

RESTRICTED PERSONS AMENDMENTS

2023 FIRST SPECIAL SESSION

STATE OF UTAH

Chief Sponsor: Ryan D. Wilcox

Senate Sponsor: Todd D. Weiler

LONG TITLE

General Description:

This bill amends provisions concerning dangerous weapons restrictions for certain persons.

Highlighted Provisions:

This bill:

- ▶ amends provisions concerning dangerous weapons restrictions for an alien who has been admitted to the United States under a nonimmigrant visa; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

This bill provides a special effective date.

Utah Code Sections Affected:

AMENDS:

76-10-503, as last amended by Laws of Utah 2023, Chapters 389, 397, 425, and 448 and last amended by Coordination Clause, Laws of Utah 2023, Chapter 397

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

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

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

(1) For purposes of this section:

- 30 (a) A Category I restricted person is a person who:
- 31 (i) has been convicted of a violent felony;
- 32 (ii) is on probation or parole for a felony;
- 33 (iii) is on parole from secure care, as defined in Section 80-1-102;
- 34 (iv) within the last 10 years has been adjudicated under Section 80-6-701 for an offense
- 35 which if committed by an adult would have been a violent felony as defined in Section
- 36 76-3-203.5;
- 37 (v) is an alien who is illegally or unlawfully in the United States; or
- 38 (vi) is on probation for a conviction of possessing:
- 39 (A) a substance classified in Section 58-37-4 as a Schedule I or II controlled substance;
- 40 (B) a controlled substance analog; or
- 41 (C) a substance listed in Section 58-37-4.2.
- 42 (b) A Category II restricted person is a person who:
- 43 (i) has been convicted of:
- 44 (A) a domestic violence offense that is a felony;
- 45 (B) a felony that is not a domestic violence offense or a violent felony and within seven
- 46 years after completing the sentence for the conviction, has been convicted of or charged with
- 47 another felony or class A misdemeanor;
- 48 (C) multiple felonies that are part of a single criminal episode and are not domestic
- 49 violence offenses or violent felonies and within seven years after completing the sentence for
- 50 the convictions, has been convicted of or charged with another felony or class A misdemeanor;
- 51 or
- 52 (D) multiple felonies that are not part of a single criminal episode;
- 53 (ii) (A) within the last seven years has completed a sentence for:
- 54 (I) a conviction for a felony that is not a domestic violence offense or a violent felony;
- 55 or
- 56 (II) convictions for multiple felonies that are part of a single criminal episode and are
- 57 not domestic violence offenses or violent felonies; and

58 (B) within the last seven years and after the completion of a sentence for a conviction
59 described in Subsection (1)(b)(ii)(A), has not been convicted of or charged with another felony
60 or class A misdemeanor;

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

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

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

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

67 (vii) has been found mentally incompetent to stand trial for a felony offense;

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

71 (ix) has been dishonorably discharged from the armed forces;

72 (x) has renounced the individual's citizenship after having been a citizen of the United
73 States;

74 (xi) is a respondent or defendant subject to a protective order or child protective order
75 that is issued after a hearing for which the respondent or defendant received actual notice and at
76 which the respondent or defendant has an opportunity to participate, that restrains the
77 respondent or defendant from harassing, stalking, threatening, or engaging in other conduct that
78 would place an intimate partner, as defined in 18 U.S.C. Sec. 921, or a child of the intimate
79 partner, in reasonable fear of bodily injury to the intimate partner or child of the intimate
80 partner, and that:

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

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

86 an intimate partner; or

87 (xii) except as provided in Subsection (1)(d), has been convicted of the commission or
88 attempted commission of misdemeanor assault under Section 76-5-102 or aggravated assault
89 under Section 76-5-103 against an individual:

90 (A) who is a current or former spouse, parent, or guardian;

91 (B) with whom the restricted person shares a child in common;

92 (C) who is cohabitating or has cohabitated with the restricted person as a spouse,
93 parent, or guardian;

94 (D) involved in a dating relationship with the restricted person within the last five
95 years; or

96 (E) similarly situated to a spouse, parent, or guardian of the restricted person~~[, or]~~.

97 ~~[(xiii) is an alien who has been admitted to the United States under a nonimmigrant
98 visa as defined in 8 U.S.C. Sec. 1101(a)(26).]~~

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

101 (A) a conviction or an adjudication under Section 80-6-701 for an offense pertaining to
102 antitrust violations, unfair trade practices, restraint of trade, or other similar offenses relating to
103 the regulation of business practices not involving theft or fraud; or

104 (B) a conviction or an adjudication under Section 80-6-701 which, in accordance with
105 the law of the jurisdiction in which the conviction or adjudication occurred, has been
106 expunged, set aside, reduced to a misdemeanor by court order, pardoned or regarding which the
107 person's civil rights have been restored unless the pardon, reduction, expungement, or
108 restoration of civil rights expressly provides that the person may not ship, transport, possess, or
109 receive firearms.

110 (ii) As used in this section, a conviction for misdemeanor assault under Subsection
111 (1)(b)(xii), does not include a conviction which, in accordance with the law of the jurisdiction
112 in which the conviction occurred, has been expunged, set aside, reduced to an infraction by
113 court order, pardoned, or regarding which the person's civil rights have been restored, unless

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

116 (iii) It is the burden of the defendant in a criminal case to provide evidence that a
117 conviction or an adjudication under Section 80-6-701 is subject to an exception provided in
118 this Subsection (1)(c), after which it is the burden of the state to prove beyond a reasonable
119 doubt that the conviction or the adjudication is not subject to that exception.

120 (d) A person is not a restricted person for a conviction under Subsection (1)(b)(xii)(D)
121 if:

122 (i) five years have elapsed from the later of:

123 (A) the day on which the conviction is entered;

124 (B) the day on which the person is released from incarceration following the
125 conviction; or

126 (C) the day on which the person's probation for the conviction is successfully
127 terminated;

128 (ii) the person only has a single conviction for misdemeanor assault as described in
129 Subsection (1)(b)(xii)(D); and

130 (iii) the person is not otherwise a restricted person under Subsection (1)(a) or (b).

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

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

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

137 (3) ~~[Except as provided in Subsection (4), a]~~ A Category II restricted person who
138 intentionally or knowingly purchases, transfers, possesses, uses, or has under the person's
139 custody or control:

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

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

142 ~~[(4) A Category II restricted person may possess, use, or have under the person's~~
143 ~~control a firearm or dangerous weapon if:]~~

144 ~~[(a) the person is a Category II restricted person solely due to Subsection (1)(b)(xiii);]~~

145 ~~[(b) the person has been admitted to the United States under a nonimmigrant visa~~
146 ~~solely for lawful hunting or sporting purposes;]~~

147 ~~[(c) the person is in possession of a valid hunting license or permit; and]~~

148 ~~[(d) the possession, use, or control of the firearm or dangerous weapon is directly~~
149 ~~related to the lawful hunting or sporting purposes described in Subsection (4)(b).]~~

150 ~~[(5)]~~ (4) A person may be subject to the restrictions of both categories at the same time.

151 ~~[(6)]~~ (5) A Category I or Category II restricted person may not use an antique firearm
152 for an activity regulated under Title 23A, Wildlife Resources Code of Utah.

153 ~~[(7)]~~ (6) If a higher penalty than is prescribed in this section is provided in another
154 section for one who purchases, transfers, possesses, uses, or has under this custody or control a
155 dangerous weapon, the penalties of that section control.

156 ~~[(8)]~~ (7) It is an affirmative defense to a charge based on the definition in Subsection
157 (1)(b)(v) that the person was:

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

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

162 ~~[(9)]~~ (8) (a) It is an affirmative defense to transferring a firearm or other dangerous
163 weapon by a person restricted under Subsection (2) or (3) that the firearm or dangerous
164 weapon:

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

167 (ii) was not used in or possessed during the commission of a crime or subject to
168 disposition under Section Title 77, Chapter 11a, Part 4, Disposal of Seized Property and
169 Contraband;

170 (iii) is not being held as evidence by a court or law enforcement agency;
171 (iv) was transferred to a person not legally prohibited from possessing the weapon; and
172 (v) unless a different time is ordered by the court, was transferred within 10 days of the
173 person becoming a restricted person.

174 (b) Subsection [~~(9)(a)~~] (8)(a) is not a defense to the use, purchase, or possession on the
175 person of a firearm or other dangerous weapon by a restricted person.

176 [~~(10)~~] (9) (a) A person may not sell, transfer, or otherwise dispose of a firearm or
177 dangerous weapon to a person, knowing that the recipient is a person described in Subsection
178 (1)(a) or (b).

179 (b) A person who violates Subsection [~~(10)(a)~~] (9)(a) when the recipient is:

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

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

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

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

190 [~~(11)~~] (10) (a) A person may not knowingly solicit, persuade, encourage or entice a
191 dealer or other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon
192 under circumstances which the person knows would be a violation of the law.

193 (b) A person may not provide to a dealer or other person information that the person
194 knows to be materially false information with intent to deceive the dealer or other person about
195 the legality of a sale, transfer or other disposition of a firearm or dangerous weapon.

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

198 (d) A person who violates this Subsection [~~(11)~~] (10) is guilty of:
199 (i) a third degree felony if the transaction involved a firearm; or
200 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a
201 firearm.

202 Section 2. **Effective date.**

203 If approved by two-thirds of all the members elected to each house, this bill takes effect
204 upon approval by the governor, or the day following the constitutional time limit of Utah
205 Constitution, Article VII, Section 8, without the governor's signature, or in the case of a veto,
206 the date of veto override.