

**Senator Mark B. Madsen** proposes the following substitute bill:

**RIGHTS OF CITIZENS TO CARRY  
FIREARMS IN DECLARED EMERGENCY**

2008 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Mark B. Madsen**

House Sponsor: Carl Wimmer

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**LONG TITLE**

**General Description:**

This bill enacts provisions related to the lawful possession, transfer, sale, transport, storage, display, or use of firearms during a declared state of emergency or local emergency.

**Highlighted Provisions:**

This bill:

▶ provides that during a declared state of emergency or local emergency neither the governor nor an agency of a governmental entity or political subdivision may impose restrictions on the lawful possession, transfer, sale, transport, storage, display, or use of a firearm or ammunition;

▶ provides that during a declared state of emergency an individual, while acting or purporting to act on behalf of the state or a political subdivision, may not confiscate a privately owned firearm of another individual;

▶ provides exceptions to the confiscation prohibition; and

▶ provides a civil remedy for violation of the confiscation prohibition.

**Monies Appropriated in this Bill:**

None



26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

30 **63-5a-12**, Utah Code Annotated 1953



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

33 Section 1. Section **63-5a-12** is enacted to read:

34 **63-5a-12. Prohibition of restrictions on and confiscation of a firearm or**  
35 **ammunition during an emergency.**

36 (1) As used in this section:

37 (a) (i) "Confiscate" means for an individual in Utah to intentionally deprive another of  
38 a privately owned firearm.

39 (ii) "Confiscate" does not include the taking of a firearm from an individual:

40 (A) in self-defense;

41 (B) possessing a firearm while the individual is committing a felony or misdemeanor;

42 or

43 (C) who may not, under state or federal law, possess the firearm.

44 (b) "Firearm" has the same meaning as defined in Subsection 76-10-501(9).

45 (2) During a declared state of emergency or local emergency under this chapter:

46 (a) neither the governor nor an agency of a governmental entity or political subdivision  
47 of the state may impose restrictions, which were not in force prior to the declared state of  
48 emergency, on the lawful possession, transfer, sale, transport, storage, display, or use of a  
49 firearm or ammunition; and

50 (b) an individual, while acting or purporting to act on behalf of the state or a political  
51 subdivision of the state, may not confiscate a privately owned firearm of another individual.

52 (3) A law or regulation passed during a declared state of emergency that does not relate  
53 specifically to the lawful possession or use of a firearm and that has attached criminal penalties  
54 may not be used to justify the confiscation of a firearm from an individual acting in defense of  
55 self, property, or others when on:

56 (a) the individual's private property; or

57 (b) the private property of another as an invitee.

58 (4) (a) An individual who has a firearm confiscated in violation of Subsection (2) may  
59 bring a civil action in a court having the appropriate jurisdiction:

60 (i) for damages, in the maximum amount of \$10,000, against a person who violates  
61 Subsection (2);

62 (ii) for a civil penalty, in the amount of \$5,000 per violation, against a person who  
63 violates Subsection (2); and

64 (iii) for return of the confiscated firearm.

65 ~~§→ [(b) The court shall award court costs and reasonable attorney fees to a prevailing~~  
66 ~~plaintiff in an action brought under Subsection (4)(a):~~

67 ~~—— (c)] (b) ←§~~ As used in this Subsection (4), "person" means an individual, the governmental  
68 entity on whose behalf the individual is acting or purporting to act, or both the individual and  
69 the governmental entity.

69a ~~§→ (5)(a) A law enforcement officer shall not be subject to disciplinary action for refusing to~~  
69b ~~confiscate a firearm under this section if:~~

69c ~~(i) ordered or directed to do so by a superior officer; and~~

69d ~~(ii) by obeying the order or direction, the law enforcement officer would be committing a~~  
69e ~~violation of this section.~~

69f ~~(b) For purposes of this Subsection (5), disciplinary action might include:~~

69g ~~(i) dismissal, suspension, or demotion;~~

69h ~~(ii) loss of or decrease in benefits, pay, privileges or conditions of employment; and~~

69i ~~(iii) any type of written or electronic indication, permanent or temporary, on the officer's~~  
69j ~~personnel record of the officer's refusal to obey the unlawful order.~~

69k ~~(6)(a) If a law enforcement officer commits a violation of this section, the officer's liability in~~  
69l ~~an action brought under Subsection (4)(a) is limited to five percent of the damages and civil~~  
69m ~~penalty allowed under Subsection (4)(a) if the officer can show by clear and convincing~~  
69n ~~evidence that the officer was obeying a direct and unlawful order from a superior officer or~~  
69o ~~authority.~~

69p ~~(b) The balance of the damages and civil penalty, the remaining 95 percent, shall be assessed~~  
69q ~~against the superior officer or authority who ordered or directed the confiscation in violation~~  
69r ~~of this section. ←§~~

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**Fiscal Note**

**S.B. 157 1st Sub. (Green) - Rights of Citizens to Carry Firearms in Declared  
Emergency**

2008 General Session

State of Utah

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**State Impact**

Enactment of this bill will not require additional appropriations.

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**Individual, Business and/or Local Impact**

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.

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