to discharge a firearm.

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

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

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

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

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

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

152 against the shoulder.

153 ~~[(22)]~~ (23) "Slug" means a single projectile discharged from a shotgun shell.

154 ~~[(23)]~~ (24) "State entity" means a department, commission, board, council, agency,
155 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
156 unit, bureau, panel, or other administrative unit of the state.

157 (25) "Transfer" means to sell, give, lend, deliver, or otherwise provide, with or without
158 consideration.

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

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

163 (28) "Unlicensed person" means a person who is not a federal firearms licensee.

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 criminal history background check is completed on the transferee
170 in compliance with this section.

171 (2) A transferor and a transferee shall request that a federal firearms licensee conduct a
172 criminal history background check before 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 criminal history background check and otherwise complete the transfer
180 pursuant to this section;

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

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

186 (e) the federal firearms licensee shall process the transfer in the same manner as when
187 transferring a firearm from the licensee's own inventory to a transferee, complying with all
188 federal and state requirements, including record keeping.

189 (4) A transferor may not transfer a firearm to a transferee if the results of the criminal
190 history background check indicate that the transferee is prohibited from possessing or receiving
191 a firearm under state or federal law.

192 (5) This section does not prevent the transferor from removing the firearm from the
193 premises of the federal firearms licensee if the results of the background check indicate that the
194 transferee is prohibited from possessing or receiving firearms or if the transfer results in a delay
195 described in Subsection 76-10-526(7)(d).

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

197 (a) between family members;

198 (b) by or to a federal firearms licensee;

199 (c) by or to a law enforcement agency or an individual who is a law enforcement
200 officer, member of the armed forces, or security guard, if the individual is acting within the
201 course and scope of the individual's employment;

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

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

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

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

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

211 (i) at an established shooting range authorized by the governing body of the jurisdiction
212 in which the range is located or, if no authorization is required, operated in conformance with
213 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 (7) 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 (8) A transferee who receives one or more firearms in violation of this section is guilty
225 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 (9) Each firearm transferred in violation of this section constitutes a separate offense.