

Senator Michael G. Waddoups proposes to substitute the following bill:

AMENDMENTS FOR DANGEROUS WEAPONS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

1 AN ACT RELATING TO PUBLIC SAFETY AND THE JUDICIAL CODE; PROVIDING
2 CROSS REFERENCES TO RESTRICTED AREAS; AUTHORIZING RULEMAKING
3 AUTHORITY TO THE OLYMPIC LAW ENFORCEMENT COMMANDER TO DESIGNATE
4 SECURE AREAS AT OLYMPIC VENUES, PROVIDE NOTICE OF WEAPONS AND
5 EXPLOSIVE RESTRICTIONS; RESTRICTING WEAPONS, INCLUDING CONCEALED
6 WEAPONS, AND EXPLOSIVES IN SECURE AREAS AT OLYMPIC VENUES; ENACTING
7 PROVISIONS REGARDING LIABILITY FOR CERTAIN INJURIES IN OLYMPIC VENUES;
8 PRESCRIBING PENALTIES; PROVIDING A REPEALER FOR THE OLYMPIC PROVISIONS;
9 AMENDING WHEN THE LAW ENFORCEMENT AND TECHNICAL SERVICES DIVISION
10 MAY TAKE ACTION REGARDING A CONCEALED FIREARM PERMIT; AMENDING
11 UNIFORM LAW PROVISIONS RELATING TO WEAPONS; PROVIDING DEFINITIONS;
12 RESTRICTING FIREARMS IN HOUSES OF WORSHIP AND IN PRIVATE RESIDENCES IN
13 CERTAIN CIRCUMSTANCES; PRESCRIBING PENALTIES; MAKING TECHNICAL
14 CORRECTIONS; AND PROVIDING A COORDINATION CLAUSE.

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

16 AMENDS:

17 **53-5-704**, as last amended by Chapters 13, 187 and 404, Laws of Utah 1998

18 **53-5-710**, as enacted by Chapter 117, Laws of Utah 1997

19 **76-10-501**, as last amended by Chapter 263, Laws of Utah 1998

20 ENACTS:

21 **53-12-301.1**, Utah Code Annotated 1953

26 **63-55b-153**, Utah Code Annotated 1953

27 **63-55b-176**, Utah Code Annotated 1953

28 **76-10-530**, Utah Code Annotated 1953

29 **76-10-531**, Utah Code Annotated 1953

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

31 Section 1. Section **53-5-704** is amended to read:

32 **53-5-704. Division duties -- Permit to carry concealed firearm -- Requirements for**
33 **issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.**

34 (1) The division or its designated agent shall issue a permit to carry a concealed firearm
35 for lawful self defense to an applicant who is 21 years of age or older within 60 days after
36 receiving an application and upon proof that the person applying is of good character. The permit
37 is valid throughout the state, without restriction except as provided by Section 53-5-710:

38 (a) for two years; or

39 (b) for five years for permits issued or renewed on or after May 1, 1998.

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

41 (a) has not been convicted of a felony;

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

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

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

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

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

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

50 (h) is qualified to purchase and possess a dangerous weapon and a handgun pursuant to
51 Section 76-10-503 and federal law.

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

55 (i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

56 (ii) past participation in incidents involving unlawful violence or threats of unlawful

57 violence; or

58 (iii) conviction of any offense in violation of Title 76, Chapter 10, Part 5, Weapons.

59 (b) The division may not deny, suspend, or revoke a concealed firearm permit solely for
60 a single conviction for an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

61 [~~(b)~~] (c) In determining whether the applicant has been or is a danger to self or others, the
62 division may inspect:

63 (i) expunged records of arrests and convictions of adults as provided in Section 77-18-15;
64 and

65 (ii) juvenile court records as provided in Section 78-3a-206.

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

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

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

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

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

76 (a) letters of character reference;

77 (b) two recent dated photographs;

78 (c) two sets of fingerprints;

79 (d) a five-year employment history;

80 (e) a five-year residential history; and

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

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

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

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

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

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

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

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

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

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

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

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

107 (c) If an applicant appeals his denial to the review board, the applicant may have access
108 to the evidence upon which the denial is based in accordance with Title 63, Chapter 2, Government
109 Records Access and Management Act.

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

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

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

118 Section 2. Section **53-5-710** is amended to read:

119 **53-5-710. Cross-references to concealed firearm permit restrictions.**

120 A person with a permit to carry a concealed firearm may not carry a concealed firearm in
121 the following locations:

122 (1) any secure area prescribed in Section 76-10-523.5 in which firearms are prohibited and
123 notice of the prohibition posted; [and]

124 (2) in any airport secure area as provided in Section 76-10-529;

125 (3) in any house of worship or in any private residence where dangerous weapons are
126 prohibited as provided in Section 76-10-530; or

127 (4) at an Olympic venue secure area in violation of Section 76-10-531.

128 Section 3. Section **53-12-301.1** is enacted to read:

129 **53-12-301.1. Olympic venue secure areas -- Rulemaking authority ---- Notice --**
130 **Responsibilities -- Liability.**

131 (1) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the
132 Olympic law enforcement commander designated in Section 53-12-301 shall make rules:

133 (a) designating the locations of secure areas within Olympic venues where a firearm,
134 ammunition, dangerous weapon, or explosive, chemical, or incendiary device is prohibited
135 between January 25, 2002, and April 1, 2002;

136 (b) providing notice that a reasonable person would understand regarding:

137 (i) the locations of the Olympic venue secure areas where the items in Subsection (1)(a)
138 are prohibited;

139 (ii) the locations of public access entrances and exits to the Olympic venue secure areas;
140 and

141 (iii) the locations of secure weapons storage areas;

142 (iv) the penalty for violating Section 76-10-531, restriction of dangerous weapons in
143 Olympic venue secure areas; and

144 (c) designating persons authorized to carry weapons into Olympic venues, including those
145 persons exempted by Subsection 76-10-523(1).

146 (2) The notice in Subsection (1)(b) shall include:

147 (a) written notice provided to a person at the time the person receives tickets to events at
148 Olympic venue secure areas; and

149 (b) at least one notice prominently displayed at each entrance to every Olympic venue

150 secure area in which a dangerous weapon or explosive is prohibited.

151 (3) The Olympic law enforcement commander:

152 (a) shall use reasonable means, which may include mechanical, electronic, x-ray, or any
153 other device to detect dangerous weapons or explosives concealed in or upon the person of any
154 individual attempting to enter an Olympic venue secure area;

155 (b) may provide secure weapons storage areas so that persons may store their weapons
156 prior to entering an Olympic venue secure area; and

157 (c) shall provide instructions to personnel operating an Olympic venue secure area that,
158 upon discovery of a firearm possessed by a person licensed to carry a concealed firearm, the
159 personnel may:

160 (i) require the person to deliver the firearm to a secure weapons storage area permitted by
161 Subsection (3)(b); or

162 (ii) require the person to exit the Olympic venue secure area.

163 (4) A cause of action may be maintained against the state for any injury where an
164 individual can establish by clear and convincing evidence that:

165 (a) if a person licensed to carry a concealed firearm had been able to access the concealed
166 firearm the injury would not have occurred to that individual or others; and

167 (b) the individual suffered damages as a consequence.

168 Section 4. Section **63-55b-153** is enacted to read:

169 **63-55b-153. Repeal date -- Title 53.**

170 (1) Subsection 53-5-710(4) pertaining to restrictions at Olympic venue secure areas is
171 repealed April 1, 2002.

172 (2) Section 53-12-301.1 is repealed April 1, 2002.

173 Section 5. Section **63-55b-176** is enacted to read:

174 **63-55b-176. Repeal date -- Title 76.**

175 Section 76-10-531 is repealed April 1, 2002.

176 Section 6. Section **76-10-501** is amended to read:

177 **76-10-501. Definitions.**

178 (1) (a) The individual right to keep and bear arms being a constitutionally protected right,
179 the Legislature finds the need to provide uniform laws throughout the state. Except as specifically
180 provided by state law, a citizen of the United States or a lawfully admitted alien shall not be:

181 (i) prohibited from owning, possessing, purchasing, selling, transferring, transporting, or
182 keeping any firearm at his place of residence, property, business, or in any vehicle lawfully in his
183 possession or lawfully under his control; or

184 (ii) required to have a permit or license to purchase, own, possess, transport, or keep a
185 firearm.

186 (b) This part is uniformly applicable throughout this state and in all its political
187 subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state
188 except where the Legislature specifically delegates responsibility to local authorities or state
189 entities. Unless specifically authorized by the Legislature by statute, a local authority or state
190 entity may not enact or enforce any ordinance, regulation, or rule pertaining to firearms.

191 (2) As used in this part:

192 (a) (i) "Concealed dangerous weapon" means a dangerous weapon that is covered, hidden,
193 or secreted in a manner that the public would not be aware of its presence and is readily accessible
194 for immediate use.

195 (ii) A dangerous weapon shall not be considered a concealed dangerous weapon if it is a
196 firearm which is unloaded and is securely encased.

197 (b) "Crime of violence" means aggravated murder, murder, manslaughter, rape, mayhem,
198 kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by threats of
199 violence, assault with a dangerous weapon, assault with intent to commit any offense punishable
200 by imprisonment for more than one year, arson punishable by imprisonment for more than one
201 year, or an attempt to commit any of these offenses.

202 (c) "Criminal history background check" means a criminal background check conducted
203 by a licensed firearms dealer on every purchaser of a handgun through the division or the local law
204 enforcement agency where the firearms dealer conducts business.

205 (d) "Dangerous weapon" means any item that in the manner of its use or intended use is
206 capable of causing death or serious bodily injury. The following factors shall be used in
207 determining whether a knife, or any other item, object, or thing not commonly known as a
208 dangerous weapon is a dangerous weapon:

209 (i) the character of the instrument, object, or thing;

210 (ii) the character of the wound produced, if any;

211 (iii) the manner in which the instrument, object, or thing was used; and

212 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

213 (e) "Dealer" means every person who is licensed under crimes and criminal procedure, 18
214 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring a handgun,
215 whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

216 (f) "Division" means the Criminal Investigations and Technical Services Division of the
217 Department of Public Safety, created in Section 53-10-103.

218 (g) "Enter" means intrusion of the entire body.

219 [(g)] (h) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
220 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
221 a projectile by action of an explosive.

222 [(i)] (i) "Firearms transaction record form" means a form created by the division to be
223 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

224 [(h)] (j) "Fully automatic weapon" means any firearm which fires, is designed to fire, or
225 can be readily restored to fire, automatically more than one shot without manual reloading by a
226 single function of the trigger.

227 [(j)] (k) "Handgun" means a pistol, revolver, or other firearm of any description, loaded
228 or unloaded, from which any shot, bullet, or other missile can be discharged, the length of which,
229 not including any revolving, detachable, or magazine breech, does not exceed 12 inches.

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

233 [(k)] (m) "Prohibited area" means any place where it is unlawful to discharge a firearm.

234 [(h)] (n) "Readily accessible for immediate use" means that a firearm or other dangerous
235 weapon is carried on the person or within such close proximity and in such a manner that it can
236 be retrieved and used as readily as if carried on the person.

237 (o) "Residence" means an improvement to real property used or occupied as a primary or
238 secondary residence.

239 [(m)] (p) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
240 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
241 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
242 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26

243 inches.

244 [(m)] (q) "Securely encased" means not readily accessible for immediate use, such as held
245 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage
246 area of a motor vehicle, not including a glove box or console box.

247 (r) "State entity" means each department, commission, board, council, agency, institution,
248 officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau,
249 panel, or other administrative unit of the state.

250 Section 7. Section 76-10-530 is enacted to read:

251 **76-10-530. Trespass with a firearm in a house of worship or private residence.**

252 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
253 Chapter 5, Part 7, Concealed Weapon Act, after having received notice as provided in Subsection
254 (2) that firearms are prohibited, may not knowingly and intentionally:

255 (a) transport a firearm into:

256 (i) a house of worship; or

257 (ii) a private residence; or

258 (b) while in possession of a firearm, enter or remain in:

259 (i) a house of worship; or

260 (ii) a private residence.

261 (2) Notice that firearms are prohibited may be made by:

262 (a) personal communication to the actor by:

263 (i) the church or organization operating the house of worship;

264 (ii) the owner, lessee, or person with lawful right of possession of the private residence;

265 or

266 (iii) a person with authority to act for the person or entity in Subsections (2)(a)(i) and (ii);

267 or

268 (b) posting of signs reasonably likely to come to the attention of persons entering the house
269 of worship or private residence.

270 (3) A violation of this section is an infraction.

271 Section 8. Section 76-10-531 is enacted to read:

272 **76-10-531. Restricting dangerous weapons and explosives in Olympic venue secure**
273 **areas -- Penalty.**

274 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
275 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly and intentionally transport into an
276 Olympic venue secure area, designated by rule pursuant to Section 53-12-301.1:

277 (a) a firearm, ammunition, or dangerous weapon; or

278 (b) an explosive, chemical, or incendiary device, as those terms are defined in Section
279 76-10-306.

280 (2) A violation of this section is:

281 (a) a class B misdemeanor if the violation is with a firearm, ammunition, or dangerous
282 weapon; or

283 (b) a first degree felony if the violation is with an explosive, chemical, or incendiary
284 device.

285 (3) It is a defense to any prosecution under this section that the accused, in committing the
286 act made criminal by this section, acted in conformity with the rules authorized by Section
287 53-12-301.1.

288 Section 9. **Coordination clause.**

289 If this bill and S.B. 91, Weapons - Technical Amendments, both pass, it is the intent of the
290 Legislature that:

291 (1) the amendments in Subsection 76-10-501(1) of this bill merge into the enacted Section
292 76-10-500 of S.B. 91; and

293 (2) the definitions in Subsection 76-10-501(2) of this bill be merged into Section
294 76-10-501 of S.B. 91.