

OPTIONAL FIREARM BACKGROUND CHECKS

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jeffrey D. Stenquist

Senate Sponsor: _____

LONG TITLE

General Description:

This bill concerns an optional criminal history background check by a Federal Firearms Licensee before the transfer of a firearm between private parties.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ provides procedures for an optional criminal history background check by a Federal Firearms Licensee for the transfer of a firearm between persons who are not Federal Firearms Licensees; and
- ▶ makes technical changes.

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:

76-10-526.2, Utah Code Annotated 1953



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

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

30 **76-10-501. Definitions.**

31 As used in this part:

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

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

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

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

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

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

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

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

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

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

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

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

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

50 (A) barrel;

51 (B) bolt;

52 (C) breechblock; or

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

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

56 (3) (a) "Concealed firearm" means a firearm that is:

57 (i) covered, hidden, or secreted in a manner that the public would not be aware of its
58 presence; and

59 (ii) readily accessible for immediate use.

60 (b) A firearm that is unloaded and securely encased is not a concealed firearm for the
61 purposes of this part.

62 (4) "Criminal history background check" means a criminal background check
63 conducted by a licensed firearms dealer on every purchaser of a handgun, except a Federal
64 Firearms Licensee, through the bureau or the local law enforcement agency where the firearms
65 dealer conducts business.

66 (5) "Curio or relic firearm" means a firearm that:

67 (a) is of special interest to a collector because of a quality that is not associated with
68 firearms intended for:

69 (i) sporting use;

70 (ii) use as an offensive weapon; or

71 (iii) use as a defensive weapon;

72 (b) (i) was manufactured at least 50 years before the current date; and

73 (ii) is not a replica of a firearm described in Subsection (5)(b)(i);

74 (c) is certified by the curator of a municipal, state, or federal museum that exhibits
75 firearms to be a curio or relic of museum interest;

76 (d) derives a substantial part of its monetary value:

77 (i) from the fact that the firearm is:

78 (A) novel;

79 (B) rare; or

80 (C) bizarre; or

81 (ii) because of the firearm's association with an historical:

82 (A) figure;

83 (B) period; or

84 (C) event; and

85 (e) has been designated as a curio or relic firearm by the director of the United States
86 Treasury Department Bureau of Alcohol, Tobacco, and Firearms under 27 C.F.R. Sec. 478.11.

87 (6) (a) "Dangerous weapon" means:

88 (i) a firearm; or

89 (ii) an object that in the manner of its use or intended use is capable of causing death or

90 serious bodily injury.

91 (b) The following factors are used in determining whether any object, other than a
92 firearm, is a dangerous weapon:

93 (i) the location and circumstances in which the object was used or possessed;

94 (ii) the primary purpose for which the object was made;

95 (iii) the character of the wound, if any, produced by the object's unlawful use;

96 (iv) the manner in which the object was unlawfully used;

97 (v) whether the manner in which the object is used or possessed constitutes a potential
98 imminent threat to public safety; and

99 (vi) the lawful purposes for which the object may be used.

100 (c) "Dangerous weapon" does not include an explosive, chemical, or incendiary device
101 as defined by Section 76-10-306.

102 (7) "Dealer" means a person who is:

103 (a) licensed under 18 U.S.C. Sec. 923; and

104 (b) engaged in the business of selling, leasing, or otherwise transferring a handgun,
105 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

106 (8) "Enter" means intrusion of the entire body.

107 (9) "Federal Firearms Licensee" means a person who:

108 (a) holds a valid Federal Firearms License issued under 18 U.S.C. Sec. 923; and

109 (b) is engaged in the activities authorized by the specific category of license held.

110 (10) (a) "Firearm" means a pistol, revolver, shotgun, short barreled shotgun, rifle or
111 short barreled rifle, or a device that could be used as a dangerous weapon from which is
112 expelled a projectile by action of an explosive.

113 (b) As used in Sections 76-10-526 and 76-10-527, "firearm" does not include an
114 antique firearm.

115 (11) "Firearms transaction record form" means a form created by the bureau to be
116 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

117 (12) "Fully automatic weapon" means a firearm which fires, is designed to fire, or can
118 be readily restored to fire, automatically more than one shot without manual reloading by a
119 single function of the trigger.

120 (13) (a) "Handgun" means a pistol, revolver, or other firearm of any description, loaded

121 or unloaded, from which a shot, bullet, or other missile can be discharged, the length of which,
122 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

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

125 (14) "House of worship" means a church, temple, synagogue, mosque, or other
126 building set apart primarily for the purpose of worship in which religious services are held and
127 the main body of which is kept for that use and not put to any other use inconsistent with its
128 primary purpose.

129 (15) "Prohibited area" means a place where it is unlawful to discharge a firearm.

130 (16) "Readily accessible for immediate use" means that a firearm or other dangerous
131 weapon is carried on the person or within such close proximity and in such a manner that it can
132 be retrieved and used as readily as if carried on the person.

133 (17) "Residence" means an improvement to real property used or occupied as a
134 primary or secondary residence.

135 (18) "Securely encased" means not readily accessible for immediate use, such as held
136 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other
137 storage area of a motor vehicle, not including a glove box or console box.

138 (19) "Short barreled shotgun" or "short barreled rifle" means a shotgun having a barrel
139 or barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels
140 of fewer than 16 inches in length, or a dangerous weapon made from a rifle or shotgun by
141 alteration, modification, or otherwise, if the weapon as modified has an overall length of fewer
142 than 26 inches.

143 (20) "Shotgun" means a smooth bore firearm designed to fire cartridges containing
144 pellets or a single slug.

145 (21) "Shoulder arm" means a firearm that is designed to be fired while braced against
146 the shoulder.

147 (22) "Slug" means a single projectile discharged from a shotgun shell.

148 (23) "State entity" means a department, commission, board, council, agency,
149 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
150 unit, bureau, panel, or other administrative unit of the state.

151 (24) "Transfer" means to sell, give, lend, deliver, or otherwise provide, with or without

152 consideration.

153 (25) "Transferee" means an unlicensed person who receives a firearm from another
154 unlicensed person.

155 (26) "Transferor" means an unlicensed person who transfers a firearm to another
156 unlicensed person.

157 (27) "Unlicensed person" means a person who is not a Federal Firearms Licensee.

158 ~~[(24)]~~ (28) "Violent felony" means the same as that term is defined in Section
159 76-3-203.5.

160 Section 2. Section **76-10-526.2** is enacted to read:

161 **76-10-526.2. Optional criminal history background check for a firearm transfer**
162 **between unlicensed persons -- Procedures.**

163 (1) A transferor and a transferee may request a criminal history background check from
164 a Federal Firearms Licensee before the transfer of a firearm.

165 (2) A Federal Firearms Licensee may conduct the criminal history background check
166 under Subsection (1) to facilitate the transfer of a firearm between a transferor and a transferee
167 if the transferor and the transferee:

168 (a) appear together with the firearm at the Federal Firearms Licensee's place of
169 business or a location where the Federal Firearms Licensee is legally permitted to conduct a
170 criminal history background check; and

171 (b) each complete, sign, and submit all federal and state forms necessary to process the
172 criminal history background check and otherwise complete the transfer under this section.

173 (3) (a) If a request is made under Subsection (1) and a Federal Firearms Licensee
174 agrees to conduct a criminal history background check under Subsection (2), the Federal
175 Firearms Licensee shall:

176 (i) indicate on the forms that the transfer is between unlicensed persons; and

177 (ii) process the transfer in the same manner as when transferring a firearm from the
178 Federal Firearms Licensee's own inventory to a transferee, complying with all federal and state
179 requirements, including record keeping.

180 (b) The Federal Firearms Licensee may charge a reasonable fee, which may include the
181 fee described in Subsection [76-10-526\(12\)](#), to conduct the criminal history background check
182 and facilitate the transfer under this section, and note the fee on the forms.

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

186 (b) This section does not prevent the transferor from removing the firearm from the
187 premises of the Federal Firearms Licensee if the results of the criminal history background
188 check indicate that the transferee is prohibited from possessing or receiving firearms or if the
189 transfer results in a delay described in Subsection [76-10-526\(7\)\(d\)](#).