

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

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Mark B. Madsen**

6 House Sponsor: Carl Wimmer

8 **LONG TITLE**

9 **General Description:**

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

13 **Highlighted Provisions:**

14 This bill:

- 15 ▶ provides that during a declared state of emergency or local emergency neither the
16 governor nor an agency of a governmental entity or political subdivision may impose
17 restrictions on the lawful possession, transfer, sale, transport, storage, display, or use
18 of a firearm or ammunition;
- 19 ▶ provides that during a declared state of emergency an individual, while acting or
20 purporting to act on behalf of the state or a political subdivision, may not confiscate
21 a privately owned firearm of another individual;
- 22 ▶ provides exceptions to the confiscation prohibition; and
- 23 ▶ provides a civil remedy for violation of the confiscation prohibition.

24 **Monies Appropriated in this Bill:**

25 None

26 **Other Special Clauses:**

27 None

28 **Utah Code Sections Affected:**

29 ENACTS:

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



31
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 a
38 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; or

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

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

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

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

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

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

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

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

57 (4) (a) An individual who has a firearm confiscated in violation of Subsection (2) may

58 bring a civil action in a court having the appropriate jurisdiction:

59 (i) for damages, in the maximum amount of \$10,000, against a person who violates

60 Subsection (2);

61 (ii) for a civil penalty, in the amount of \$5,000 per violation, against a person who

62 violates Subsection (2); and

63 (iii) for return of the confiscated firearm.

64 (b) As used in this Subsection (4), "person" means an individual, the governmental

65 entity on whose behalf the individual is acting or purporting to act, or both the individual and

66 the governmental entity.

67 (5) (a) A law enforcement officer shall not be subject to disciplinary action for refusing

68 to confiscate a firearm under this section if:

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

70 (ii) by obeying the order or direction, the law enforcement officer would be committing

71 a violation of this section.

72 (b) For purposes of this Subsection (5), disciplinary action might include:

73 (i) dismissal, suspension, or demotion;

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

75 (iii) any type of written or electronic indication, permanent or temporary, on the

76 officer's personnel record of the officer's refusal to obey the unlawful order.

77 (6) (a) If a law enforcement officer commits a violation of this section, the officer's

78 liability in an action brought under Subsection (4)(a) is limited to 5% of the damages and civil

79 penalty allowed under Subsection (4)(a) if the officer can show by clear and convincing

80 evidence that the officer was obeying a direct and unlawful order from a superior officer or

81 authority.

82 (b) The balance of the damages and civil penalty, the remaining 95%, shall be assessed

83 against the superior officer or authority who ordered or directed the confiscation in violation of

84 this section.