

Representative Curtis Oda proposes the following substitute bill:

CONCEALED FIREARMS INSTRUCTORS

AMENDMENTS

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Curtis Oda

Senate Sponsor: David P. Hinkins

LONG TITLE

General Description:

This bill modifies provisions related to actions brought against concealed firearms instructors.

Highlighted Provisions:

This bill:

- ▶ provides for a hearing process to deal with written complaints filed against concealed firearms instructors;
- ▶ provides for notice and provides a burden of proof standard;
- ▶ provides for penalties against an instructor who commits a violation of certain provisions of the Concealed Weapon Act;
- ▶ provides a penalty against a complainant who intentionally or maliciously files a false complaint against a concealed firearms instructor; and
- ▶ makes certain technical changes.

Monies Appropriated in this Bill:

None

Other Special Clauses:

None



26 **Utah Code Sections Affected:**

27 AMENDS:

28 **53-5-704**, as last amended by Laws of Utah 2008, Chapters 3 and 382

29

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

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

32 **53-5-704. Division duties -- Permit to carry concealed firearm -- Certification for**
33 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
34 **suspension, or revocation -- Appeal procedure.**

35 (1) (a) The division or its designated agent shall issue a permit to carry a concealed
36 firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days
37 after receiving an application, unless during the 60-day period the division finds proof that the
38 applicant is not of good character.

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

41 (2) (a) An applicant satisfactorily demonstrates good character if the applicant:

- 42 (i) has not been convicted of a felony;
- 43 (ii) has not been convicted of a crime of violence;
- 44 (iii) has not been convicted of an offense involving the use of alcohol;
- 45 (iv) has not been convicted of an offense involving the unlawful use of narcotics or
46 other controlled substances;
- 47 (v) has not been convicted of an offense involving moral turpitude;
- 48 (vi) has not been convicted of an offense involving domestic violence;
- 49 (vii) has not been adjudicated by a state or federal court as mentally incompetent,
50 unless the adjudication has been withdrawn or reversed; and
- 51 (viii) is qualified to purchase and possess a firearm pursuant to Section 76-10-503 and
52 federal law.

53 (b) In assessing good character under Subsection (2)(a), the licensing authority shall
54 consider mitigating circumstances.

55 (3) (a) The division may deny, suspend, or revoke a concealed firearm permit if it has
56 reasonable cause to believe that the applicant has been or is a danger to self or others as

57 demonstrated by evidence, including:

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

59 (ii) past participation in incidents involving unlawful violence or threats of unlawful
60 violence; or

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

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

64 (c) In determining whether the applicant has been or is a danger to self or others, the
65 division may inspect:

66 (i) expunged records of arrests and convictions of adults as provided in Section
67 77-18-15; and

68 (ii) juvenile court records as provided in Section 78A-6-209.

69 (d) (i) If a person granted a permit under this part has been charged with a crime of
70 violence in any state, the division shall suspend the permit.

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

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

76 (5) Except as provided in Subsection (6), the licensing authority shall also require the
77 applicant to provide:

78 (a) the address of the applicant's permanent residence;

79 (b) one recent dated photograph;

80 (c) one set of fingerprints; and

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

83 (6) An applicant who is a law enforcement officer under Section 53-13-103 may
84 provide a letter of good standing from the officer's commanding officer in place of the evidence
85 required by Subsection (5)(d).

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

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

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

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

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

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

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

102 (c) Instruction taken by a student under Subsection (7)(b) shall be in person and not
103 through electronic means.

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

105 (i) be at least 21 years of age;

106 (ii) be currently eligible to possess a firearm under Section 76-10-503 and federal law;

107 (iii) have a current National Rifle Association certification or its equivalent as
108 determined by the division; and

109 (iv) for certificates issued beginning July 1, 2006, have taken a course of instruction
110 and passed a certification test as described in Subsection (8)(c).

111 (b) An instructor's certification is valid for three years from the date of issuance, unless
112 revoked by the division.

113 (c) (i) In order to obtain initial certification or renew a certification, an instructor shall
114 attend an instructional course and pass a test under the direction of the division.

115 (ii) (A) [~~Beginning May 1, 2006, the~~] The division shall provide or contract to provide
116 the course referred to in Subsection (8)(c)(i) twice every year.

117 (B) The course shall include instruction on current Utah law related to firearms,
118 including concealed carry statutes and rules, and the use of deadly force by private citizens.

119 (d) (i) Each applicant for certification under this Subsection (8) shall pay a fee of
120 \$50.00 at the time of application for initial certification.

121 (ii) The renewal fee for the certificate is \$25.

122 (iii) The ~~[fees]~~ division may use a fee paid under Subsections (8)(d)(i) and (ii) ~~[may be~~
123 ~~used by the division]~~ as a dedicated credit to cover the cost incurred in maintaining and
124 improving the instruction program required for concealed firearm instructors under this
125 Subsection (8).

126 (9) A certified concealed firearms instructor shall provide each of the instructor's
127 students with the required course of instruction outline approved by the division.

128 (10) (a) (i) A concealed firearms instructor ~~[is required to]~~ shall provide a signed
129 certificate to a person successfully completing the offered course of instruction.

130 (ii) The instructor shall sign the certificate with the exact name indicated on the
131 instructor's certification issued by the division under Subsection (8).

132 (iii) (A) The certificate shall also have affixed to it the instructor's official seal, which
133 is the exclusive property of the instructor and may not be used by any other person.

134 (B) The instructor shall destroy the seal upon revocation or expiration of the
135 instructor's certification under Subsection (8).

136 (C) The division shall determine the design and content of the seal to include at least
137 the following:

138 (I) the instructor's name as it appears on the instructor's certification;

139 (II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my
140 certification expires on (the instructor's certification expiration date)"; and

141 (III) the instructor's business or residence address.

142 (D) ~~[The]~~ An instructor shall affix the seal ~~[shall be affixed]~~ to each student certificate
143 issued by the instructor in a manner that does not obscure or render illegible any information or
144 signatures contained in the document.

145 (b) The applicant shall provide the certificate to the division in compliance with
146 Subsection (5)(d).

147 (11) ~~[The]~~ (a) Except as otherwise provided in Subsection (11)(b), the division may
148 deny, suspend, or revoke the certification of a concealed firearms instructor if it has reason to
149 believe that the applicant or certificate holder has:

150 ~~[(a)]~~ (i) become ineligible to possess a firearm under Section 76-10-503 or federal law;
151 ~~[or]~~

152 ~~[(b)]~~ (ii) knowingly and willfully provided false information to the division.

153 (b) (i) If a written complaint alleging a violation of Subsection (7), (8), (9), or (10) by a
154 concealed firearms instructor is filed with the division, upon its determination that the
155 complaint has merit, the division shall notify the instructor, in writing, that the board shall
156 conduct a hearing on the matter within 30 days from the date of receipt of the complaint by the
157 division.

158 (ii) The notice shall include the reasons for the hearing, and the instructor may have
159 access to the evidence upon which the hearing is based in accordance with Title 63G, Chapter
160 2, Government Records Access and Management Act.

161 (iii) The division has the burden of proof of a violation by the instructor by a
162 preponderance of the evidence.

163 (iv) (A) If the board finds that the instructor has violated Subsection (7), (8), (9), or
164 (10), then the division shall revoke the instructor's certificate for a period of up to seven years.

165 (B) If the instructor is licensed to carry a concealed firearm under this section, the
166 division shall also revoke that permit for a period of up to seven years.

167 (C) The division shall issue the board's ruling within 30 days of its decision, and the
168 ruling is final agency action for purposes of judicial review under Subsection 63G-4-402.

169 (v) The division shall permanently revoke an instructor's certificate and permit to carry
170 a concealed firearm for any subsequent violation of Subsection (7), (8), (9), or (10) by the
171 instructor as determined by the board.

172 (vi) If the board finds that the complainant intentionally or maliciously falsely accused
173 the instructor of a violation under this Subsection (11)(b), the division shall revoke the
174 complainant's concealed weapon permit or instructor's certificate or both permit and certificate,
175 if the complainant has been issued one by the division.

176 (12) A concealed firearms instructor has the same appeal rights as set forth in
177 Subsection (15).

178 (13) In providing instruction and issuing a permit under this part, the concealed
179 firearms instructor and the licensing authority are not vicariously liable for damages caused by
180 the permit holder.

181 (14) An individual who knowingly and willfully provides false information on an
182 application filed under this part is guilty of a class B misdemeanor, and the division may deny
183 the application [~~may be denied;~~] or suspend or revoke the permit [~~may be suspended or~~
184 ~~revoked~~].

185 (15) (a) In the event of a denial, suspension, or revocation of a permit or certificate, the
186 applicant, permit holder, or certificate holder may file a petition for review with the board
187 within 60 days from the date the denial, suspension, or revocation is received by the [~~applicant~~]
188 individual by certified mail, return receipt requested.

189 (b) The denial, suspension, or revocation of a permit or certificate shall be in writing
190 and shall include the general reasons for the action.

191 (c) If an applicant, permit holder, or certificate holder appeals the denial, suspension,
192 or revocation to the review board, the applicant, permit holder, or certificate holder may have
193 access to the evidence upon which the [~~denial~~] action is based in accordance with Title 63G,
194 Chapter 2, Government Records Access and Management Act.

195 (d) On appeal to the board, the agency has the burden of proof by a preponderance of
196 the evidence.

197 (e) (i) Upon a ruling by the board on the appeal of a denial, the division shall issue a
198 final order within 30 days stating the board's decision.

199 (ii) The division shall issue the final order [~~shall be~~] in the form prescribed by
200 Subsection 63G-4-203(1)(i).

201 (iii) The final order is final agency action for purposes of judicial review under Section
202 63G-4-402.

203 (16) The commissioner may make rules in accordance with Title 63G, Chapter 3, Utah
204 Administrative Rulemaking Act, necessary to administer this chapter.

H.B. 204 1st Sub. (Buff) - Concealed Firearms Instructors Amendments

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

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.
