

**DIVISION OF CRIMINAL INVESTIGATION
AND TECHNICAL SERVICES AMENDMENTS**

2005 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: Patrice M. Arent

LONG TITLE

General Description:

This bill modifies provisions related to the issuance of a concealed firearm permit by the Division of Criminal Investigations and Technical Services or its designated agent.

Highlighted Provisions:

This bill:

- ▶ provides that a concealed firearm permit shall be issued by the Division of Criminal Investigations and Technical Services or its designated agent within 60 days after receiving an application, unless during that period a determination is made that the applicant is not of good character; and
- ▶ makes conforming changes regarding the issuance of a temporary concealed firearm permit.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-5-702, as last amended by Chapter 280, Laws of Utah 1997

53-5-704, as last amended by Chapter 361, Laws of Utah 2004

53-5-705, as last amended by Chapter 280, Laws of Utah 1997

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

Section 1. Section **53-5-702** is amended to read:

53-5-702. Definitions.

(1) As used in this part:

(a) "Board" means the Concealed Weapon Review Board created in Section 53-5-703[;].

(b) "Commissioner" means the commissioner of the Department of Public Safety[; and].

(c) "Conviction" means criminal conduct where the filing of a criminal charge has resulted in:

(i) a finding of guilt based on evidence presented to a judge or jury;

(ii) a guilty plea;

(iii) a plea of nolo contendere;

(iv) a plea of guilty or nolo contendere which is held in abeyance pending the successful completion of probation;

(v) a pending diversion agreement; or

(vi) a conviction which has been reduced pursuant to Section 76-3-402.

(d) "Division" means the Criminal Investigations and Technical Services Division created in Section 53-10-103.

(2) The definitions in Section 76-10-501 apply to this part.

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

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

(1) (a) 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~~], unless during the 60-day period the division finds proof that the applicant is not of good character.

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

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

(a) has not been convicted of a felony;

(b) has not been convicted of a crime of violence;

(c) has not been convicted of an offense involving the use of alcohol;

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

(e) has not been convicted of an offense involving moral turpitude;

(f) has not been convicted of an 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; and

(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 an 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.

(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.

(d) (i) If a person granted a permit under this part has been charged with a crime of violence in any 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) Except as provided in Subsection (7), the licensing authority shall also require the applicant to provide:

(a) address of applicant's permanent residence;

(b) one recent dated photograph;

(c) one set of fingerprints; and

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

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

(8) (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 force by a private citizen including 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 certified 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.

(c) Any instruction taken by a student under Subsection (8)(b) shall be in person and not through electronic means.

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

(a) be at least 21 years of age; and

(b) be currently eligible to possess a firearm under Section 76-10-503 and federal law.

(10) Each certified concealed firearms instructor shall provide each of the instructor's students with the required course of instruction outline approved by the division.

(11) All concealed firearms instructors are required to provide a signed certificate to persons completing the course of instruction, which certificate shall be provided by the applicant to the division.

(12) The division may deny, suspend, or revoke the certification of a concealed firearms instructor if the licensing authority has reason to believe the applicant has:

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

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

(13) A concealed firearms instructor has the same appeal rights as set forth in Subsection (16).

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

(15) 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.

(16) (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) (i) 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.

(ii) The final order shall be in the form prescribed by Subsection 63-46b-5(1)(i).

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

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

Section 3. Section **53-5-705** is amended to read:

53-5-705. Temporary permit to carry concealed firearm -- Denial, suspension, or revocation -- Appeal.

(1) The division or its designated agent may issue a temporary permit to carry a concealed firearm to a person who:

- (a) has applied for a permit under Section 53-5-704;
- (b) has applied for a temporary permit under this section; and
- (c) meets the criteria required in Subsections (2) and (3).

(2) To receive a temporary permit under this section, the applicant shall ~~[(a) demonstrate good character by the same requirements as in Section 53-5-704; and (b)]~~ demonstrate in writing to the satisfaction of the licensing authority extenuating circumstances that would justify issuing a temporary permit.

(3) A temporary permit may not be issued under this section until preliminary record checks regarding the applicant have been made with the National Crime Information Center and

the division to determine any criminal history.

(4) A temporary permit is valid only for a maximum of 90 days or any lesser period specified by the division, or until a permit under Section 53-5-704 is issued to the holder of the temporary permit, whichever period is shorter.

(5) The licensing authority may deny, suspend, or revoke a temporary permit prior to expiration if the commissioner determines:

(a) the circumstances justifying the temporary permit no longer exist; or

~~[(b) the holder of the permit has knowingly and willfully provided false information regarding his character; or]~~

~~[(c)]~~ (b) the holder of the temporary permit does not meet the requirements for a permit under Section 53-5-704.

(6) (a) The denial, suspension, or revocation of a temporary permit shall be in writing and shall include the reasons for the action.

(b) The licensing authority's decision to deny, suspend, or revoke a temporary permit may not be appealed to the board.

(c) Denial, suspension, or revocation under this subsection is final action for purposes of judicial review under Section 63-46b-15.