

FIREARM PURCHASE REQUIREMENTS

1998 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

AN ACT RELATING TO CRIMINAL CODE; EXCLUDING PERSONS WITH A VALID CONCEALED FIREARM PERMIT FROM BACKGROUND CHECK AND FEE FOR FIREARM PURCHASE; MODIFYING GOOD CHARACTER QUALIFICATIONS; PROVIDING THAT THE DIVISION GIVE NOTICE OF THE AFFIRMATIVE DUTY; PRESCRIBING A PENALTY; REQUIRING DEALER TO DETERMINE PERMIT IS VALID; MODIFYING DEFINITION AND PROCEDURES REGARDING STATE WARRANT SYSTEM; PROVIDING A DEFINITION; GIVING THE DIVISION AUTHORITY TO MAKE RULES TO EXTEND BACKGROUND CHECKS TO OTHER FIREARMS WHEN THE FEDERAL LAW GOES INTO EFFECT; PROVIDING A COORDINATION CLAUSE; AND MAKING TECHNICAL CHANGES.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

53-5-209, as renumbered and amended by Chapters 17, 82 and 234, Laws of Utah 1993

53-5-704, as last amended by Chapter 280, Laws of Utah 1997

76-10-526, as last amended by Chapter 285, Laws of Utah 1997

76-10-527, as enacted by Chapter 19, Laws of Utah 1994

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

Section 1. Section **53-5-209** is amended to read:

53-5-209. Definition -- Magistrates and court clerks to supply information -- Offenses included on statewide warrant system -- Transportation fee to be included -- Statewide warrant system responsibility -- Quality control -- Training -- Technical support -- Transaction costs.

(1) "Statewide warrant system" means the portion of the state court computer system [containing] that is accessible by modem from the state mainframe computer and contains:

(a) records of criminal warrant information [that is accessed by modem from the state

mainframe computer]; and

(b) after notice and hearing, records of protective orders issued pursuant to:

(i) Title 30, Chapter 6, Cohabitant Abuse Act; or

(ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(2) Every magistrate or clerk of a court responsible for court records in this state shall furnish the division with information pertaining to:

(a) [~~information pertaining to~~] all dispositions of criminal matters, including guilty pleas, convictions, dismissals, acquittals, pleas held in abeyance, or probations granted, within 30 days of the disposition and on forms and in the manner provided by the division; [~~and~~]

(b) [~~information pertaining to~~] the issuance, recall, cancellation, or modification of all warrants of arrest or commitment as described in Rule 6, Utah Rules of Criminal Procedure and Section 78-32-4, within one day of the action and in a manner provided by the division; and

(c) protective orders issued after notice and hearing, pursuant to:

(i) Title 30, Chapter 6, Cohabitant Abuse Act; or

(ii) Title 77, Chapter 36, Cohabitant Abuse Procedures Act.

(3) (a) (i) The division [~~will~~] shall include on the statewide warrant system all warrants issued for felony offenses and class A, B, and C misdemeanor offenses in the state.

(ii) For each offense the division shall indicate whether the magistrate ordered under Section 77-7-5 and Rule 6, Utah Rules of Criminal Procedure, that the accused appear in court.

(b) Infractions [~~will~~] shall not be included on the statewide warrant system, including any subsequent failure to appear warrants issued on an infraction.

(4) The division is the agency responsible for the statewide warrant system and shall:

(a) ensure quality control of all warrants of arrest or commitment and protective orders contained in the statewide warrant system by conducting regular validation checks with every clerk of a court responsible for entering [~~warrant~~] the information on the system;

(b) upon the expiration of the protective orders and in the manner prescribed by the division, purge information regarding protective orders described in Subsection (2)(c) within 30 days of the time after expiration;

~~[(b)]~~ (c) establish system procedures and provide training to all criminal justice agencies having access to ~~[warrant]~~ information contained on the state warrant system;

~~[(c)]~~ (d) provide technical support, program development, and systems maintenance for the operation of the system; and

~~[(d)]~~ (e) pay data processing and transaction costs for state, county, and city law enforcement agencies and criminal justice agencies having access to ~~[warrant]~~ information contained on the state warrant system.

(5) (a) Any data processing or transaction costs not funded by legislative appropriation shall be paid on a pro rata basis by all agencies using the system during the fiscal year.

(b) This subsection supersedes any conflicting provision in Subsection (4)~~[(d)]~~(e).

Section 2. Section **53-5-704** is amended to read:

53-5-704. Division duties -- Permit to carry concealed firearm -- Requirements for issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.

(1) The division or its designated agent shall issue a permit to carry a concealed firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days after receiving an application and upon proof that the person applying is of good character. The permit is valid throughout the state, without restriction, for two years.

(2) An applicant satisfactorily demonstrates good character if he:

(a) has not been convicted of a felony;

(b) has not been convicted of any crime of violence;

(c) has not been convicted of any offenses involving the use of alcohol;

(d) has not been convicted of any offense involving the unlawful use of narcotics or other controlled substances;

(e) has not been convicted of any offenses involving moral turpitude;

(f) has not been convicted of any offense involving domestic violence;

(g) has not been adjudicated by a court of a state or of the United States as mentally incompetent, unless the adjudication has been withdrawn or reversed[-];

(h) is qualified to purchase and possess a dangerous weapon and a handgun pursuant to

Section 76-10-503 and federal law.

(3) (a) The division may deny, suspend, or revoke a concealed firearm permit if the licensing authority has reasonable cause to believe that the applicant has been or is a danger to self or others as demonstrated by evidence including, but not limited to:

- (i) past pattern of behavior involving unlawful violence or threats of unlawful violence;
- (ii) past participation in incidents involving unlawful violence or threats of unlawful violence; or
- (iii) conviction of any offense in violation of Title 76, Chapter 10, Part 5, Weapons.

(b) In determining whether the applicant has been or is a danger to self or others, the division may inspect:

- (i) expunged records of arrests and convictions of adults as provided in Section 77-18-15; and
- (ii) juvenile court records as provided in Section 78-3a-206.

(c) (i) If a person granted a permit under this part has been charged with a crime of violence in Utah or any other state, the division shall suspend the permit.

(ii) Upon notice of the acquittal of the person charged, or notice of the charges having been dropped, the division shall immediately reinstate the suspended permit.

(4) A former peace officer who departs full-time employment as a peace officer, in an honorable manner, shall be issued a concealed firearm permit within five years of that departure if the officer meets the requirements of this section.

(5) In assessing good character under Subsection (2), the licensing authority shall consider mitigating circumstances.

(6) The licensing authority shall also require the applicant to provide:

- (a) letters of character reference;
- (b) two recent dated photographs;
- (c) two sets of fingerprints;
- (d) a five-year employment history;
- (e) a five-year residential history; and

(f) evidence of general familiarity with the types of firearms to be concealed as defined in Subsection (7).

(7) (a) General familiarity with the types of firearms to be concealed includes training in:

(i) the safe loading, unloading, storage, and carrying of the types of firearms to be concealed; and

(ii) current laws defining lawful use of a firearm by a private citizen, including lawful self-defense, use of deadly force, transportation, and concealment.

(b) Evidence of general familiarity with the types of firearms to be concealed may be satisfied by one of the following:

(i) completion of a course of instruction conducted by any national, state, or local firearms training organization approved by the division;

(ii) certification of general familiarity by a person who has been approved by the division, which may include a law enforcement officer, military or civilian firearms instructor, or hunter safety instructor; or

(iii) equivalent experience with a firearm through participation in an organized shooting competition, law enforcement, or military service.

(8) In issuing a permit under this part, the licensing authority is not vicariously liable for damages caused by the permit holder.

(9) If any person knowingly and willfully provides false information on an application filed under this part, he is guilty of a class B misdemeanor, and his application may be denied, or his permit may be suspended or revoked.

(10) (a) In the event of a denial, suspension, or revocation by the agency, the applicant may file a petition for review with the board within 60 days from the date the denial, suspension, or revocation is received by the applicant by certified mail, return receipt requested.

(b) The denial of a permit shall be in writing and shall include the general reasons for the action.

(c) If an applicant appeals his denial to the review board, the applicant may have access to the evidence upon which the denial is based in accordance with Title 63, Chapter 2, Government

Records Access and Management Act.

(d) On appeal to the board, the agency shall have the burden of proof by a preponderance of the evidence.

(e) Upon a ruling by the board on the appeal of a denial, the division shall issue a final order within 30 days stating the board's decision. The final order shall be in the form prescribed by Subsection 63-46b-5(1)(i). The final order is final agency action for purposes of judicial review under Section 63-46b-15.

~~[(12)]~~ (11) The commissioner may make rules in accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, necessary to administer this chapter.

Section 3. Section **76-10-526** is amended to read:

76-10-526. Criminal background check prior to purchase of a firearm -- Fee -- Exemption for concealed firearm permit holders.

(1) A criminal background check required by this section shall only apply to the purchase of a handgun until federal law requires the background check to extend to other firearms.

(2) At the time that federal law extends the criminal background check requirement to other firearms, the division shall make rules to extend the background checks required under this section to the other firearms.

(3) For purposes of this section, "valid permit to carry a concealed firearm" does not include a temporary permit issued pursuant to Section 53-5-705.

~~[(1)]~~ (4) To establish personal identification and residence in this state for purposes of this part, a dealer shall require any person receiving a ~~[handgun]~~ firearm to present:

- (a) one photo identification on a form issued by a governmental agency of the state; and
- (b) one other documentation of residence which must show an address identical to that shown on the photo identification form.

~~[(2)]~~ (5) A criminal history background check is required for the sale of a ~~[handgun]~~ firearm by a licensed firearm dealer in the state.

~~[(3)]~~ (6) Any person, except a dealer, purchasing a ~~[handgun]~~ firearm from a dealer shall consent in writing to a criminal background check, on a form provided by the division. The form

shall also contain the following information:

- (a) the dealer identification number;
- (b) the name and address of the person receiving the [handgun] firearm;
- (c) the date of birth, height, weight, eye color, and hair color of the person receiving the [handgun] firearm; and
- (d) the Social Security number or any other identification number of the person receiving the [handgun] firearm.

~~[(4)]~~ (7) (a) The dealer shall send the form required by Subsection ~~[(3)]~~(6) to the division immediately upon its completion.

(b) No dealer shall sell or transfer any [handgun] firearm to any person until the dealer has provided the division with the information in Subsection ~~[(3)]~~(6) and has received approval from the division under Subsection ~~[(5)]~~(8).

~~[(5)]~~ (8) The dealer shall make a request for criminal history background information by telephone to the division and shall receive approval or denial of the inquiry by telephone.

~~[(6)]~~ (9) When the dealer calls for a criminal history background check, the division shall:

- (a) review the criminal history files to determine if the person is prohibited from purchasing, possessing, or transferring a [handgun] firearm by state or federal law;
- (b) inform the dealer that:
 - (i) the criminal record indicates the person is so prohibited; or
 - (ii) the person is approved for purchasing, possessing, or transferring a [handgun] firearm;
- (c) provide the dealer with a unique transaction number for that inquiry; and
- (d) provide a response to the requesting dealer during the call for a criminal background, or by return call without delay, except in case of electronic failure or other circumstances beyond the control of the division, the division shall advise the dealer of the reason for such delay and give the dealer an estimate of the length of such delay.

~~[(7)]~~ (10) The division shall not maintain any records of the criminal history background check longer than 20 days from the date of the dealer's request if the division determines that the person receiving the gun is not prohibited from purchasing, possessing, or transferring the [handgun]

firearm under state or federal law. However, the division shall maintain a log of requests containing the dealer's federal firearms number, the transaction number, and the transaction date for a period of 12 months.

~~[(8)]~~ (11) If the criminal history background check discloses information indicating that the person receiving the ~~[handgun]~~ firearm is prohibited from purchasing, possessing, or transferring a ~~[handgun]~~ firearm, the division shall inform the chief law enforcement officer in the jurisdiction where the person resides.

~~[(9)]~~ (12) If a person is denied the right to purchase a ~~[handgun]~~ firearm under this section, the person may review his criminal history information and may challenge or amend the information as provided in Subsection 53-5-214(8).

~~[(10)]~~ (13) The division shall make rules as provided in Title 63, Chapter 46a, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and security of all records provided by the division pursuant to this part are in conformance with the requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993).

~~[(11)]~~ (14) (a) All dealers shall collect a fee established by the division in accordance with Section 63-38-3.2 for every criminal history background check done pursuant to this part. Until changed by the division through this process, the fee shall be \$7.50.

(b) The dealer shall forward at one time all fees collected for criminal history background checks performed during the month to the division by the last day of the month following the sale of a ~~[handgun]~~ firearm. The division may retain the fees as dedicated credits to cover the cost of administering and conducting the criminal history background check program.

(15) A person with a concealed firearm permit issued pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, shall be exempt from the background check and corresponding fee required in this section for the purchase of a firearm if:

(a) the person presents his concealed firearm permit to the dealer prior to purchase of the firearm; and

(b) the dealer verifies with the division that the person's concealed firearm permit is valid.

Section 4. Section **76-10-527** is amended to read:

76-10-527. Penalties.

(1) This section shall apply only to a handgun until federal law requires the background check in Section 76-10-526 to extend to other firearms at which time this section shall also apply to those firearms.

~~[(1)]~~ (2) A dealer is guilty of a class A misdemeanor who willfully and intentionally:

(a) requests, obtains, or seeks to obtain criminal history background information under false pretenses; or

(b) disseminates criminal history background information.

~~[(2)]~~ (3) A person who purchases or transfers a ~~[handgun]~~ firearm is guilty of a felony of the third degree who willfully and intentionally makes a false statement of the information required for a criminal background check in [Subsection] Section 76-10-526[(3)].

~~[(3)]~~ (4) A dealer is guilty of a felony of the third degree if the dealer willfully and intentionally sells or transfers a ~~[handgun]~~ firearm in violation of this part.

~~[(4)]~~ (5) A person is guilty of a felony of the third degree who purchases a ~~[handgun]~~ firearm with the intent to:

(a) resell or otherwise provide a ~~[handgun]~~ firearm to any person who is ineligible to purchase or receive from a dealer a ~~[handgun]~~ firearm; or

(b) transport a ~~[handgun]~~ firearm out of this state to be resold to an ineligible person.

Section 5. Coordination clause.

It is the intent of the Legislature that, except for page 7 line 23, any place on pages 6, 7, and 8 where the term "handgun" is used it should be bracketed and "firearm" inserted accordingly.