



MICHAEL O. LEAVITT  
*Governor*

OLENE S. WALKER  
*Lieutenant Governor*

State of Utah

Department of  
Human Services

ROBIN ARNOLD-WILLIAMS  
*Executive Director*

RICHARD J. ANDERSON  
*Director*  
*Division of Child and Family Services*

May 26, 2004

Stacy Norton  
1375 W. 7000 S. #85  
West Jordan, UT 84084

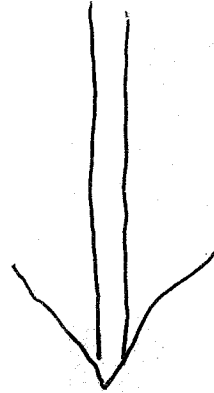
Dear Mr. Norton,

Attached is the information you requested regarding laws and DCFS policy re: firearms in the home. I hope you will find the information helpful and that it will assist you in assuring your child's safety in your home.

If I can be of further assistance feel free to call me at 281-5098.-

Sincerely,

Mayla W. Slack, CSW  
Child Protective Services.



Download Zipped Introduced WordPerfect [SB0036.ZIP](#)  
[\[Status\]](#)[\[Bill Documents\]](#)[\[Fiscal Note\]](#)[\[Bills Directory\]](#)

**S.B. 36**

*This was only a BILL that  
was never  
even voted  
on!!*

1

**PREVENTION OF CHILD ACCESS TO**

2

**FIREARMS**

3

2004 GENERAL SESSION

4

STATE OF UTAH

5

Sponsor: Paula F. Julander

6

**LONG TITLE**

7

**General Description:**

8

This bill modifies the Utah Criminal Code and Judicial Code.

9

**Highlighted Provisions:**

10

This bill:

11

. creates a crime for negligent storage of a firearm and provides affirmative defenses to the alleged crime;

12

. requires a licensed firearm dealer to provide written warning of possible prosecution and civil suit for negligent storage of a firearm and provides a criminal penalty to dealers who violate this requirement;

13

14

. creates a civil cause of action for negligent storage of a firearm; and  
. provides a statute of limitation.

15

16

17

**Monies Appropriated in this Bill:**

18

None

19

**Other Special Clauses:**

20

This bill takes effect on July 1, 2004.

21

**Utah Code Sections Affected:**

22

ENACTS:

23

76-10-509.1, Utah Code Annotated 1953

24

76-10-527.5, Utah Code Annotated 1953

25

78-11-6.3, Utah Code Annotated 1953

26

27

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

30 *Section 1. Section 76-10-509.1 is enacted to read:*

31 **76-10-509.1. Criminally negligent storage of a firearm -- Affirmative defenses --**

32 **Penalty.**

33 *(1) A person is guilty of a class B misdemeanor if:*

34 *(a) notwithstanding Section 76-10-502, the person keeps a firearm that has*

*ammunition*

35 *in the chamber, cylinder, or magazine in a condition that the firearm can be discharged*

*within a*

36 *premise which is under the person's custody or control;*

37 *(b) the person knows or reasonably should know that a minor is likely to gain access to*  
38 *the firearm without the permission of the minor's parent, legal guardian, or property*

*owner*

39 *where the firearm is stored; and*

40 *(c) the minor obtains access to the firearm and by discharging it causes death or bodily*  
41 *injury to the minor or another person.*

42 *(2) It is an affirmative defense to Subsection (1) if:*

43 *(a) the minor obtains the firearm as a result of an unlawful entry to any premises by*

*any*

44 *person;*

45 *(b) the firearm is kept in a locked container or in a location which a reasonable person*  
46 *would believe to be secure;*

47 *(c) the firearm is carried on the person or within a close proximity so that the person*  
48 *can readily retrieve and use the firearm as if carried on the person;*

49 *(d) the firearm is secured with a locking device;*

50 *(e) the person is authorized to possess a weapon under Subsection 76-10-505.5 (3)(b)*

*or*

51 *(c) or Section 76-10-523 and the minor obtains the firearm during, or incidental to, the*  
52 *performance of the person's duties;*

53 *(f) the minor obtains, or obtains and discharges, the firearm in a lawful act of*  
54 *self-defense or defense of another person; or*

55 *(g) the person who keeps a firearm on a premise which is under the person's custody or*  
56 *control has no reasonable expectation, based on objective facts and circumstances, that a*

*minor*

57 *is likely to be present on the premises.*

58 *(3) The definitions in Section 78-11-6.3 apply to this section.*

59

Section 2. Section 76-10-527.5 is enacted to read:

60 **76-10-527.5. Dealer requirement for firearm warning -- Penalty.**

61 *(1) Upon the retail sale or transfer of a firearm, the retail dealer or the dealer's*  
62 *employee shall deliver to the purchaser or transferee the following written warning,*

*printed in*

63 *block letters not less than 1/4 of an inch in height:*

64 **"AN ADULT CAN BE PROSECUTED AND SUED FOR LEAVING A**  
65 **FIREARM WITHIN EASY ACCESS OF A MINOR. FIREARMS SHOULD**  
66 **BE SECURED WITH A LOCKING DEVICE OR SECURELY STORED IN A**

67 LOCKED BOX, CONTAINER, OR OTHER LOCATION."

68 (2) A wholesale or retail dealer of firearms shall conspicuously post at each purchase  
69 counter the same written warning required under Subsection (1).

70 (3) A retail or wholesale dealer of firearms who violates Subsection (1) or (2) is guilty  
71 of a class C misdemeanor.

72 Section 3. Section 78-11-6.3 is enacted to read:

73 78-11-6.3. Negligent storage of a firearm -- Definitions -- Affirmative defenses --

74 Civil action.

75 (1) As used in this section and Section 76-10-509.1 :

76 (a) "Bodily injury" means a physical injury as defined in Section 76-1-601.

77 (b) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off  
78 rifle, or a device that could be used as a dangerous weapon, as defined in Section 76-10-

501,

79 from which a projectile is expelled by action of an explosive.

80 (c) "Locked container" means a secure container which is fully enclosed and locked by  
81 a padlock, key lock, combination lock, or similar locking device.

82 (d) "Locking device" means a device which temporarily prevents a firearm from  
83 functioning.

84 (e) "Minor" means a person who is younger than 18.

85 (2) As provided in Section 78-11-6, when death or bodily injury is caused by the  
86 negligent storage of a firearm by another person and the dead or injured person:

87 (a) is a minor, an action for the death or bodily injury of the minor may be maintained  
88 by the minor's parent or legal guardian; or

89 (b) is a person other than a minor:

90

(i) the injured person may maintain an action for the person's bodily injury; or

the

91 (ii) the heirs or the personal representative of the person may maintain an action for

92 death of the person.

93 (3) A person commits the act of negligent storage of a firearm if:

person's

94 (a) the person keeps a firearm that has ammunition in the chamber, cylinder, or  
95 magazine in a condition that it can be discharged within a premise which is under the

96 custody or control;

owner

97 (b) the person knows or reasonably should know that a minor is likely to gain access to  
98 the firearm without the permission of the minor's parent, legal guardian, or property

99 where the firearm is stored; and

bodily

100 (c) the minor obtains access to the firearm and by discharging it causes death or

101 injury to the minor or another person.

any

102 (4) It is an affirmative defense to Subsection (3) that:

103 (a) the minor obtains the firearm as a result of an unlawful entry to any premises by

104 person;

person

105 (b) the firearm is kept in a locked container or in a location which a reasonable

106 would believe to be secure;

107 (c) the firearm is carried on the person or within a close proximity so that the person

- 108 can readily retrieve and use the firearm as if carried on the person:  
109 (d) the firearm is secured with a locking device;  
110 (e) the person is authorized to possess a weapon under Subsection 76-10-505.5 (3)(b)

or

- 111 (c) or Section 76-10-523 and the minor obtains the firearm during, or incidental to, the  
112 performance of the person's duties;  
113 (f) the minor obtains, or obtains and discharges, the firearm in a lawful act of  
114 self-defense or defense of another person; or  
115 (g) the person who keeps a firearm on a premise which is under the person's custody

or

- 116 control has no reasonable expectation, based on objective facts and circumstances, that  
a minor  
117 is likely to be present on the premise.  
118 (5) This section does not supersede any other cause of action.  
119 (6) An action based upon a cause of action under this section shall be commenced  
120 within two years of the date of the injury.

---

121

Section 4. **Effective date.**

122 This bill takes effect on July 1, 2004.

**Legislative Review Note**  
as of 9-16-03 7:53 AM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**

---

[\[Bill Documents\]](#)[\[Bills Directory\]](#)

[Questions/Comments](#) | [Utah State Home Page](#) | [Terms of Use/Privacy Policy](#)