

AMENDMENTS FOR DANGEROUS WEAPONS

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Michael G. Waddoups

AN ACT RELATING TO PUBLIC SAFETY AND THE JUDICIAL CODE; PROVIDING CROSS REFERENCES TO RESTRICTED AREAS; AUTHORIZING RULEMAKING AUTHORITY TO THE OLYMPIC LAW ENFORCEMENT COMMANDER TO DESIGNATE SECURE AREAS AT OLYMPIC VENUES, PROVIDE NOTICE OF WEAPONS AND EXPLOSIVE RESTRICTIONS; RESTRICTING WEAPONS, INCLUDING CONCEALED WEAPONS, AND EXPLOSIVES IN SECURE AREAS AT OLYMPIC VENUES; ENACTING PROVISIONS REGARDING LIABILITY FOR CERTAIN INJURIES IN OLYMPIC VENUES; PRESCRIBING PENALTIES; PROVIDING A REPEALER FOR THE OLYMPIC PROVISIONS; AMENDING WHEN THE LAW ENFORCEMENT AND TECHNICAL SERVICES DIVISION MAY TAKE ACTION REGARDING A CONCEALED FIREARM PERMIT; AMENDING UNIFORM LAW PROVISIONS RELATING TO WEAPONS; PROVIDING DEFINITIONS; RESTRICTING FIREARMS IN HOUSES OF WORSHIP AND IN PRIVATE RESIDENCES IN CERTAIN CIRCUMSTANCES; PRESCRIBING PENALTIES; MAKING TECHNICAL CORRECTIONS; AND PROVIDING A COORDINATION CLAUSE.

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

AMENDS:

53-5-704, as last amended by Chapters 13, 187 and 404, Laws of Utah 1998

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

76-10-501, as last amended by Chapter 263, Laws of Utah 1998

ENACTS:

53-12-301.1, Utah Code Annotated 1953

63-55b-153, Utah Code Annotated 1953

63-55b-176, Utah Code Annotated 1953

76-10-530, Utah Code Annotated 1953

76-10-531, Utah Code Annotated 1953

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

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

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

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

- (a) for two years; or
- (b) for five years for permits issued or renewed on or after May 1, 1998.
- (2) An applicant satisfactorily demonstrates good character if he:
 - (a) has not been convicted of a felony;
 - (b) has not been convicted of any crime of violence;
 - (c) has not been convicted of any offenses involving the use of alcohol;
 - (d) has not been convicted of any offense involving the unlawful use of narcotics or other controlled substances;
 - (e) has not been convicted of any offenses involving moral turpitude;
 - (f) has not been convicted of any offense involving domestic violence;
 - (g) has not been adjudicated by a court of a state or of the United States as mentally incompetent, unless the adjudication has been withdrawn or reversed;
 - (h) is qualified to purchase and possess a dangerous weapon and a handgun pursuant to Section 76-10-503 and federal law.
- (3) (a) The division may deny, suspend, or revoke a concealed firearm permit if the licensing authority has reasonable cause to believe that the applicant has been or is a danger to self or others as demonstrated by evidence including, but not limited to:
 - (i) past pattern of behavior involving unlawful violence or threats of unlawful violence;
 - (ii) past participation in incidents involving unlawful violence or threats of unlawful violence; or

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

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

~~[(b)]~~ (c) In determining whether the applicant has been or is a danger to self or others, the division may inspect:

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

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

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

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

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

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

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

(a) letters of character reference;

(b) two recent dated photographs;

(c) two sets of fingerprints;

(d) a five-year employment history;

(e) a five-year residential history; and

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

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

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

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

(b) Evidence of general familiarity with the types of firearms to be concealed may be satisfied by one of the following:

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

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

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

(8) In issuing a permit under this part, the licensing authority is not vicariously liable for damages caused by the permit holder.

(9) If any person knowingly and willfully provides false information on an application filed under this part, he is guilty of a class B misdemeanor, and his application may be denied, or his permit may be suspended or revoked.

(10) (a) In the event of a denial, suspension, or revocation by the agency, the applicant may file a petition for review with the board within 60 days from the date the denial, suspension, or revocation is received by the applicant by certified mail, return receipt requested.

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

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

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

(e) Upon a ruling by the board on the appeal of a denial, the division shall issue a final order within 30 days stating the board's decision. The final order shall be in the form prescribed by

Subsection 63-46b-5(1)(i). The final order is final agency action for purposes of judicial review under Section 63-46b-15.

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

Section 2. Section **53-5-710** is amended to read:

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

A person with a permit to carry a concealed firearm may not carry a concealed firearm in the following locations:

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

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

(3) in any house of worship or in any private residence where dangerous weapons are prohibited as provided in Section 76-10-530; or

(4) at an Olympic venue secure area in violation of Section 76-10-531.

Section 3. Section **53-12-301.1** is enacted to read:

53-12-301.1. Olympic venue secure areas -- Restrictions -- Rulemaking authority ----
Notice -- Responsibilities -- Liability.

(1) For purposes of this section and Section 76-10-531, "Olympic venues" means a specific location:

(a) that is secured by a perimeter and public access is controlled; and

(b) where spectators view Olympic events; or

(c) designated for media or official athlete housing not open to the general public.

(2) In accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act, the Olympic law enforcement commander designated in Section 53-12-301 shall make rules:

(a) designating the locations of secure areas within Olympic venues where a firearm, ammunition, dangerous weapon, or explosive, chemical, or incendiary device is prohibited between January 25, 2002, and April 1, 2002;

(b) providing notice that a reasonable person would understand regarding:

(i) the locations of the Olympic venue secure areas where the items in Subsection (1)(a) are prohibited;

(ii) the locations of public access entrances and exits to the Olympic venue secure areas; and

(iii) the locations of secure weapons storage areas;

(iv) the penalty for violating Section 76-10-531, restriction of dangerous weapons in Olympic venue secure areas; and

(c) designating persons authorized to carry weapons into Olympic venues, including those persons exempted by Subsection 76-10-523(1).

(3) The notice in Subsection (1)(b) shall include:

(a) written notice provided to a person at the time the person receives tickets to events at Olympic venue secure areas; and

(b) at least one notice prominently displayed at each entrance to every Olympic venue secure area in which a dangerous weapon or explosive is prohibited.

(4) The Olympic law enforcement commander:

(a) shall use reasonable means, which may include mechanical, electronic, x-ray, or any other device to detect dangerous weapons or explosives concealed in or upon the person of any individual attempting to enter an Olympic venue secure area;

(b) may provide secure weapons storage areas so that persons may store their weapons prior to entering an Olympic venue secure area; and

(c) shall provide instructions to personnel operating an Olympic venue secure area that, upon discovery of a firearm possessed by a person licensed to carry a concealed firearm, the personnel may:

(i) require the person to deliver the firearm to a secure weapons storage area permitted by Subsection (3)(b); or

(ii) require the person to exit the Olympic venue secure area.

(5) A cause of action may be maintained against the state for any injury where an individual can establish by clear and convincing evidence that:

(a) if a person licensed to carry a concealed firearm had been able to access the concealed

firearm the injury would not have occurred to that individual or others; and

(b) the individual suffered damages as a consequence.

(6) Nothing in Subsection (5) modifies or amends Title 63, Chapter 30, Governmental Immunity Act.

Section 4. Section **63-55b-153** is enacted to read:

63-55b-153. Repeal date -- Title 53.

(1) Subsection 53-5-710(4) pertaining to restrictions at Olympic venue secure areas is repealed April 1, 2002.

(2) Section 53-12-301.1 is repealed April 1, 2002.

Section 5. Section **63-55b-176** is enacted to read:

63-55b-176. Repeal date -- Title 76.

Section 76-10-531 is repealed April 1, 2002.

Section 6. Section **76-10-501** is amended to read:

76-10-501. Definitions.

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

(i) prohibited from owning, possessing, purchasing, selling, transferring, transporting, or keeping any firearm at his place of residence, property, business, or in any vehicle lawfully in his possession or lawfully under his control; or

(ii) required to have a permit or license to purchase, own, possess, transport, or keep a firearm.

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

(2) As used in this part:

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

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

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

(c) "Criminal history background check" means a criminal background check conducted by a licensed firearms dealer on every purchaser of a handgun through the division or the local law enforcement agency where the firearms dealer conducts business.

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

(i) the character of the instrument, object, or thing;

(ii) the character of the wound produced, if any;

(iii) the manner in which the instrument, object, or thing was used; and

(iv) the other lawful purposes for which the instrument, object, or thing may be used.

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

(f) "Division" means the Criminal Investigations and Technical Services Division of the Department of Public Safety, created in Section 53-10-103.

(g) "Enter" means intrusion of the entire body.

~~[(g)]~~ (h) "Firearm" means a pistol, revolver, shotgun, sawed-off shotgun, rifle or sawed-off

rifle, or any device that could be used as a dangerous weapon from which is expelled a projectile by action of an explosive.

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

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

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

(l) "House of worship" means a church, temple, synagogue, mosque, or other building set apart primarily for the purpose of worship in which religious services are held and the main body of which is kept for that use and not put to any other use inconsistent with its primary purpose.

~~(k)~~ (m) "Prohibited area" means any place where it is unlawful to discharge a firearm.

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

(o) "Residence" means an improvement to real property used or occupied as a primary or secondary residence.

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

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

(r) "State entity" means each department, commission, board, council, agency, institution, officer, corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau,

panel, or other administrative unit of the state.

Section 7. Section **76-10-530** is enacted to read:

76-10-530. Trespass with a firearm in a house of worship or private residence -- Notice -- Penalty.

(1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53, Chapter 5, Part 7, Concealed Weapon Act, after having received notice as provided in Subsection

(2) that firearms are prohibited, may not knowingly and intentionally:

(a) transport a firearm into:

(i) a house of worship; or

(ii) a private residence; or

(b) while in possession of a firearm, enter or remain in:

(i) a house of worship; or

(ii) a private residence.

(2) Notice that firearms are prohibited may be made by:

(a) personal communication to the actor by:

(i) the church or organization operating the house of worship;

(ii) the owner, lessee, or person with lawful right of possession of the private residence; or

(iii) a person with authority to act for the person or entity in Subsections (2)(a)(i) and (ii);

or

(b) posting of signs reasonably likely to come to the attention of persons entering the house of worship or private residence.

(3) Nothing in this section permits an owner who has granted the lawful right of possession to a renter or lessee to restrict the renter or lessee from lawfully possessing a firearm in the residence.

(4) A violation of this section is an infraction.

Section 8. Section **76-10-531** is enacted to read:

76-10-531. Restricting dangerous weapons and explosives in Olympic venue secure areas -- Penalty -- Defense.

(1) A person, including a person licensed to carry a concealed firearm pursuant to Title 53,

Chapter 5, Part 7, Concealed Weapon Act, may not knowingly and intentionally transport into an Olympic venue secure area, designated by rule pursuant to Section 53-12-301.1:

(a) a firearm, ammunition, or dangerous weapon; or

(b) an explosive, chemical, or incendiary device, as those terms are defined in Section 76-10-306.

(2) A violation of this section is:

(a) a class B misdemeanor if the violation is with a firearm, ammunition, or dangerous weapon; or

(b) a first degree felony if the violation is with an explosive, chemical, or incendiary device.

(3) It is a defense to any prosecution under this section that the accused, in committing the act made criminal by this section, acted in conformity with the rules authorized by Section 53-12-301.1.

Section 9. Coordination clause.

If this bill and S.B. 91, Weapons - Technical Amendments, both pass, it is the intent of the Legislature that:

(1) the amendments in Subsection 76-10-501(1) of this bill merge into the enacted Section 76-10-500 of S.B. 91; and

(2) the definitions in Subsection 76-10-501(2) of this bill be merged into Section 76-10-501 of S.B. 91.