

Senator Mark B. Madsen proposes the following substitute bill:

**PROTECTION OF CONSTITUTIONALLY
GUARANTEED ACTIVITIES IN CERTAIN
PRIVATE VENUES**

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Mark B. Madsen

House Sponsor: Curtis Oda

8	Cosponsors:	Scott K. Jenkins	Howard A. Stephenson
9	Curtis S. Bramble	Sheldon L. Killpack	Dennis E. Stowell
10	D. Chris Buttars	Peter C. Knudson	Stephen H. Urquhart
11	Allen M. Christensen	Daniel R. Liljenquist	John L. Valentine
12	Margaret Dayton	Wayne L. Niederhauser	Kevin T. Van Tassell
13	Jon J. Greiner	Ralph Okerlund	Michael G. Waddoups
14	David P. Hinkins		

LONG TITLE

General Description:

This bill modifies Title 34, Labor in General, by enacting Title 34, Chapter 45, Protection of Activities in Private Vehicles.

Highlighted Provisions:

- This bill:
- provides definitions;
 - prohibits certain persons from creating or enforcing a policy that prohibits the storage of firearms in a motor vehicle parked on property owned, leased, or otherwise controlled by the person if:
 - the individual storing the firearm is legally entitled to possess and transport the



- 27 firearm;
- 28 • the vehicle is locked, or the firearm is in a locked container; and
- 29 • the firearm is not in plain view;
- 30 ▶ provides exceptions for persons with secured lots under certain circumstances;
- 31 ▶ prohibits certain persons from creating or enforcing a policy that prohibits the
- 32 display or possession of items in or on a vehicle parked on property owned, leased,
- 33 or otherwise controlled by the person if the policy results in a substantial burden on
- 34 the free exercise of religion;
- 35 ▶ provides protections from civil liability in relation to occurrences that result from,
- 36 are connected with, or are incidental to the use of a firearm that is properly stored or
- 37 transported in a motor vehicle in association with this chapter;
- 38 ▶ permits an individual to bring a civil action to enforce the requirements of this
- 39 chapter;
- 40 ▶ permits a court to grant injunctive relief, declaratory relief, damages, costs, and
- 41 attorney fees in association with a suit brought to enforce the requirements of this
- 42 chapter;
- 43 ▶ provides that the chapter does not apply to the following:
- 44 • school premises;
- 45 • state and local government entities; and
- 46 • religious organizations;
- 47 ▶ permits the attorney general to bring an action to enforce the chapter and to request
- 48 damages on behalf of any individual that has suffered loss due to a violation of this
- 49 chapter;
- 50 ▶ makes certain documents filed with the attorney general private records; and
- 51 ▶ makes technical changes.

52 **Monies Appropriated in this Bill:**

53 None

54 **Other Special Clauses:**

55 None

56 **Utah Code Sections Affected:**

57 AMENDS:

58 **63G-2-302**, as last amended by Laws of Utah 2008, Chapter 91 and renumbered and
59 amended by Laws of Utah 2008, Chapter 382

60 ENACTS:

61 **34-45-101**, Utah Code Annotated 1953

62 **34-45-102**, Utah Code Annotated 1953

63 **34-45-103**, Utah Code Annotated 1953

64 **34-45-104**, Utah Code Annotated 1953

65 **34-45-105**, Utah Code Annotated 1953

66 **34-45-106**, Utah Code Annotated 1953

67 **34-45-107**, Utah Code Annotated 1953



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

70 Section 1. Section **34-45-101** is enacted to read:

71 **CHAPTER 45. PROTECTION OF ACTIVITIES IN PRIVATE VEHICLES**

72 **34-45-101. Title.**

73 This chapter is known as "Protection of Activities in Private Vehicles."

74 Section 2. Section **34-45-102** is enacted to read:

75 **34-45-102. Definitions.**

76 As used in this chapter:

77 (1) "Firearm" has the same meaning as provided in Section 76-10-501.

78 (2) "Motor vehicle" has the same meaning as provided in Section 41-1a-102.

79 (3) "Person" means an individual, property owner, landlord, tenant, employer, business
80 entity, or other legal entity.

81 Section 3. Section **34-45-103** is enacted to read:

82 **34-45-103. Protection of certain activities -- Firearms -- Free exercise of religion.**

83 (1) Except as provided in Subsection (2), a person may not establish, maintain, or
84 enforce any policy or rule that has the effect of:

85 (a) prohibiting any individual from transporting or storing a firearm in a motor vehicle
86 on any property designated for motor vehicle parking, if:

87 (i) the individual is legally permitted to transport, possess, purchase, receive, transfer,
88 or store the firearm;

89 (ii) the firearm is locked securely in the motor vehicle or in a locked container attached
90 to the motor vehicle while the motor vehicle is not occupied; and

91 (iii) the firearm is not in plain view from the outside of the motor vehicle; or

92 (b) prohibiting any individual from possessing any item in or on a motor vehicle on any
93 property designated for motor vehicle parking, if the effect of the policy or rule constitutes a
94 substantial burden on that individual's free exercise of religion.

95 (2) A person may establish, maintain, or enforce a policy or rule that has the effect of
96 placing limitations on or prohibiting an individual from transporting or storing a firearm in a
97 motor vehicle on property the person has designated for motor vehicle parking if:

98 (a) the person provides, or there is otherwise available, one of the following, in a
99 location reasonably proximate to the property the person has designated for motor vehicle
100 parking:

101 (i) alternative parking for individuals who desire to transport, possess, receive, transfer,
102 or store a firearm in the individual's motor vehicle at no additional cost to the individual; or

103 (ii) a secured and monitored storage location where the individual may securely store a
104 firearm before proceeding with the vehicle into the secured parking area; or

105 (b) the person complies with Subsection 34-45-107(5).

106 Section 4. Section **34-45-104** is enacted to read:

107 **34-45-104. Protection from liability.**

108 A person that owns or controls a parking area that is subject to this chapter and that
109 complies with the requirements of Section 34-45-103 is not liable in any civil action for any
110 occurrence resulting from, connected with, or incidental to the use of a firearm, by any person,
111 unless the use of the firearm involves a criminal act by the person who owns or controls the
112 parking area.

113 Section 5. Section **34-45-105** is enacted to read:

114 **34-45-105. Cause of action for noncompliance -- Remedies.**

115 (1) An individual who is injured, physically or otherwise, as a result of any policy or
116 rule prohibited by Section 34-45-103, may bring a civil action in a court of competent
117 jurisdiction against any person that violates the provisions of Section 34-45-103.

118 (2) Any individual who asserts a claim under this section is entitled to request:

119 (a) declaratory relief;

120 (b) temporary or permanent injunctive relief to prevent the threatened or continued
121 violation;

122 (c) recovery for actual damages sustained; and

123 (d) punitive damages, if:

124 (i) serious bodily injury or death occurs as a result of the violation of Section
125 34-45-103; or

126 (ii) the person who violates Section 34-45-103 has previously been notified by the
127 attorney general that a policy or rule violates Section 34-45-103.

128 (3) The prevailing party in an action brought under this chapter may recover its court
129 costs and reasonable attorney fees incurred.

130 (4) Nothing in this chapter shall be construed or held to affect any rights or claims
131 made in relation to Title 34A, Chapter 2, Workers' Compensation Act.

132 Section 6. Section **34-45-106** is enacted to read:

133 **34-45-106. Enforcement by attorney general.**

134 (1) The attorney general may bring an action to enforce this chapter and may request
135 any relief that is provided for under Section 34-45-105, including a request for damages on
136 behalf of any individual suffering loss because of a violation of this chapter.

137 (2) Upon entry of final judgment for a cause of action brought under this section, the
138 court may award restitution, when appropriate, to any individual suffering loss because of a
139 violation of this chapter if proof of loss is submitted to the satisfaction of the court.

140 Section 7. Section **34-45-107** is enacted to read:

141 **34-45-107. Exemptions -- Limitations on chapter -- School premises --**

142 **Government entities -- Religious organizations -- Single family detached residential units.**

143 (1) (a) School premises, as defined in Subsection 76-3-203.2(1), are exempt from the
144 provisions of this chapter.

145 (b) Possession of a firearm on or about school premises is subject to the provisions of
146 Section 76-10-505.5.

147 (2) Government entities, including a local authority or state entity, are subject to the
148 requirements of Title 53, Chapter 5a, Firearm Laws, but are otherwise exempt from the
149 provisions of this chapter.

150 (3) Religious organizations, including religious organizations acting as an employer,

151 are exempt from, and are not subject to the provisions of this chapter.

152 (4) Owner-occupied single family detached residential units and tenant-occupied single
153 family detached residential units are exempt from the provisions of this chapter.

154 (5) A person who is subject to federal law that specifically forbids the presence of a
155 firearm from property designated for motor vehicle parking is exempt from Section 34-45-103
156 if:

157 (a) providing alternative parking or a storage location under Subsection
158 34-45-103(2)(a) would pose an undue burden on the person; and

159 (b) the person files a statement with the attorney general citing the federal law that
160 forbids the presence of a firearm and detailing the reasons why providing alternative parking or
161 a storage location poses an undue burden.

162 Section 8. Section **63G-2-302** is amended to read:

163 **63G-2-302. Private records.**

164 (1) The following records are private:

165 (a) records concerning an individual's eligibility for unemployment insurance benefits,
166 social services, welfare benefits, or the determination of benefit levels;

167 (b) records containing data on individuals describing medical history, diagnosis,
168 condition, treatment, evaluation, or similar medical data;

169 (c) records of publicly funded libraries that when examined alone or with other records
170 identify a patron;

171 (d) records received or generated for a Senate or House Ethics Committee concerning
172 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
173 meeting, if the ethics committee meeting was closed to the public;

174 (e) records received or generated for a Senate confirmation committee concerning
175 character, professional competence, or physical or mental health of an individual:

176 (i) if prior to the meeting, the chair of the committee determines release of the records:

177 (A) reasonably could be expected to interfere with the investigation undertaken by the
178 committee; or

179 (B) would create a danger of depriving a person of a right to a fair proceeding or
180 impartial hearing; and

181 (ii) after the meeting, if the meeting was closed to the public;

182 (f) employment records concerning a current or former employee of, or applicant for
183 employment with, a governmental entity that would disclose that individual's home address,
184 home telephone number, Social Security number, insurance coverage, marital status, or payroll
185 deductions;

186 (g) records or parts of records under Section 63G-2-303 that a current or former
187 employee identifies as private according to the requirements of that section;

188 (h) that part of a record indicating a person's Social Security number or federal
189 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
190 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

191 (i) that part of a voter registration record identifying a voter's driver license or
192 identification card number, Social Security number, or last four digits of the Social Security
193 number;

194 (j) a record that:

195 (i) contains information about an individual;

196 (ii) is voluntarily provided by the individual; and

197 (iii) goes into an electronic database that:

198 (A) is designated by and administered under the authority of the Chief Information
199 Officer; and

200 (B) acts as a repository of information about the individual that can be electronically
201 retrieved and used to facilitate the individual's online interaction with a state agency;

202 (k) information provided to the Commissioner of Insurance under:

203 (i) Subsection 31A-23a-115(2)(a); or

204 (ii) Subsection 31A-23a-302(3); [~~and~~]

205 (l) information obtained through a criminal background check under Title 11, Chapter
206 40, Criminal Background Checks by Political Subdivisions Operating Water Systems[-]; and

207 (m) a statement and any supporting documentation filed with the attorney general in
208 accordance with Section 34-45-107, if the federal law supporting the filing involves homeland
209 security.

210 (2) The following records are private if properly classified by a governmental entity:

211 (a) records concerning a current or former employee of, or applicant for employment
212 with a governmental entity, including performance evaluations and personal status information

213 such as race, religion, or disabilities, but not including records that are public under Subsection
214 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);

215 (b) records describing an individual's finances, except that the following are public:

216 (i) records described in Subsection 63G-2-301(2);

217 (ii) information provided to the governmental entity for the purpose of complying with
218 a financial assurance requirement; or

219 (iii) records that must be disclosed in accordance with another statute;

220 (c) records of independent state agencies if the disclosure of those records would
221 conflict with the fiduciary obligations of the agency;

222 (d) other records containing data on individuals the disclosure of which constitutes a
223 clearly unwarranted invasion of personal privacy;

224 (e) records provided by the United States or by a government entity outside the state
225 that are given with the requirement that the records be managed as private records, if the
226 providing entity states in writing that the record would not be subject to public disclosure if
227 retained by it; and

228 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
229 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
230 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.

231 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
232 records, statements, history, diagnosis, condition, treatment, and evaluation.

233 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
234 doctors, or affiliated entities are not private records or controlled records under Section
235 63G-2-304 when the records are sought:

236 (i) in connection with any legal or administrative proceeding in which the patient's
237 physical, mental, or emotional condition is an element of any claim or defense; or

238 (ii) after a patient's death, in any legal or administrative proceeding in which any party
239 relies upon the condition as an element of the claim or defense.

240 (c) Medical records are subject to production in a legal or administrative proceeding
241 according to state or federal statutes or rules of procedure and evidence as if the medical
242 records were in the possession of a nongovernmental medical care provider.

Fiscal Note

**S.B. 78 1st Sub. (Green) - Protection of Constitutionally Guaranteed
Activities in Certain Private Venues**

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.
