

Representative Curtis Oda 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

Cosponsors:

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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 exceptions;
- 44 ▶ permits the attorney general to bring an action to enforce the chapter and to request
- 45 damages on behalf of any individual that has suffered loss due to a violation of this
- 46 chapter;
- 47 ▶ makes certain documents filed with the attorney general private records; and
- 48 ▶ makes technical changes.

49 **Monies Appropriated in this Bill:**

50 None

51 **Other Special Clauses:**

52 None

53 **Utah Code Sections Affected:**

54 AMENDS:

55 **63G-2-302**, as last amended by Laws of Utah 2008, Chapter 91 and renumbered and
56 amended by Laws of Utah 2008, Chapter 382

57 ENACTS:

- 58 **34-45-101**, Utah Code Annotated 1953
- 59 **34-45-102**, Utah Code Annotated 1953
- 60 **34-45-103**, Utah Code Annotated 1953
- 61 **34-45-104**, Utah Code Annotated 1953
- 62 **34-45-105**, Utah Code Annotated 1953
- 63 **34-45-106**, Utah Code Annotated 1953
- 64 **34-45-107**, Utah Code Annotated 1953



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

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

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

69 **34-45-101. Title.**

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

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

72 **34-45-102. Definitions.**

73 As used in this chapter:

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

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

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

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

79 **34-45-103. Protection of certain activities -- Firearms -- Free exercise of religion.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

111 **34-45-105. Cause of action for noncompliance -- Remedies.**

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

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

116 (a) declaratory relief;

117 (b) temporary or permanent injunctive relief to prevent the threatened or continued
118 violation;

119 (c) recovery for actual damages sustained; and

120 (d) punitive damages, if:
121 (i) serious bodily injury or death occurs as a result of the violation of Section
122 34-45-103; or
123 (ii) the person who violates Section 34-45-103 has previously been notified by the
124 attorney general that a policy or rule violates Section 34-45-103.
125 (3) The prevailing party in an action brought under this chapter may recover its court
126 costs and reasonable attorney fees incurred.

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

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

130 **34-45-106. Enforcement by attorney general.**

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

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

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

138 **34-45-107. Exemptions -- Limitations on chapter -- School premises --**

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

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

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

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

147 (3) Religious organizations, including religious organizations acting as an employer,
148 are exempt from, and are not subject to the provisions of this chapter.

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

151 (5) A person who is subject to federal law that specifically forbids the presence of a
152 firearm from property designated for motor vehicle parking, or a person who is subject to
153 Section 550 of the United States Department of Homeland Security Appropriations Act of
154 2007, Pub. L. No. 109-295 or regulations enacted in accordance with that section, is exempt
155 from Section 34-45-103 if:

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

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

161 (6) A person who is subject to Section 550 of the United States Department of
162 Homeland Security Appropriations Act of 2007, Pub. L. No. 109-295 or regulations enacted
163 in accordance with that section is exempt from this chapter if:

164 (a) the person has attempted to provide alternative parking or a storage location in
165 accordance with Subsection 34-45-103(2)(a);

166 (b) the secretary of the federal Department of Homeland Security notifies the person
167 that the provision of alternative parking or a storage location causes the person to be out of
168 compliance with Section 550 of the United States Department of Homeland Security
169 Appropriations Act of 2007, Pub. L. No. 109-295 or regulations enacted in accordance with
170 that section and the person may be subject to punitive measures; and

171 (c) the person files a detailed statement with the attorney general notifying the attorney
172 general of the facts under Subsections (6)(a) and (b).

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

174 **63G-2-302. Private records.**

175 (1) The following records are private:

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

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

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

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

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

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

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

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

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

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

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

199 (h) that part of a record indicating a person's Social Security number or federal
200 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
201 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

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

205 (j) a record that:

206 (i) contains information about an individual;

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

208 (iii) goes into an electronic database that:

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

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

- 213 (k) information provided to the Commissioner of Insurance under:
214 (i) Subsection 31A-23a-115(2)(a); or
215 (ii) Subsection 31A-23a-302(3); [~~and~~]
216 (l) information obtained through a criminal background check under Title 11, Chapter
217 40, Criminal Background Checks by Political Subdivisions Operating Water Systems[-]; and
218 (m) a statement and any supporting documentation filed with the attorney general in
219 accordance with Section 34-45-107, if the federal law or action supporting the filing involves
220 homeland security.
- 221 (2) The following records are private if properly classified by a governmental entity:
222 (a) records concerning a current or former employee of, or applicant for employment
223 with a governmental entity, including performance evaluations and personal status information
224 such as race, religion, or disabilities, but not including records that are public under Subsection
225 63G-2-301(2)(b) or 63G-2-301(3)(o), or private under Subsection (1)(b);
226 (b) records describing an individual's finances, except that the following are public:
227 (i) records described in Subsection 63G-2-301(2);
228 (ii) information provided to the governmental entity for the purpose of complying with
229 a financial assurance requirement; or
230 (iii) records that must be disclosed in accordance with another statute;
231 (c) records of independent state agencies if the disclosure of those records would
232 conflict with the fiduciary obligations of the agency;
233 (d) other records containing data on individuals the disclosure of which constitutes a
234 clearly unwarranted invasion of personal privacy;
235 (e) records provided by the United States or by a government entity outside the state
236 that are given with the requirement that the records be managed as private records, if the
237 providing entity states in writing that the record would not be subject to public disclosure if
238 retained by it; and
239 (f) any portion of a record in the custody of the Division of Aging and Adult Services,
240 created in Section 62A-3-102, that may disclose, or lead to the discovery of, the identity of a
241 person who made a report of alleged abuse, neglect, or exploitation of a vulnerable adult.
- 242 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
243 records, statements, history, diagnosis, condition, treatment, and evaluation.

244 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
245 doctors, or affiliated entities are not private records or controlled records under Section
246 63G-2-304 when the records are sought:

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

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

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

Fiscal Note**S.B. 78 2nd Sub. (Salmon) - 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.
