

Representative Stephen E. Sandstrom proposes the following substitute bill:

FIREARMS AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: Margaret Dayton

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 that the Bureau of Criminal Identification may, rather than shall, deny, suspend, or revoke a concealed firearm permit on the basis of an indictment for a crime of violence in any state, but shall reverse that action upon notice of dismissal of the indictment or acquittal;
- ▶ 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:



26 None

27 **Other Special Clauses:**

28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53-5-704**, as last amended by Laws of Utah 2011, Chapters 193 and 368

32 **76-10-503**, as last amended by Laws of Utah 2003, Chapters 203 and 235

33

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

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

36 **53-5-704. Bureau duties -- Permit to carry concealed firearm -- Certification for**
37 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
38 **suspension, or revocation -- Appeal procedure.**

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

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

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

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

49 (i) has been or is convicted of a felony;

50 (ii) has been or is convicted of a crime of violence;

51 (iii) has been or is convicted of an offense involving the use of alcohol;

52 (iv) has been or is convicted of an offense involving the unlawful use of narcotics or
53 other controlled substances;

54 (v) has been or is convicted of an offense involving moral turpitude;

55 (vi) has been or is convicted of an offense involving domestic violence;

56 (vii) has been or is adjudicated by a state or federal court as mentally incompetent,

57 unless the adjudication has been withdrawn or reversed; and

58 (viii) is not qualified to purchase and possess a firearm pursuant to Section 76-10-503
59 and federal law.

60 (b) In determining whether an applicant or permit holder meets the qualifications set
61 forth in Subsection (2)(a), the bureau shall consider mitigating circumstances.

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

65 [(†)] (A) past pattern of behavior involving unlawful violence or threats of unlawful
66 violence;

67 [(††)] (B) past participation in incidents involving unlawful violence or threats of
68 unlawful violence; [or]

69 [(†††)] (C) conviction of an offense in violation of Title 76, Chapter 10, Part 5,
70 Weapons.

71 (ii) The bureau shall immediately reverse any action taken that was based primarily on
72 an indictment or bindover under Subsection (3)(a)(i)(D) upon notice:

73 (A) that the indictment or bindover has been dismissed; or

74 (B) of acquittal of the person charged.

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

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

79 (i) expunged records of arrests and convictions of adults as provided in Section
80 77-40-109; and

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

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

84 [~~(ii) Upon notice of the acquittal of the person charged, or notice of the charges having~~
85 ~~been dropped, the bureau shall immediately reinstate the suspended permit.]~~

86 (4) (a) In addition to meeting the other qualifications for the issuance of a concealed
87 firearm permit under this section, a nonresident applicant who resides in a state that recognizes

88 the validity of the Utah permit or has reciprocity with Utah's concealed firearm permit law
89 shall:

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

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

94 (b) A nonresident applicant who knowingly and willfully provides false information to
95 the bureau under Subsection (4)(a) is prohibited from holding a Utah concealed firearm permit
96 for a period of 10 years.

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

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

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

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

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

107 (b) one recent dated photograph;

108 (c) one set of fingerprints; and

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

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

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

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

118 (ii) current laws defining lawful use of a firearm by a private citizen, including lawful

119 self-defense, use of force by a private citizen, including use of deadly force, transportation, and
120 concealment.

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

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

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

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

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

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

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

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

135 (iii) have:

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

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

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

143 (v) possess a Utah concealed firearm permit.

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

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

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

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

152 (d) (i) Each applicant for certification under this Subsection (9) shall pay a fee of
153 \$50.00 at the time of application for initial certification.

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

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

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

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

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

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

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

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

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

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

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

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

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

179 (12) The bureau may deny, suspend, or revoke the certification of an applicant or a
180 concealed firearms instructor if it has reason to believe the applicant or the instructor has:

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

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

183 (13) An applicant for certification or a concealed firearms instructor has the same
184 appeal rights as set forth in Subsection (16).

185 (14) In providing instruction and issuing a permit under this part, the concealed
186 firearms instructor and the bureau are not vicariously liable for damages caused by the permit
187 holder.

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

191 (16) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or
192 permit holder may file a petition for review with the board within 60 days from the date the
193 denial, suspension, or revocation is received by the applicant or permit holder by certified mail,
194 return receipt requested.

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

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

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

202 (e) (i) Upon a ruling by the board on the appeal of a denial, the board shall issue a final
203 order within 30 days stating the board's decision.

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

205 (iii) The final order is final bureau action for purposes of judicial review under Section
206 63G-4-402.

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

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

210 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
211 **dangerous weapons by certain persons.**

- 212 (1) For purposes of this section:
- 213 (a) A Category I restricted person is a person who:
- 214 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;
- 215 (ii) is on probation or parole for any felony;
- 216 (iii) is on parole from a secure facility as defined in Section 62A-7-101; ~~[or]~~
- 217 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
- 218 committed by an adult would have been a violent felony as defined in Section 76-3-203.5~~[-]; or~~
- 219 (v) is an alien who is illegally or unlawfully in the United States.
- 220 (b) A Category II restricted person is a person who:
- 221 (i) has been convicted of ~~[or is under indictment for]~~ any felony;
- 222 (ii) within the last seven years has been adjudicated delinquent for an offense which if
- 223 committed by an adult would have been a felony;
- 224 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;
- 225 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
- 226 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;
- 227 (v) has been found not guilty by reason of insanity for a felony offense;
- 228 (vi) has been found mentally incompetent to stand trial for a felony offense;
- 229 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
- 230 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
- 231 to a mental institution;
- 232 ~~[(viii) is an alien who is illegally or unlawfully in the United States;]~~
- 233 ~~[(ix)]~~ (viii) has been dishonorably discharged from the armed forces; or
- 234 ~~[(x)]~~ (ix) has renounced his citizenship after having been a citizen of the United States.
- 235 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
- 236 offers, or arranges to purchase, transfer, possess, use, or have under ~~[his]~~ the person's custody
- 237 or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
- 238 ~~[his]~~ the person's custody or control:
- 239 (a) any firearm is guilty of a second degree felony; or
- 240 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.
- 241 (3) A Category II restricted person who purchases, transfers, possesses, uses, or has
- 242 under ~~[his]~~ the person's custody or control:

- 243 (a) any firearm is guilty of a third degree felony; or
- 244 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.
- 245 (4) A person may be subject to the restrictions of both categories at the same time.
- 246 (5) If a higher penalty than is prescribed in this section is provided in another section
- 247 for one who purchases, transfers, possesses, uses, or has under this custody or control any
- 248 dangerous weapon, the penalties of that section control.
- 249 (6) It is an affirmative defense to a charge based on the definition in Subsection
- 250 (1)(b)(iv) that the person was:
- 251 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner
- 252 for use of a member of the person's household or for administration to an animal owned by the
- 253 person or a member of the person's household; or
- 254 (b) otherwise authorized by law to possess the substance.
- 255 (7) (a) It is an affirmative defense to transferring a firearm or other dangerous weapon
- 256 by a person restricted under Subsection (2) or (3) that the firearm or dangerous weapon:
- 257 (i) was possessed by the person or was under the person's custody or control before the
- 258 person became a restricted person;
- 259 (ii) was not used in or possessed during the commission of a crime or subject to
- 260 disposition under Section 76-10-525;
- 261 (iii) is not being held as evidence by a court or law enforcement agency;
- 262 (iv) was transferred to a person not legally prohibited from possessing the weapon; and
- 263 (v) unless a different time is ordered by the court, was transferred within 10 days of the
- 264 person becoming a restricted person.
- 265 (b) Subsection (7)(a) is not a defense to the use, purchase, or possession on the person
- 266 of a firearm or other dangerous weapon by a restricted person.
- 267 (8) A person may not sell, transfer, or otherwise dispose of any firearm or dangerous
- 268 weapon to any person, knowing that the recipient is a person described in Subsection (1)(a) or
- 269 (b).
- 270 (9) (a) A person may not knowingly solicit, persuade, encourage or entice a dealer or
- 271 other person to sell, transfer or otherwise dispose of a firearm or dangerous weapon under
- 272 circumstances which the person knows would be a violation of the law.
- 273 (b) A person may not provide to a dealer or other person what the person knows to be

274 materially false information with intent to deceive the dealer or other person about the legality
275 of a sale, transfer or other disposition of a firearm or dangerous weapon.

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

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

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

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