

WEAPONS REVISIONS

2010 GENERAL SESSION

STATE OF UTAH

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LONG TITLE

General Description:

This bill modifies weapons provisions of the Utah Criminal Code on carrying, displaying, and using a dangerous weapon.

Highlighted Provisions:

This bill:

- ▶ clarifies the use of force or the threat of force necessary to defend a person against another's imminent use of unlawful force;
 - ▶ clarifies when a person may threaten or display a dangerous weapon in self defense;
- and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

76-2-402, as last amended by Laws of Utah 1994, Chapter 26

76-10-506, as last amended by Laws of Utah 1992, Chapter 101

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32 *Be it enacted by the Legislature of the state of Utah:*33 Section 1. Section **76-2-402** is amended to read:34 **76-2-402. Force in defense of person -- Forcible felony defined.**

35 (1) (a) A person is justified in threatening or using force against another when and to
 36 the extent that ~~[he or she]~~ the person reasonably believes that force or a threat of force is
 37 necessary to defend ~~[himself]~~ the person or a third person against ~~[such other's]~~ another
 38 person's imminent use of unlawful force. ~~[However, that]~~

39 (b) A person is justified in using force intended or likely to cause death or serious
 40 bodily injury only if ~~[he or she]~~ the person reasonably believes that force is necessary to
 41 prevent death or serious bodily injury to ~~[himself]~~ the person or a third person as a result of
 42 ~~[the other's]~~ another person's imminent use of unlawful force, or to prevent the commission of
 43 a forcible felony.

44 (2) (a) A person is not justified in using force under the circumstances specified in
 45 Subsection (1) if ~~[he or she]~~ the person:

46 ~~[(a)]~~ (i) initially provokes the use of force against ~~[himself]~~ the person with the intent
 47 to use force as an excuse to inflict bodily harm upon the assailant;

48 ~~[(b)]~~ (ii) is attempting to commit, committing, or fleeing after the commission or
 49 attempted commission of a felony; or

50 ~~[(c)-(i)]~~ (iii) was the aggressor or was engaged in a combat by agreement, unless ~~[he]~~
 51 the person withdraws from the encounter and effectively communicates to the other person his
 52 intent to do so and, notwithstanding, the other person continues or threatens to continue the
 53 use of unlawful force~~[-and]~~.

54 ~~[(ii) for]~~ (b) For purposes of Subsection ~~[(i)]~~ (2)(a)(iii) the following do not, by
 55 themselves, constitute "combat by agreement":

56 ~~[(A)]~~ (i) voluntarily entering into or remaining in an ongoing relationship; or

57 ~~[(B)]~~ (ii) entering or remaining in a place where one has a legal right to be.

58 (3) A person does not have a duty to retreat from the force or threatened force

59 described in Subsection (1) in a place where that person has lawfully entered or remained,
60 except as provided in Subsection (2)~~(c)~~(a)(iii).

61 (4) (a) For purposes of this section, a forcible felony includes aggravated assault,
62 mayhem, aggravated murder, murder, manslaughter, kidnapping, and aggravated kidnapping,
63 rape, forcible sodomy, rape of a child, object rape, object rape of a child, sexual abuse of a
64 child, aggravated sexual abuse of a child, and aggravated sexual assault as defined in Title 76,
65 Chapter 5, Offenses Against the Person, and arson, robbery, and burglary as defined in Title
66 76, Chapter 6, Offenses Against Property.

67 (b) Any other felony offense which involves the use of force or violence against a
68 person so as to create a substantial danger of death or serious bodily injury also constitutes a
69 forcible felony.

70 (c) Burglary of a vehicle, defined in Section 76-6-204, does not constitute a forcible
71 felony except when the vehicle is occupied at the time unlawful entry is made or attempted.

72 (5) In determining imminence or reasonableness under Subsection (1), the trier of fact
73 may consider, but is not limited to, any of the following factors:

- 74 (a) the nature of the danger;
- 75 (b) the immediacy of the danger;
- 76 (c) the probability that the unlawful force would result in death or serious bodily
77 injury;
- 78 (d) the other's prior violent acts or violent propensities; and
- 79 (e) any patterns of abuse or violence in the parties' relationship.

80 Section 2. Section **76-10-506** is amended to read:

81 **76-10-506. Threatening with or using dangerous weapon in fight or quarrel.**

82 (1) As used in this section, "threatening manner" does not include:

83 (a) the possession of a dangerous weapon, whether visible or concealed, without
84 additional behavior which is threatening; or

85 (b) informing another of the actor's possession of a deadly weapon in order to prevent
86 what the actor reasonably perceives as a possible use of unlawful force by the other and the

87 actor is not engaged in any activity described in Subsection 76-2-402(2)(a).

88 (2) [Every person, except] Except as otherwise provided in Section 76-2-402 and for
89 those persons described in Section 76-10-503, a person who, [not in necessary self defense] in
90 the presence of two or more persons, draws or exhibits [any] a dangerous weapon in an angry
91 and threatening manner or unlawfully uses [the same] a dangerous weapon in [any] a fight or
92 quarrel is guilty of a class A misdemeanor.

93 (3) This section does not apply to a person who, reasonably believing the action to be
94 necessary in compliance with Section 76-2-402, with purpose to prevent another's use of
95 unlawful force:

96 (a) threatens the use of a dangerous weapon; or

97 (b) draws or exhibits a dangerous weapon.