

Representative Ronda Rudd Menlove proposes the following substitute bill:

CONCEALED FIREARM ACT MODIFICATIONS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Ronda Rudd Menlove

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies provisions of the Concealed Firearm Act regarding the requirements for certification as a concealed firearms instructor and the submission of fingerprints for a criminal background check.

Highlighted Provisions:

This bill:

- ▶ requires an applicant for certification as a concealed firearm instructor to have completed a firearm instruction training course from the National Rifle Association or the Department of Public Safety, Division of Peace Officer Safety Standards and Training or their equivalent;
- ▶ requires submission of sufficient fingerprints to conduct a criminal background check for issuance of a concealed firearm permit; and
- ▶ makes certain technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:



26 AMENDS:

27 **53-5-704**, as last amended by Laws of Utah 2010, Chapters 62 and 283

28 **53-5-706**, as last amended by Laws of Utah 2010, Chapter 62

29

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. Bureau duties -- Permit to carry concealed firearm -- Certification for**
33 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
34 **suspension, or revocation -- Appeal procedure.**

35 (1) (a) The bureau shall issue a permit to carry a concealed firearm for lawful self
36 defense to an applicant who is 21 years of age or older within 60 days after receiving an
37 application, unless the bureau finds proof that the applicant does not meet the qualifications set
38 forth in Subsection (2).

39 (b) The permit is valid throughout the state for five years, without restriction, except as
40 otherwise provided by Section 53-5-710.

41 (c) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not
42 apply to a person issued a permit under Subsection (1)(a).

43 (2) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if the
44 applicant or permit holder:

- 45 (i) has been or is convicted of a felony;
- 46 (ii) has been or is convicted of a crime of violence;
- 47 (iii) has been or is convicted of an offense involving the use of alcohol;
- 48 (iv) has been or is convicted of an offense involving the unlawful use of narcotics or
49 other controlled substances;
- 50 (v) has been or is convicted of an offense involving moral turpitude;
- 51 (vi) has been or is convicted of an offense involving domestic violence;
- 52 (vii) has been or is adjudicated by a state or federal court as mentally incompetent,
53 unless the adjudication has been withdrawn or reversed; and
- 54 (viii) is not qualified to purchase and possess a firearm pursuant to Section 76-10-503
55 and federal law.

56 (b) In determining whether an applicant or permit holder meets the qualifications set

57 forth in Subsection (2)(a), the bureau shall consider mitigating circumstances.

58 (3) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if it has
59 reasonable cause to believe that the applicant or permit holder has been or is a danger to self or
60 others as demonstrated by evidence, including:

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

62 (ii) past participation in incidents involving unlawful violence or threats of unlawful
63 violence; or

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

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

67 (c) In determining whether the applicant or permit holder has been or is a danger to self
68 or others, the bureau may inspect:

69 (i) expunged records of arrests and convictions of adults as provided in Section
70 77-40-109; and

71 (ii) juvenile court records as provided in Section 78A-6-209.

72 (d) (i) If a person granted a permit under this part has been charged with a crime of
73 violence in any state, the bureau shall suspend the permit.

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

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

79 (5) Except as provided in Subsection (6), the bureau shall also require the applicant to
80 provide:

81 (a) the address of the applicant's permanent residence;

82 (b) one recent dated photograph;

83 (c) one set of fingerprints; and

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

86 (6) An applicant who is a law enforcement officer under Section 53-13-103 may
87 provide a letter of good standing from the officer's commanding officer in place of the evidence

88 required by Subsection (5)(d).

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

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

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

96 (b) An applicant may satisfy the general familiarity requirement of Subsection (7)(a) by
97 one of the following:

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

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

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

105 (c) Instruction taken by a student under Subsection (7) shall be in person and not
106 through electronic means.

107 (8) (a) An applicant for certification as a Utah concealed firearms instructor shall:

108 (i) be at least 21 years of age;

109 (ii) be currently eligible to possess a firearm under Section 76-10-503 and federal law;

110 ~~[(iii) have a current National Rifle Association certification or its equivalent as
111 determined by the division; and]~~

112 (iii) have:

113 (A) completed a firearm instruction training course from the National Rifle Association
114 or the Department of Public Safety, Division of Peace Officer Safety Standards and Training;

115 or

116 (B) received training equivalent to one of the courses referred to in Subsection
117 (8)(a)(iii)(A) as determined by the bureau.

118 (iv) have taken a course of instruction and passed a certification test as described in

119 Subsection (8)(c).

120 (b) An instructor's certification is valid for three years from the date of issuance, unless
121 revoked by the bureau.

122 (c) (i) In order to obtain initial certification or renew a certification, an instructor shall
123 attend an instructional course and pass a test under the direction of the bureau.

124 (ii) (A) The bureau shall provide or contract to provide the course referred to in
125 Subsection (8)(c)(i) twice every year.

126 (B) The course shall include instruction on current Utah law related to firearms,
127 including concealed carry statutes and rules, and the use of deadly force by private citizens.

128 (d) (i) Each applicant for certification under this Subsection (8) shall pay a fee of
129 \$50.00 at the time of application for initial certification.

130 (ii) The renewal fee for the certificate is \$25.

131 (iii) The fees paid under Subsections (8)(d)(i) and (ii) may be used by the bureau as a
132 dedicated credit to cover the cost incurred in maintaining and improving the instruction
133 program required for concealed firearm instructors under this Subsection (8).

134 (9) A certified concealed firearms instructor shall provide each of the instructor's
135 students with the required course of instruction outline approved by the bureau.

136 (10) (a) (i) A concealed firearms instructor is required to provide a signed certificate to
137 a person successfully completing the offered course of instruction.

138 (ii) The instructor shall sign the certificate with the exact name indicated on the
139 instructor's certification issued by the bureau under Subsection (8).

140 (iii) (A) The certificate shall also have affixed to it the instructor's official seal, which
141 is the exclusive property of the instructor and may not be used by any other person.

142 (B) The instructor shall destroy the seal upon revocation or expiration of the
143 instructor's certification under Subsection (8).

144 (C) The bureau shall determine the design and content of the seal to include at least the
145 following:

146 (I) the instructor's name as it appears on the instructor's certification;

147 (II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my
148 certification expires on (the instructor's certification expiration date)"; and

149 (III) the instructor's business or residence address.

150 (D) The seal shall be affixed to each student certificate issued by the instructor in a
151 manner that does not obscure or render illegible any information or signatures contained in the
152 document.

153 (b) The applicant shall provide the certificate to the bureau in compliance with
154 Subsection (5)(d).

155 (11) The [~~division~~] bureau may deny, suspend, or revoke the certification of an
156 applicant or a concealed firearms instructor if it has reason to believe the applicant or the
157 instructor has:

- 158 (a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or
- 159 (b) knowingly and willfully provided false information to the bureau.

160 (12) An applicant for certification or a concealed firearms instructor has the same
161 appeal rights as set forth in Subsection (15).

162 (13) In providing instruction and issuing a permit under this part, the concealed
163 firearms instructor and the bureau are not vicariously liable for damages caused by the permit
164 holder.

165 (14) An individual who knowingly and willfully provides false information on an
166 application filed under this part is guilty of a class B misdemeanor, and the application may be
167 denied, or the permit may be suspended or revoked.

168 (15) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or
169 permit holder may file a petition for review with the board within 60 days from the date the
170 denial, suspension, or revocation is received by the applicant or permit holder by certified mail,
171 return receipt requested.

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

174 (c) If an applicant or permit holder appeals the denial to the review board, the applicant
175 or permit holder may have access to the evidence upon which the denial is based in accordance
176 with Title 63G, Chapter 2, Government Records Access and Management Act.

177 (d) On appeal to the board, the bureau has the burden of proof by a preponderance of
178 the evidence.

179 (e) (i) Upon a ruling by the board on the appeal of a denial, the [~~division~~] board shall
180 issue a final order within 30 days stating the board's decision.

181 (ii) The final order shall be in the form prescribed by Subsection 63G-4-203(1)(i).

182 (iii) The final order is final bureau action for purposes of judicial review under Section
183 63G-4-402.

184 (16) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah
185 Administrative Rulemaking Act, necessary to administer this chapter.

186 Section 2. Section **53-5-706** is amended to read:

187 **53-5-706. Permit -- Fingerprints transmitted to bureau -- Report from bureau.**

188 (1) (a) Except as provided in Subsection (2), the fingerprints of each applicant shall be
189 taken on a form prescribed by the bureau [~~and shall be forwarded to the bureau~~].

190 (b) Upon receipt of the fingerprints and the fee prescribed in Section 53-5-707, the
191 bureau shall conduct a search of its files for criminal history information pertaining to the
192 applicant, and shall request the Federal Bureau of Investigation to conduct a similar search
193 through its files.

194 [~~(c) The bureau shall promptly furnish the forwarding licensing authority a report of all
195 data and information pertaining to any applicant of which there is a record in its office, or of
196 which a record is found in the files of the Federal Bureau of Investigation.~~]

197 [~~(d) A permit may not be issued by any licensing authority until receipt of the report
198 from the bureau.~~]

199 (c) If the fingerprints are insufficient for the bureau of Federal Bureau of Investigation
200 to conduct a search of its files for criminal history information, the application or concealed
201 firearm permit may be denied, suspended, or revoked until sufficient fingerprints are submitted
202 by the applicant.

203 (2) (a) If the permit applicant has previously applied to the [~~same licensing authority~~]
204 bureau for a permit to carry concealed firearms [~~and the applicant's fingerprints and fee have~~
205 ~~been previously forwarded within one year to the division~~], the bureau shall note the previous
206 identification numbers and other data which would provide positive identification in the files of
207 the bureau on the copy of any subsequent permit submitted to the bureau in accordance with
208 this section.

209 (b) No additional application form, fingerprints, or fee are required under this
210 Subsection (2).