

1 **DANGEROUS WEAPONS RESTRICTIONS**

2 1998 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Robert C. Steiner**

5 AN ACT RELATING TO PUBLIC SAFETY AND THE CRIMINAL CODE; AMENDING
6 CROSS REFERENCES FOR CERTAIN RESTRICTED AREAS WHERE CONCEALED
7 PERMIT HOLDERS MAY NOT CARRY FIREARMS; SPECIFYING THAT IT IS NOT A
8 DISCRIMINATORY PRACTICE FOR AN EMPLOYER TO PROHIBIT EMPLOYEES
9 FROM POSSESSING DANGEROUS WEAPONS DURING WORKING HOURS;
10 PROVIDING DEFINITIONS; SEPARATING INTO TWO SECTIONS PROVISIONS
11 RELATING TO DEFINITIONS AND UNIFORM LAW TO FACILITATE THE ADDITION
12 OF DEFINITIONS IN THE FUTURE; AMENDING SECTIONS REGARDING THE
13 PROHIBITION OF DANGEROUS WEAPONS ON SCHOOL PREMISES; PROHIBITING
14 DANGEROUS WEAPONS IN A PRIVATE RESIDENCE AND ON PRIVATE PROPERTY
15 IN CERTAIN CIRCUMSTANCES; PRESCRIBING THAT DANGEROUS WEAPONS MAY
16 NOT BE POSSESSED IN A CHURCH BUILDING OR ON CHURCH PROPERTY UNLESS
17 AUTHORIZED; SPECIFYING PRIMA FACIE DETERMINATION THAT VIOLATOR HAS
18 FAILED TO MAINTAIN GOOD CHARACTER FOR A CONCEALED FIREARM PERMIT;
19 PROVIDING CRIMINAL PENALTIES; MAKING TECHNICAL CORRECTIONS; AND
20 PROVIDING AN EFFECTIVE DATE.

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

22 AMENDS:

23 **34A-5-106**, as renumbered and amended by Chapter 375, Laws of Utah 1997

24 **53-5-704**, as last amended by Chapter 280, Laws of Utah 1997

25 **53-5-710**, as enacted by Chapter 117, Laws of Utah 1997

26 **53A-3-502**, as enacted by Chapter 2, Laws of Utah 1988

27 **53A-11-904**, as last amended by Chapter 74, Laws of Utah 1996

- 1 **76-3-203.2**, as last amended by Chapter 289, Laws of Utah 1997
- 2 **76-6-206**, as last amended by Chapter 142, Laws of Utah 1996
- 3 **76-8-311.3**, as last amended by Chapter 288, Laws of Utah 1997
- 4 **76-10-501**, as last amended by Chapters 80 and 285, Laws of Utah 1995
- 5 **76-10-505.5**, as last amended by Chapters 10 and 289, Laws of Utah 1997

6 ENACTS:

- 7 **76-10-501.5**, Utah Code Annotated 1953
- 8 **76-10-530**, Utah Code Annotated 1953
- 9 **76-10-531**, Utah Code Annotated 1953

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

11 Section 1. Section **34A-5-106** is amended to read:

12 **34A-5-106. Discriminatory or unfair employment practices -- Permitted practices.**

13 (1) It is a discriminatory or prohibited employment practice:

14 (a) (i) for an employer to refuse to hire, or promote, or to discharge, demote, terminate any
15 person, or to retaliate against, harass, or discriminate in matters of compensation or in terms,
16 privileges, and conditions of employment against any person otherwise qualified, because of race,
17 color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years
18 of age or older, religion, national origin, or handicap. No applicant nor candidate for any job or
19 position may be considered "otherwise qualified," unless he possesses the education, training,
20 ability, moral character, integrity, disposition to work, adherence to reasonable rules and
21 regulations, and other job related qualifications required by an employer for any particular job, job
22 classification, or position to be filled or created;

23 (ii) as used in this chapter, "to discriminate in matters of compensation" means the
24 payment of differing wages or salaries to employees having substantially equal experience,
25 responsibilities, and skill for the particular job. However, nothing in this chapter prevents
26 increases in pay as a result of longevity with the employer, if the salary increases are uniformly
27 applied and available to all employees on a substantially proportional basis. Nothing in this
28 section prohibits an employer and employee from agreeing to a rate of pay or work schedule
29 designed to protect the employee from loss of Social Security payment or benefits if the employee
30 is eligible for those payments;

31 (b) for an employment agency:

1 (i) to refuse to list and properly classify for employment, or to refuse to refer an individual
2 for employment, in a known available job for which the individual is otherwise qualified, because
3 of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, religion, national origin,
4 age, if the individual is 40 years of age or older, or handicap;

5 (ii) to comply with a request from an employer for referral of applicants for employment
6 if the request indicates either directly or indirectly that the employer discriminates in employment
7 on account of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, religion,
8 national origin, age, if the individual is 40 years of age or older, or handicap;

9 (c) for a labor organization to exclude any individual otherwise qualified from full
10 membership rights in the labor organization, or to expel the individual from membership in the
11 labor organization, or to otherwise discriminate against or harass any of its members in full
12 employment of work opportunity, or representation, because of race, sex, pregnancy, childbirth,
13 or pregnancy-related conditions, religion, national origin, age, if the individual is 40 years of age
14 or older, or handicap;

15 (d) for any employer, employment agency, or labor organization to print, or circulate, or
16 cause to be printed or circulated, any statement, advertisement, or publication, or to use any form
17 of application for employment or membership, or to make any inquiry in connection with
18 prospective employment or membership, which expresses, either directly or indirectly, any
19 limitation, specification, or discrimination as to race, color, religion, sex, pregnancy, childbirth,
20 or pregnancy-related conditions, national origin, age, if the individual is 40 years of age or older,
21 or handicap or intent to make any such limitation, specification, or discrimination; unless based
22 upon a bona fide occupational qualification, or required by, and given to, an agency of government
23 for security reasons;

24 (e) for any person, whether or not an employer, an employment agency, a labor
25 organization, or the employees or members thereof, to aid, incite, compel, or coerce the doing of
26 an act defined in this section to be a discriminatory or prohibited employment practice; or to
27 obstruct or prevent any person from complying with this chapter, or any order issued under it; or
28 to attempt, either directly or indirectly, to commit any act prohibited in this section;

29 (f) for any employer, labor organization, joint apprenticeship committee, or vocational
30 school, providing, coordinating, or controlling apprenticeship programs, or providing,
31 coordinating, or controlling on-the-job-training programs, instruction, training, or retraining

1 programs:

2 (i) to deny to, or withhold from, any qualified person, because of race, color, sex,
3 pregnancy, childbirth, or pregnancy-related conditions, religion, national origin, age, if the
4 individual is 40 years of age or older, or handicap the right to be admitted to, or participate in any
5 apprenticeship training program, on-the-job-training program, or other occupational instruction,
6 training or retraining program;

7 (ii) to discriminate against or harass any qualified person in that person's pursuit of such
8 programs, or to discriminate against such a person in the terms, conditions, or privileges of such
9 programs, because of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions,
10 religion, national origin, age, if the individual is 40 years of age or older, or handicap; or

11 (iii) to print, or publish, or cause to be printed or published, any notice or advertisement
12 relating to employment by the employer, or membership in or any classification or referral for
13 employment by a labor organization, or relating to any classification or referral for employment
14 by an employment agency, indicating any preference, limitation, specification, or discrimination
15 based on race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, religion, national
16 origin, age, if the individual is 40 years of age or older, or handicap except that a notice or
17 advertisement may indicate a preference, limitation, specification, or discrimination based on race,
18 color, religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, national origin,
19 or handicap when religion, race, color, sex, age, national origin, or handicap is a bona fide
20 occupational qualification for employment.

21 (2) Nothing contained in Subsections (1)(a) through (1)(f) shall be construed to prevent
22 the termination of employment of an individual who is physically, mentally, or emotionally unable
23 to perform the duties required by that individual's employment, or to preclude the variance of
24 insurance premiums, of coverage on account of age, or affect any restriction upon the activities of
25 individuals licensed by the liquor authority with respect to persons under 21 years of age.

26 (3) (a) It is not a discriminatory or prohibited employment practice:

27 (i) for an employer to hire and employ employees, for an employment agency to classify
28 or refer for employment any individual, for a labor organization to classify its membership or to
29 classify or refer for employment any individual or for an employer, labor organization, or joint
30 labor-management committee controlling apprenticeship or other training or retraining programs
31 to admit or employ any individual in any such program, on the basis of religion, sex, pregnancy,

1 childbirth, or pregnancy-related conditions, age, national origin, or handicap in those certain
2 instances where religion, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the
3 individual is 40 years of age or older, national origin, or handicap is a bona fide occupational
4 qualification reasonably necessary to the normal operation of that particular business or enterprise;

5 (ii) for a school, college, university, or other educational institution to hire and employ
6 employees of a particular religion if the school, college, university, or other educational institution
7 is, in whole or in substantial part, owned, supported, controlled, or managed by a particular
8 religious corporation, association, or society, or if the curriculum of the school, college, university,
9 or other educational institution is directed toward the propagation of a particular religion;

10 (iii) for an employer to give preference in employment to his own spouse, son, son-in-law,
11 daughter, daughter-in-law, or to any person for whom the employer is or would be liable to furnish
12 financial support if those persons were unemployed; or for an employer to give preference in
13 employment to any person to whom the employer during the preceding six months has furnished
14 more than one-half of total financial support regardless of whether or not the employer was or is
15 legally obligated to furnish support; or for an employer to give preference in employment to any
16 person whose education or training was substantially financed by the employer for a period of two
17 years or more[-]; or

18 (iv) for an employer to prohibit employees, including a person licensed to carry a
19 concealed firearm under Title 53, Chapter 5, Part 7, Concealed Weapon Act, from possessing a
20 dangerous weapon, as defined in Section 76-10-501, while engaged in the employer's business or
21 participating in employer-sponsored activities.

22 (b) Nothing contained in this chapter applies to any business or enterprise on or near an
23 Indian reservation with respect to any publicly announced employment practice of the business
24 or enterprise under which preferential treatment is given to any individual because he is a native
25 American Indian living on or near an Indian reservation.

26 (c) Nothing contained in this chapter shall be interpreted to require any employer,
27 employment agency, labor organization, vocational school, joint labor-management committee,
28 or apprenticeship program subject to this chapter to grant preferential treatment to any individual
29 or to any group because of the race, color, religion, sex, age, national origin, or handicap of the
30 individual or group on account of an imbalance which may exist with respect to the total number
31 or percentage of persons of any race, color, religion, sex, age, national origin, or handicap

1 employed by any employer, referred or classified for employment by an employment agency or
2 labor organization, admitted to membership or classified by any labor organization, or admitted
3 to or employed in, any apprenticeship or other training program, in comparison with the total
4 number or percentage of persons of that race, color, religion, sex, age, national origin, or handicap
5 in any community or county or in the available work force in any community or county.

6 (4) It is not a discriminatory or prohibited practice with respect to age to observe the terms
7 of a bona fide seniority system or any bona fide employment benefit plan such as a retirement,
8 pension, or insurance plan which is not a subterfuge to evade the purposes of this chapter except
9 that no such employee benefit plan shall excuse the failure to hire any individual.

10 (5) Notwithstanding Subsection (4), or any other statutory provision to the contrary, other
11 than Subsection (6) and Section 67-5-8, and except where age is a bona fide occupational
12 qualification, no person shall be subject to involuntary termination or retirement from employment
13 on the basis of age alone, if the individual is 40 years of age or older.

14 (6) Nothing in this section prohibits compulsory retirement of an employee who has
15 attained at least 65 years of age, and who, for the two-year period immediately before retirement,
16 is employed in a bona fide executive or a high policymaking position, if that employee is entitled
17 to an immediate nonforfeitable annual retirement benefit from his employer's pension,
18 profit-sharing, savings, or deferred compensation plan, or any combination of those plans, which
19 benefit equals, in the aggregate, at least \$44,000.

20 Section 2. Section **53-5-704** is amended to read:

21 **53-5-704. Division duties -- Permit to carry concealed firearm -- Requirements for**
22 **issuance -- Violation -- Denial, suspension, or revocation -- Appeal procedure.**

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

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

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

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

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

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

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

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

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

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

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

11 (ii) past participation in incidents involving unlawful violence or threats of unlawful
12 violence; or

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

14 (b) In determining whether the applicant has been or is a danger to self or others, the
15 division may inspect:

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

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

19 (c) (i) If a person granted a permit under this part has been charged with a crime of
20 violence in Utah or any other state, the division shall suspend the permit.

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

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

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

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

29 (a) letters of character reference;

30 (b) two recent dated photographs;

31 (c) two sets of fingerprints;

- 1 (d) a five-year employment history;
- 2 (e) a five-year residential history; and
- 3 (f) evidence of general familiarity with the types of firearms to be concealed as defined
- 4 in Subsection (7).

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

- 6 (i) the safe loading, unloading, storage, and carrying of the types of firearms to be
- 7 concealed; and
- 8 (ii) current laws defining lawful use of a firearm by a private citizen, including lawful
- 9 self-defense, use of deadly force, transportation, and concealment.

10 (b) Evidence of general familiarity with the types of firearms to be concealed may be

11 satisfied by one of the following:

- 12 (i) completion of a course of instruction conducted by any national, state, or local firearms
- 13 training organization approved by the division;
- 14 (ii) certification of general familiarity by a person who has been approved by the division,
- 15 which may include a law enforcement officer, military or civilian firearms instructor, or hunter
- 16 safety instructor; or
- 17 (iii) equivalent experience with a firearm through participation in an organized shooting
- 18 competition, law enforcement, or military service.

19 (8) In issuing a permit under this part, the licensing authority is not vicariously liable for

20 damages caused by the permit holder.

21 (9) If any person knowingly and willfully provides false information on an application

22 filed under this part, he is guilty of a class B misdemeanor, and his application may be denied, or

23 his permit may be suspended or revoked.

24 (10) (a) In the event of a denial, suspension, or revocation by the agency, the applicant

25 may file a petition for review with the board within 60 days from the date the denial, suspension,

26 or revocation is received by the applicant by certified mail, return receipt requested.

27 (b) The denial of a permit shall be in writing and shall include the general reasons for the

28 action.

29 (c) If an applicant appeals his denial to the review board, the applicant may have access

30 to the evidence upon which the denial is based in accordance with Title 63, Chapter 2, Government

31 Records Access and Management Act.

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

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

7 [(12)] (11) The commissioner may make rules in accordance with Title 63, Chapter 46a,
8 Utah Administrative Rulemaking Act, necessary to administer this chapter.

9 Section 3. Section **53-5-710** is amended to read:

10 **53-5-710. Cross-references to concealed firearm permit restrictions.**

11 A person with a permit to carry a concealed firearm may not carry a concealed firearm [in
12 the following locations] as follows:

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

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

16 (3) on private property as provided in Section 76-6-206;

17 (4) on or about school premises as provided in Section 76-10-505.5;

18 (5) in a church building or on church property as provided in Section 76-10-530;

19 (6) in a private residence as provided in Section 76-10-531; and

20 (7) an employee while engaged in the employer's business or activities as provided in
21 Section 34A-5-106.

22 Section 4. Section **53A-3-502** is amended to read:

23 **53A-3-502. Dangerous materials in the public schools -- Class B misdemeanor --**
24 **Exceptions.**

25 (1) A person who possesses [~~a weapon, explosive, flammable material, or other~~] material
26 dangerous to persons or property, other than a dangerous weapon restricted under Section
27 76-10-505.5, in a public or private elementary or secondary school, on the grounds of the school,
28 or in those parts of a building, park, or stadium which are being used for an activity sponsored by
29 or through the school is guilty of a class B misdemeanor, unless a higher penalty is prescribed in
30 Title 76, Criminal Code, in which case the penalty provisions of that title control.

31 (2) Subsection (1) does not apply under the following circumstances:

- 1 (a) possession is approved by the responsible school administrator; or
- 2 (b) the item or material is present or to be used in connection with a lawful, approved
- 3 activity and is in the possession or under the control of the person responsible for its possession
- 4 or use.

5 Section 5. Section **53A-11-904** is amended to read:

6 **53A-11-904. Grounds for suspension or expulsion from a public school.**

7 (1) A student may be suspended or expelled from a public school for any of the following

8 reasons:

- 9 (a) frequent or flagrant willful disobedience, defiance of proper authority, or disruptive
- 10 behavior, including the use of foul, profane, vulgar, or abusive language;
- 11 (b) willful destruction or defacing of school property;
- 12 (c) behavior or threatened behavior which poses an immediate and significant threat to the
- 13 welfare, safety, or morals of other students or school personnel or to the operation of the school;
- 14 (d) possession, control, or use of an alcoholic beverage as defined in Section 32A-1-105;
- 15 or
- 16 (e) behavior proscribed under Subsection (2) which threatens harm or does harm to the
- 17 school or school property, to a person associated with the school, or property associated with any
- 18 such person, regardless of where it occurs.

19 (2) (a) A student shall be suspended or expelled from a public school for any of the

20 following reasons:

- 21 (i) any serious violation affecting another student or a staff member, or any serious
- 22 violation occurring in a school building, in or on school property, or in conjunction with any
- 23 school activity, including the possession, control, or actual or threatened use of a real, look alike,
- 24 or pretend weapon, explosive, or noxious or flammable material under Section 53A-3-502 or
- 25 76-10-505.5, or the sale, control, or distribution of a drug or controlled substance as defined in
- 26 Section 58-37-2, an imitation controlled substance defined in Section 58-37b-2, or drug
- 27 paraphernalia as defined in Section 58-37a-3; or
- 28 (ii) the commission of an act involving the use of force or the threatened use of force
- 29 which if committed by an adult would be a felony or class A misdemeanor.

30 (b) A student who commits a violation of Subsection (2)(a) involving a real, look alike,

31 or pretend firearm, explosive, or flammable material shall be expelled from school for a period of

1 not less than one year, unless the district superintendent determines, on a case-by-case basis, that
2 a lesser penalty would be more appropriate.

3 (3) A student may be denied admission to a public school on the basis of having been
4 expelled from that or any other school during the preceding 12 months.

5 (4) A suspension or expulsion under this section is not subject to the age limitations under
6 Subsection 53A-11-102(1).

7 Section 6. Section **76-3-203.2** is amended to read:

8 **76-3-203.2. Definitions -- Use of dangerous weapon in offenses committed on or**
9 **about school premises -- Enhanced penalties.**

10 For purposes of this section:

11 (1) (a) "On or about school premises" as used in this section [~~and Section 76-10-505.5~~]
12 means any of the following:

13 (i) in a public or private elementary, secondary, or on the grounds of any of those schools;

14 (ii) in a public or private vocational school or postsecondary institution or on the grounds
15 of any of those schools or institutions;

16 (iii) in those portions of any building, park, stadium, or other structure or grounds which
17 are, at the time of the act, being used for an activity sponsored by or through a school or institution
18 under Subsections (1)(a)(i) and (ii);

19 (iv) in or on the grounds of a preschool or child-care facility; and

20 (v) within 1,000 feet of any structure, facility, or grounds included in Subsections (1)(a)(i),
21 (ii), (iii), and (iv).

22 (b) As used in this section:

23 (i) "Educator" means any person who is employed by a public school district and who is
24 required to hold a certificate issued by the State Board of Education in order to perform duties of
25 employment.

26 (ii) "Within the course of employment" means that an educator is providing services or
27 engaging in conduct required by the educator's employer to perform the duties of employment.

28 (2) Any person who, on or about school premises, commits any offense and uses or
29 threatens to use a dangerous weapon, as defined in Section 76-1-601, in the commission of the
30 offense is subject to an enhanced degree of offense as provided in [~~Subsection~~] Subsections (4) and
31 (5).

1 (3) (a) Any person who commits an offense against an educator when the educator is
2 acting within the course of employment is subject to an enhanced degree of offense as provided
3 in ~~[Subsection]~~ Subsections (4) and (5).

4 (b) As used in Subsection (3)(a), "offense" means ~~[an]~~ any offense;

5 (i) under Title 76, Chapter 5, Offenses Against The Person; ~~[and]~~ or

6 ~~[(c) an offense]~~ (ii) under Title 76, Chapter 6, Part 3, Robbery.

7 (4) The enhanced degree of offense for offenses committed under this section are:

8 (a) if the offense is otherwise a class B misdemeanor it is a class A misdemeanor;

9 (b) if the offense is otherwise a class A misdemeanor it is a third degree felony;

10 (c) if the offense is otherwise a third degree felony it is a second degree felony; or

11 (d) if the offense is otherwise a second degree felony it is a first degree felony.

12 (5) The enhanced penalty for a first degree felony offense of a convicted person:

13 (a) shall be imprisonment for a term of not less than five years and which may be for life,
14 and imposition or execution of the sentence may not be suspended unless the court:

15 (i) finds that the interests of justice would be best served; and

16 (ii) states the specific circumstances justifying the disposition on the record; and

17 (b) shall ~~[be]~~ subject the person also to the dangerous weapon enhancement provided in
18 Section 76-3-203 except for an offense committed under Subsection (3) that does not involve a
19 firearm.

20 (6) (a) The prosecuting attorney, or grand jury if an indictment is returned, shall provide
21 notice upon the information or indictment that the defendant is subject to the enhanced degree of
22 offense or penalty under Subsection (4) or (5).

23 (b) The notice shall be in a clause separate from and in addition to the substantive offense
24 charged.

25 ~~[(b)]~~ (c) If the notice is not included initially, the court may subsequently allow the
26 prosecutor to amend the charging documents to include the notice if the court finds:

27 (i) the charging document, including any statement of probable cause, provide notice to
28 the defendant of the allegation he committed the offense on or about school premises~~[-];~~ or ~~[if the~~
29 ~~court finds]~~

30 (ii) the defendant has not otherwise been substantially prejudiced by the omission.

31 (7) ~~[It]~~ The convicted person shall not be subject to the dangerous weapon enhancement

1 in Section 76-3-203:

2 (a) in cases where an offense is enhanced pursuant to Subsection (4)(a), (b), (c), or (d)[;];

3 or

4 (b) under Subsection (5)(a) for an offense committed under Subsection (2) that does not

5 involve a firearm[~~, the convicted person shall not be subject to the dangerous weapon enhancement~~
6 in Section 76-3-203].

7 Section 7. Section **76-6-206** is amended to read:

8 **76-6-206. Criminal trespass.**

9 (1) For purposes of this section:

10 (a) "Dangerous weapon" means the same as defined in Section 76-10-501; and

11 (b) "[enter] Enter" means intrusion of the entire body[;].

12 (2) A person is guilty of criminal trespass if, under circumstances not amounting to
13 burglary as defined in Section 76-6-202, 76-6-203, or 76-6-204:

14 (a) he enters or remains unlawfully on property and:

15 (i) intends to cause annoyance or injury to any person or damage to any property,
16 including the use of graffiti as defined in Section 76-6-107;

17 (ii) intends to commit any crime, other than theft or a felony; or

18 (iii) is reckless as to whether his presence will cause fear for the safety of another; or

19 (b) knowing his entry or presence is unlawful, he enters or remains on property as to which
20 notice against entering is given by:

21 (i) personal communication to the actor by the owner or someone with apparent authority
22 to act for the owner;

23 (ii) fencing or other enclosure obviously designed to exclude intruders; or

24 (iii) posting of signs reasonably likely to come to the attention of intruders or those
25 persons to whom the owner wishes to prohibit entry pursuant to Subsection (3).

26 (3) An owner, lessee, or person entitled to control private property:

27 (a) retains the right to prohibit any person, including a person licensed to carry a concealed
28 firearm pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, from bringing a dangerous
29 weapon onto the private property; and

30 (b) may exercise the right to prohibit the entry by giving notice in the same manner as
31 prescribed in Subsection (2)(b).

1 ~~[(3)]~~ (4) (a) A violation of Subsection (2)(a) is a class C misdemeanor unless it was
2 committed in a dwelling, in which event it is a class B misdemeanor.

3 (b) A violation of Subsection (2)(b) is an infraction.

4 (c) A violation of Subsection (3) is a class B misdemeanor.

5 ~~[(4)]~~ (5) It is a defense to prosecution under this section that the:

6 (a) property was open to the public when the actor entered or remained~~[-; and (b)],~~ the
7 actor's conduct did not substantially interfere with the owner's use of the property~~[-],~~ and the actor
8 did not possess a dangerous weapon; or

9 (b) person in possession of the dangerous weapon is otherwise authorized by law to enter
10 or remain on the owner's property.

11 Section 8. Section **76-8-311.3** is amended to read:

12 **76-8-311.3. Items prohibited in correctional and mental health facilities -- Penalties.**

13 (1) As used in this section:

14 (a) "Contraband" means any item not specifically prohibited for possession by offenders
15 under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

16 (b) "Controlled substance" means any substance defined as a controlled substance under
17 Title 58, Chapter 37, Utah Controlled Substances Act.

18 (c) "Correctional facility" means:

19 (i) any facility operated by the Department of Corrections to house offenders in either a
20 secure or nonsecure setting;

21 (ii) any facility operated by a municipality or a county to house or detain criminal
22 offenders;

23 (iii) any juvenile detention facility; and

24 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
25 municipality, or county for use as a correctional facility.

26 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17a, Pharmacy
27 Practice Act, but does not include any controlled substances as defined in Title 58, Chapter 37,
28 Utah Controlled Substances Act.

29 (e) "Mental health facility" has the same meaning as defined in Section 62A-12-202.

30 (f) "Offender" means a person in custody at a correctional facility.

31 (g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

1 (2) Notwithstanding any other statute to the contrary, including [~~Subsection 76-10-501(b)~~]
2 Section 76-10-501.5, a correctional or mental health facility may provide by rule that no firearm,
3 ammunition, dangerous weapon, implement of escape, explosive, controlled substance, spirituous
4 or fermented liquor, medicine, or poison in any quantity may be:

5 (a) transported to or upon a correctional or mental health facility;

6 (b) sold or given away at any correctional or mental health facility;

7 (c) given to or used by any offender at a correctional or mental health facility; or

8 (d) knowingly or intentionally possessed at a correctional or mental health facility.

9 (3) It is a defense to any prosecution under this section if the accused in committing the
10 act made criminal by this section:

11 (a) with respect to a correctional facility operated by the Department of Corrections, acted
12 in conformity with departmental rule or policy;

13 (b) with respect to a correctional facility operated by a municipality, acted in conformity
14 with the policy of the municipality;

15 (c) with respect to a correctional facility operated by a county, acted in conformity with
16 the policy of the county; or

17 (d) with respect to a mental health facility, acted in conformity with the policy of the
18 mental health facility.

19 (4) (a) Any person who transports to or upon a correctional facility, or into a secure area
20 of a mental health facility, any firearm, ammunition, dangerous weapon, explosive, or implement
21 of escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

22 (b) Any person who provides or sells to any offender at a correctional facility, or any
23 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon,
24 explosive, or implement of escape is guilty of a second degree felony.

25 (c) Any offender who possesses at a correctional facility, or any detainee who possesses
26 at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, explosive,
27 or implement of escape is guilty of a second degree felony.

28 (d) Any person who, without the permission of the authority operating the correctional
29 facility or the secure area of a mental health facility, knowingly possesses at a correctional facility
30 or a secure area of a mental health facility any firearm, ammunition, dangerous weapon, implement
31 of escape, or explosive is guilty of a third degree felony.

1 (5) (a) A person is guilty of a third degree felony who, without the permission of the
2 authority operating the correctional facility or secure area of a mental health facility, knowingly
3 transports to or upon a correctional facility or into a secure area of a mental health facility any:

- 4 (i) spirituous or fermented liquor;
- 5 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 6 (iii) poison in any quantity.

7 (b) A person is guilty of a third degree felony who knowingly violates correctional or
8 mental health facility policy or rule by providing or selling to any offender at a correctional facility
9 or detainee within a secure area of a mental health facility any:

- 10 (i) spirituous or fermented liquor;
- 11 (ii) medicine, whether or not lawfully prescribed for the offender; or
- 12 (iii) poison in any quantity.

13 (c) An inmate is guilty of a third degree felony who, in violation of correctional or mental
14 health facility policy or rule, possesses at a correctional facility or in a secure area of a mental
15 health facility any:

- 16 (i) spirituous or fermented liquor;
- 17 (ii) medicine, other than medicine provided by the facility's health care providers in
18 compliance with facility policy; or
- 19 (iii) poison in any quantity.

20 (d) A person is guilty of a class A misdemeanor who, without the permission of the
21 authority operating the correctional or mental health facility, fails to declare or knowingly
22 possesses at a correctional facility or in a secure area of a mental health facility any:

- 23 (i) spirituous or fermented liquor;
- 24 (ii) medicine; or
- 25 (iii) poison in any quantity.

26 (e) A person is guilty of a class B misdemeanor who, without the permission of the
27 authority operating the facility, knowingly engages in any activity that would facilitate the
28 possession of any contraband by an offender in a correctional facility.

29 (f) Exemptions may be granted for worship for Native American inmates pursuant to
30 Section 64-13-40.

31 (6) The possession, distribution, or use of a controlled substance at a correctional facility

1 or in a secure area of a mental health facility shall be prosecuted in accordance with Title 58,
2 Chapter 37, Utah Controlled Substances Act.

3 Section 9. Section **76-10-501** is amended to read:

4 **76-10-501. Uniform law -- Definitions.**

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

8 ~~[(i) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm~~
9 ~~at his place of residence, property, business, or in any vehicle under his control; or]~~

10 ~~[(ii) required to have a permit or license to purchase, own, possess, transport, or keep a~~
11 ~~firearm.]~~

12 ~~[(b) This part is uniformly applicable throughout this state and in all its political~~
13 ~~subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state~~
14 ~~except where the Legislature specifically delegates responsibility to local authorities. Unless~~
15 ~~specifically authorized by the Legislature by statute, a local authority may not enact or enforce any~~
16 ~~ordinance, regulation, or rule pertaining to firearms.]~~

17 ~~[(2)]~~ As used in this part:

18 ~~(1)~~ "Church" is the same as defined in Section 32A-1-105.

19 ~~(2)~~ "Church property" means property made readily identifiable as church property by
20 enclosure or posting of signs.

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

24 ~~(ii)~~ (b) A dangerous weapon shall not be considered a concealed dangerous weapon if it
25 is a firearm which is unloaded and is securely encased.

26 ~~(b)~~ (4) "Crime of violence" means aggravated murder, murder, manslaughter, rape,
27 mayhem, kidnapping, robbery, burglary, housebreaking, extortion, or blackmail accompanied by
28 threats of violence, assault with a dangerous weapon, assault with intent to commit any offense
29 punishable by imprisonment for more than one year, arson punishable by imprisonment for more
30 than one year, or an attempt to commit any of these offenses.

31 ~~(c)~~ (5) "Criminal history background check" means a criminal background check

1 conducted by a licensed firearms dealer on every purchaser of a handgun through the division or
2 the local law enforcement agency where the firearms dealer conducts business.

3 ~~[(d)]~~ (6) (a) "Dangerous weapon" means any item that in the manner of its use or intended
4 use is capable of causing death or serious bodily injury. The following factors shall be used in
5 determining whether a knife, or any other item, object, or thing not commonly known as a
6 dangerous weapon is a dangerous weapon:

- 7 (i) the character of the instrument, object, or thing;
- 8 (ii) the character of the wound produced, if any;
- 9 (iii) the manner in which the instrument, object, or thing was used; and
- 10 (iv) the other lawful purposes for which the instrument, object, or thing may be used.

11 (b) "Dangerous weapon" does not include an "explosive, chemical, or incendiary device"
12 or "explosive, chemical, or incendiary parts" as those terms are defined in Section 76-10-306.

13 ~~[(e)]~~ (7) "Dealer" means every person who is licensed under crimes and criminal
14 procedure, 18 U.S.C. 923 and engaged in the business of selling, leasing, or otherwise transferring
15 a handgun, whether the person is a retail or wholesale dealer, pawnbroker, or otherwise.

16 ~~[(f)]~~ (8) "Division" means the Law Enforcement and Technical Services Division of the
17 Department of Public Safety, created in Section 53-5-103.

18 ~~[(g)]~~ (9) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or
19 sawed-off rifle, or any device that could be used as a dangerous weapon from which is expelled
20 a projectile by action of an explosive.

21 ~~[(i)]~~ (10) "Firearms transaction record form" means a form created by the division to be
22 completed by a person purchasing, selling, or transferring a handgun from a dealer in the state.

23 ~~[(h)]~~ (11) "Fully automatic weapon" means any firearm which fires, is designed to fire, or
24 can be readily restored to fire, automatically more than one shot without manual reloading by a
25 single function of the trigger.

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

29 (13) "On or about school premises" means:

30 (a) the school building or school grounds made readily identifiable by enclosure or posting
31 signs by:

1 (i) a public or private elementary or secondary school; or

2 (ii) a public or private vocational school or postsecondary institution;

3 (b) in those portions of any building, park, stadium, or other structure or grounds which
4 are, at the time of the act, being used for an activity sponsored by or through a school or institution
5 identified in Subsection (13)(a); or

6 (c) in a preschool facility or child-care facility or on grounds of the facility made readily
7 identifiable by enclosure or posting signs.

8 (14) (a) "Postsecondary institution" means an institution that provides educational services
9 offered primarily to persons who have completed or terminated their secondary or high school
10 education or who are beyond the age of compulsory school attendance.

11 (b) "Postsecondary institution" includes a college, university, vocational school, or applied
12 technology center.

13 ~~[(k)]~~ (15) "Prohibited area" means any place where it is unlawful to discharge a firearm.

14 ~~[(h)]~~ (16) "Readily accessible for immediate use" means that a firearm or other dangerous
15 weapon is carried on the person or within such close proximity and in such a manner that it can
16 be retrieved and used as readily as if carried on the person.

17 ~~[(m)]~~ (17) "Sawed-off shotgun" or "sawed-off rifle" means a shotgun having a barrel or
18 barrels of fewer than 18 inches in length, or in the case of a rifle, having a barrel or barrels of fewer
19 than 16 inches in length, or any dangerous weapon made from a rifle or shotgun by alteration,
20 modification, or otherwise, if the weapon as modified has an overall length of fewer than 26
21 inches.

22 ~~[(n)]~~ (18) "Securely encased" means not readily accessible for immediate use, such as held
23 in a gun rack, or in a closed case or container, whether or not locked, or in a trunk or other storage
24 area of a motor vehicle, not including a glove box or console box.

25 Section 10. Section **76-10-501.5** is enacted to read:

26 **76-10-501.5. Uniform law.**

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

30 (a) prohibited from owning, possessing, purchasing, transporting, or keeping any firearm
31 at his place of residence, property, business, or in any vehicle under his control; or

1 **(b) required to have a permit or license to purchase, own, possess, transport, or keep a**
2 **firearm.**

3 **(2) This part is uniformly applicable throughout this state and in all its political**
4 **subdivisions and municipalities. All authority to regulate firearms shall be reserved to the state**
5 **except where the Legislature specifically delegates responsibility to local authorities. Unless**
6 **specifically authorized by the Legislature by statute, a local authority may not enact or enforce any**
7 **ordinance, regulation, or rule pertaining to firearms.**

8 Section 11. Section **76-10-505.5** is amended to read:

9 **76-10-505.5. Possession of a dangerous weapon or firearm on or about school**
10 **premises -- Penalty -- Exceptions.**

11 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
12 Chapter 5, Part 7, Concealed Weapon Act, may not possess any dangerous weapon, including a
13 firearm, [or sawed-off shotgun,] as those terms are defined in Section 76-10-501, at a place that
14 the person knows, or has reasonable cause to believe, is on or about school premises.

15 (2) (a) Possession of a dangerous weapon other than a firearm on or about school premises
16 is a class B misdemeanor.

17 (b) Possession of a firearm [or sawed-off shotgun] on or about school premises is a class
18 A misdemeanor.

19 (3) This section [applies] does not apply to any person~~[, except persons]~~ authorized to
20 possess a firearm [as provided under Sections 53-5-704, 53-5-705, 53A-3-502, 76-10-511,
21 76-10-523, Subsection 76-10-504(2), and as otherwise authorized by law.] by Section 76-10-503
22 and:

23 (a) who is in a residence as authorized by Section 76-10-511;

24 (b) if possession of the item or material whose presence on the school premises is
25 transitory and for a legal purpose, including a commercial driver's delivery of materials to a school
26 building or who remains with his vehicle and whose presence on the school premises is for the sole
27 purpose of transporting a student to or from the school;

28 (c) who has permission from the responsible school administrator or governing body of
29 the institution;

30 (d) when the item or material is present or to be used in connection with a lawful activity
31 approved by the responsible school administrator or governing body of the institution and is in the

1 possession or under the control of the person responsible for its possession or use; or

2 (e) when the item or material is in the possession of or under the control of a peace officer
3 as defined in Section 77-1a-1.

4 (4) This section does not prohibit prosecution of a more serious weapons offense that may
5 occur on or about school premises.

6 Section 12. Section **76-10-530** is enacted to read:

7 **76-10-530. Restricting dangerous weapons in a church building or on church**
8 **property -- Defense -- Penalty.**

9 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
10 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally:

11 (a) transport a dangerous weapon into a church building or onto church property; or

12 (b) enter or remain in a church building or on church property while in possession of a
13 dangerous weapon.

14 (2) It is a defense to prosecution under this section that the person had permission of the
15 church or organization operating the church to possess the dangerous weapon in or to transport it
16 into the church building or onto church property.

17 (3) A violation of this section is:

18 (a) an infraction for the first offense; or

19 (b) a class C misdemeanor:

20 (i) for each subsequent offense; or

21 (ii) if notice that dangerous weapons are prohibited has been given by:

22 (A) personal communication to the actor by the church or organization operating the
23 church or a person with apparent authority to act on behalf of the church or organization operating
24 the church; or

25 (B) posting of signs reasonably likely to come to the attention of persons entering the
26 church building or church property.

27 Section 13. Section **76-10-531** is enacted to read:

28 **76-10-531. Restricting dangerous weapons in private residences -- Defense -- Penalty.**

29 (1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,
30 Chapter 5, Part 7, Concealed Weapon Act, may not knowingly or intentionally:

31 (a) transport a dangerous weapon into a private residence; or

- 1 (b) enter or remain in a private residence while in possession of a dangerous weapon.
- 2 (2) It is a defense to prosecution under this section that the person had prior permission
- 3 to possess the dangerous weapon in or to transport it into the private residence of:
- 4 (a) the owner, lessee, or person with lawful right of possession of the private residence;
- 5 or
- 6 (b) a person with apparent authority to act for the person in Subsection (2)(a).
- 7 (3) A violation of this section is a class C misdemeanor.
- 8 Section 14. **Effective date.**
- 9 This act takes effect on May 1, 1998.

Legislative Review Note
as of 2-23-98 2:58 PM

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel