

1 **DOMESTIC VIOLENCE -- WEAPONS RESTRICTIONS**

2 2017 GENERAL SESSION

3 STATE OF UTAH

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

5 Senate Sponsor: Deidre M. Henderson

6 Cosponsors: Carol Spackman Moss

7 Patrice M. Arent

8

9 **LONG TITLE**

10 **General Description:**

11 This bill amends provisions relating to certain weapons restrictions relating to domestic
12 violence.

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ expands the scope of a Category II restricted person to include:
- 16 • a person who is subject to a protective order or child protective order; and
 - 17 • a person who has been convicted of assault or aggravated assault against a

18 cohabitant.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **76-10-503**, as last amended by Laws of Utah 2015, First Special Session, Chapter 1

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

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

29 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
30 **dangerous weapons by certain persons -- Exceptions.**

31 (1) For purposes of this section:

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

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

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

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

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

38 (v) is an alien who is illegally or unlawfully in the United States; or

39 (vi) is on probation for a conviction of possessing:

40 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;

41 (B) a controlled substance analog; or

42 (C) a substance listed in Section 58-37-4.2.

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

44 (i) has been convicted of any felony;

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

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

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

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

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

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

55 (viii) has been dishonorably discharged from the armed forces; [or]

56 (ix) has renounced [his] the individual's citizenship after having been a citizen of the

57 United States[-];

58 (x) is a respondent or defendant subject to a protective order or child protective order
59 that is issued after a hearing for which the respondent or defendant received actual notice and at
60 which the respondent or defendant has an opportunity to participate, that restrains the
61 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
62 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
63 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
64 partner, and that:

65 (A) includes a finding that the respondent or defendant represents a credible threat to
66 the physical safety of an individual who meets the definition of an intimate partner in 18 U.S.C.
67 Sec. 921 or the child of the individual; or

68 (B) explicitly prohibits the use, attempted use, or threatened use of physical force that
69 would reasonably be expected to cause bodily harm against an intimate partner or the child of
70 an intimate partner; or

71 (xi) has been convicted of the commission or attempted commission of assault under
72 Section [76-5-102](#) or aggravated assault under Section [76-5-103](#) against a current or former
73 spouse, parent, guardian, individual with whom the restricted person shares a child in common,
74 individual who is cohabitating or has cohabitated with the restricted person as a spouse, parent,
75 or guardian, or against an individual similarly situated to a spouse, parent, or guardian of the
76 restricted person.

77 (c) As used in this section, a conviction of a felony or adjudication of delinquency for
78 an offense which would be a felony if committed by an adult does not include:

79 (i) a conviction or adjudication of delinquency for an offense pertaining to antitrust
80 violations, unfair trade practices, restraint of trade, or other similar offenses relating to the
81 regulation of business practices not involving theft or fraud; or

82 (ii) a conviction or adjudication of delinquency which, according to the law of the
83 jurisdiction in which it occurred, has been expunged, set aside, reduced to a misdemeanor by
84 court order, pardoned or regarding which the person's civil rights have been restored unless the

85 pardon, reduction, expungement, or restoration of civil rights expressly provides that the person
86 may not ship, transport, possess, or receive firearms.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

115 (ii) was not used in or possessed during the commission of a crime or subject to
116 disposition under Section 24-3-103;

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

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

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

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

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

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

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

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

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

134 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous
135 weapon other than a firearm, and the transferor has knowledge that the recipient intends to use
136 the weapon for any unlawful purpose, is guilty of a class A misdemeanor.

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

140 (b) A person may not provide to a dealer or other person any information that the

141 person knows to be materially false information with intent to deceive the dealer or other
142 person about the legality of a sale, transfer or other disposition of a firearm or dangerous
143 weapon.

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

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

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

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