

**FIREARMS AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Stephen E. Sandstrom**

Senate Sponsor: Margaret Dayton

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**LONG TITLE**

**General Description:**

This bill amends provisions of Title 53, Chapter 5, Part 7, Concealed Firearm Act, related to the denial, suspension, or revocation of a concealed firearm permit and Title 76, Chapter 10, Part 5, Weapons, regarding restrictions on the possession, purchase, transfer, and ownership of firearms by certain persons.

**Highlighted Provisions:**

This bill:

- ▶ provides an affirmative defense for Category I and II restricted persons charged with possession or transfer of firearms or other dangerous weapons;
- ▶ makes it a crime to sell, transfer, or dispose of a firearm to a Category I or Category II restricted person;
- ▶ provides that a Category I restricted person includes illegal aliens; and
- ▶ makes certain technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

AMENDS:

**53-5-704**, as last amended by Laws of Utah 2011, Chapters 193 and 368

**76-10-503**, as last amended by Laws of Utah 2003, Chapters 203 and 235

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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 of 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) In addition to meeting the other qualifications for the issuance of a concealed  
77 firearm permit under this section, a nonresident applicant who resides in a state that recognizes  
78 the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law  
79 shall:

80 (i) hold a current concealed firearm or concealed weapon permit issued by the  
81 appropriate permitting authority of the nonresident applicant's state of residency; and

82 (ii) submit a photocopy or electronic copy of the nonresident applicant's current  
83 concealed firearm or concealed weapon permit referred to in Subsection (4)(a)(i).

84 (b) A nonresident applicant who knowingly and willfully provides false information to  
85 the bureau under Subsection (4)(a) is prohibited from holding a Utah concealed firearm permit

86 for a period of 10 years.

87 (c) Subsection (4)(a) applies to all applications for the issuance of a concealed firearm  
88 permit that are received by the bureau after May 10, 2011.

89 (d) Beginning January 1, 2012, Subsection (4)(a) also applies to an application for  
90 renewal of a concealed firearm permit by a nonresident.

91 (5) The bureau shall issue a concealed firearm permit to a former peace officer who  
92 departs full-time employment as a peace officer, in an honorable manner, within five years of  
93 that departure if the officer meets the requirements of this section.

94 (6) Except as provided in Subsection (7), the bureau shall also require the applicant to  
95 provide:

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

97 (b) one recent dated photograph;

98 (c) one set of fingerprints; and

99 (d) evidence of general familiarity with the types of firearms to be concealed as defined  
100 in Subsection (8).

101 (7) An applicant who is a law enforcement officer under Section 53-13-103 may  
102 provide a letter of good standing from the officer's commanding officer in place of the evidence  
103 required by Subsection (6)(d).

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

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

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

111 (b) An applicant may satisfy the general familiarity requirement of Subsection (8)(a) by  
112 one of the following:

113 (i) completion of a course of instruction conducted by a national, state, or local

114 firearms training organization approved by the bureau;

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

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

120           (c) Instruction taken by a student under Subsection (8) shall be in person and not  
121 through electronic means.

122           (9) (a) An applicant for certification as a Utah concealed firearms instructor shall:

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

124           (ii) be currently eligible to possess a firearm under Section 76-10-503;

125           (iii) have:

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

129           (B) received training equivalent to one of the courses referred to in Subsection  
130 (8)(a)(iii)(A) as determined by the bureau;

131           (iv) have taken a course of instruction and passed a certification test as described in  
132 Subsection (9)(c); and

133           (v) possess a Utah concealed firearm permit.

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

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

138           (ii) (A) The bureau shall provide or contract to provide the course referred to in  
139 Subsection (9)(c)(i) twice every year.

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

142 (d) (i) Each applicant for certification under this Subsection (9) shall pay a fee of  
143 \$50.00 at the time of application for initial certification.

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

145 (iii) The bureau may use a fee paid under Subsections (9)(d)(i) and (ii) as a dedicated  
146 credit to cover the cost incurred in maintaining and improving the instruction program required  
147 for concealed firearm instructors under this Subsection (9).

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

150 (11) (a) (i) A concealed firearms instructor shall provide a signed certificate to a person  
151 successfully completing the offered course of instruction.

152 (ii) The instructor shall sign the certificate with the exact name indicated on the  
153 instructor's certification issued by the bureau under Subsection (9).

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

156 (B) The instructor shall destroy the seal upon revocation or expiration of the  
157 instructor's certification under Subsection (9).

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

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

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

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

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

167 (b) The applicant shall provide the certificate to the bureau in compliance with  
168 Subsection (6)(d).

169 (12) The bureau may deny, suspend, or revoke the certification of an applicant or a

170 concealed firearms instructor if it has reason to believe the applicant or the instructor has:

171 (a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or

172 (b) knowingly and willfully provided false information to the bureau.

173 (13) An applicant for certification or a concealed firearms instructor has the same

174 appeal rights as set forth in Subsection (16).

175 (14) In providing instruction and issuing a permit under this part, the concealed

176 firearms instructor and the bureau are not vicariously liable for damages caused by the permit

177 holder.

178 (15) An individual who knowingly and willfully provides false information on an

179 application filed under this part is guilty of a class B misdemeanor, and the application may be

180 denied, or the permit may be suspended or revoked.

181 (16) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or

182 permit holder may file a petition for review with the board within 60 days from the date the

183 denial, suspension, or revocation is received by the applicant or permit holder by certified mail,

184 return receipt requested.

185 (b) The bureau's denial of a permit shall be in writing and shall include the general

186 reasons for the action.

187 (c) If an applicant or permit holder appeals the denial to the review board, the applicant

188 or permit holder may have access to the evidence upon which the denial is based in accordance

189 with Title 63G, Chapter 2, Government Records Access and Management Act.

190 (d) On appeal to the board, the bureau has the burden of proof by a preponderance of

191 the evidence.

192 (e) (i) Upon a ruling by the board on the appeal of a denial, the board shall issue a final

193 order within 30 days stating the board's decision.

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

195 (iii) The final order is final bureau action for purposes of judicial review under Section

196 63G-4-402.

197 (17) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah

198 Administrative Rulemaking Act, necessary to administer this chapter.

199 Section 2. Section **76-10-503** is amended to read:

200 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**  
201 **dangerous weapons by certain persons.**

202 (1) For purposes of this section:

203 (a) A Category I restricted person is a person who:

204 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;

205 (ii) is on probation or parole for any felony;

206 (iii) is on parole from a secure facility as defined in Section 62A-7-101; ~~[or]~~

207 (iv) within the last 10 years has been adjudicated delinquent for an offense which if

208 committed by an adult would have been a violent felony as defined in Section 76-3-203.5~~[-]; or~~

209 (v) is an alien who is illegally or unlawfully in the United States.

210 (b) A Category II restricted person is a person who:

211 (i) has been convicted of ~~[or is under indictment for]~~ any felony;

212 (ii) within the last seven years has been adjudicated delinquent for an offense which if

213 committed by an adult would have been a felony;

214 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

215 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in

216 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

217 (v) has been found not guilty by reason of insanity for a felony offense;

218 (vi) has been found mentally incompetent to stand trial for a felony offense;

219 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun

220 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed

221 to a mental institution;

222 ~~[(viii) is an alien who is illegally or unlawfully in the United States;]~~

223 ~~[(ix)]~~ (viii) has been dishonorably discharged from the armed forces; or

224 ~~[(x)]~~ (ix) has renounced his citizenship after having been a citizen of the United States.

225 (2) A Category I restricted person who intentionally or knowingly agrees, consents,

226 offers, or arranges to purchase, transfer, possess, use, or have under [his] the person's custody  
227 or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under  
228 [his] the person's custody or control:

- 229 (a) any firearm is guilty of a second degree felony; or
- 230 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.
- 231 (3) A Category II restricted person who purchases, transfers, possesses, uses, or has  
232 under [his] the person's custody or control:

- 233 (a) any firearm is guilty of a third degree felony; or
- 234 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.
- 235 (4) A person may be subject to the restrictions of both categories at the same time.
- 236 (5) If a higher penalty than is prescribed in this section is provided in another section  
237 for one who purchases, transfers, possesses, uses, or has under this custody or control any  
238 dangerous weapon, the penalties of that section control.

239 (6) It is an affirmative defense to a charge based on the definition in Subsection  
240 (1)(b)(iv) that the person was:

241 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner  
242 for use of a member of the person's household or for administration to an animal owned by the  
243 person or a member of the person's household; or

244 (b) otherwise authorized by law to possess the substance.

245 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon  
246 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:

247 (i) was possessed by the person or was under the person's custody or control before the  
248 person became a restricted person;

249 (ii) was not used in or possessed during the commission of a crime or subject to  
250 disposition under Section 76-10-525;

251 (iii) is not being held as evidence by a court or law enforcement agency;

252 (iv) was transferred to a person not legally prohibited from possessing the weapon; and

253 (v) unless a different time is ordered by the court, was transferred within 10 days of the

254 person becoming a restricted person.

255 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person  
256 of a firearm or other dangerous weapon by a restricted person.

257 (8) (a) A person may not sell, transfer, or otherwise dispose of any firearm or  
258 dangerous weapon to any person, knowing that the recipient is a person described in  
259 Subsection (1)(a) or (b).

260 (b) A person who violates Subsection (8)(a) when the recipient is:

261 (i) a person described in Subsection (1)(a) and the transaction involves a firearm, is  
262 guilty of a second degree felony;

263 (ii) a person described in Subsection (1)(a) and the transaction involves any dangerous  
264 weapon other than a firearm, is guilty of a third degree felony;

265 (iii) a person described in Subsection (1)(b) and the transaction involves a firearm, is  
266 guilty of a third degree felony; or

267 (iv) a person described in Subsection (1)(b) and the transaction involves any dangerous  
268 weapon other than a firearm, is guilty of a class A misdemeanor.

269 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or  
270 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under  
271 circumstances which the person knows would be a violation of the law.

272 (b) A person may not provide to a dealer or other person what the person knows to be  
273 materially false information with intent to deceive the dealer or other person about the legality  
274 of a sale, transfer or other disposition of a firearm or dangerous weapon.

275 (c) "Materially false information" means information that portrays an illegal transaction  
276 as legal or a legal transaction as illegal.

277 (d) A person who violates this Subsection (9) is guilty of:

278 (i) a third degree felony if the transaction involved a firearm; or

279 (ii) a class A misdemeanor if the transaction involved a dangerous weapon other than a  
280 firearm.