

FIREARMS AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Stephen E. Sandstrom

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends provisions of Title 53, Chapter 5, Part 7, Concealed Firearm Act, related to the denial, suspension, or revocation of a concealed firearm permit and Title 76, Chapter 10, Part 5, Weapons, regarding restrictions on the possession, purchase, transfer, and ownership of firearms by certain persons.

Highlighted Provisions:

This bill:

- ▶ provides that the Bureau of Criminal Identification may, rather than shall, deny, suspend, or revoke a concealed firearm permit on the basis of an open indictment for a crime of violence in any state, but shall reverse that action upon notice of dismissal of the indictment or acquittal;
- ▶ provides that a Category II restricted person includes a person who is under indictment for a violent crime and has been prohibited by court order from possessing a firearm or other dangerous weapon;
- ▶ provides an affirmative defense for Category I and II restricted persons charged with possession or transfer of firearms or other dangerous weapons; and
- ▶ makes certain technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:



28 None

29 **Utah Code Sections Affected:**

30 AMENDS:

31 **53-5-704**, as last amended by Laws of Utah 2010, Chapters 62 and 283

32 **76-10-503**, as last amended by Laws of Utah 2003, Chapters 203 and 235



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

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

36 **53-5-704. Bureau duties -- Permit to carry concealed firearm -- Certification for**
37 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
38 **suspension, or revocation -- Appeal procedure.**

39 (1) (a) The bureau shall issue a permit to carry a concealed firearm for lawful self
40 defense to an applicant who is 21 years of age or older within 60 days after receiving an
41 application, unless the bureau finds proof that the applicant does not meet the qualifications set
42 forth in Subsection (2).

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

45 (c) The provisions of Subsections 76-10-504(1) and (2), and Section 76-10-505 do not
46 apply to a person issued a permit under Subsection (1)(a).

47 (2) (a) The bureau may deny, suspend, or revoke a concealed firearm permit if the
48 applicant or permit holder:

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

59 and federal law.

60 (b) In determining whether an applicant or permit holder meets the qualifications set
61 forth in Subsection (2)(a), the bureau shall consider mitigating circumstances.

62 (3) (a) (i) The bureau may deny, suspend, or revoke a concealed firearm permit if it has
63 reasonable cause to believe that the applicant or permit holder has been or is a danger to self or
64 others as demonstrated by evidence, including:

65 [(i)] (A) past pattern of behavior involving unlawful violence or threats of unlawful
66 violence;

67 [(ii)] (B) past participation in incidents involving unlawful violence or threats of
68 unlawful violence; [or]

69 [(iii)] (C) conviction of an offense in violation of Title 76, Chapter 10, Part 5,
70 Weapons[-]; or

71 (D) an open indictment for a crime of violence in any state.

72 (ii) The bureau shall immediately reverse any action taken that was based primarily on
73 an open indictment under Subsection (3)(a)(i)(D) upon notice:

74 (A) that the indictment has been dismissed; or

75 (B) of acquittal of the person charged in the indictment.

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

78 (c) In determining whether the applicant or permit holder has been or is a danger to self
79 or others, the bureau may inspect:

80 (i) expunged records of arrests and convictions of adults as provided in Section
81 77-40-109; and

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

83 [~~(d) (i) If a person granted a permit under this part has been charged with a crime of~~
84 ~~violence in any state, the bureau shall suspend the permit.]~~

85 [~~(ii) Upon notice of the acquittal of the person charged, or notice of the charges having~~
86 ~~been dropped, the bureau shall immediately reinstate the suspended permit.]~~

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

90 (5) Except as provided in Subsection (6), the bureau shall also require the applicant to
91 provide:

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

93 (b) one recent dated photograph;

94 (c) one set of fingerprints; and

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

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

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

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

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

107 (b) An applicant may satisfy the general familiarity requirement of Subsection (7)(a) by
108 one of the following:

109 (i) completion of a course of instruction conducted by a national, state, or local
110 firearms training organization approved by the bureau;

111 (ii) certification of general familiarity by a person who has been certified by the bureau,
112 which may include a law enforcement officer, military or civilian firearms instructor, or hunter
113 safety instructor; or

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

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

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

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

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

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

123 (iv) have taken a course of instruction and passed a certification test as described in
124 Subsection (8)(c).

125 (b) An instructor's certification is valid for three years from the date of issuance, unless
126 revoked by the bureau.

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

129 (ii) (A) The bureau shall provide or contract to provide the course referred to in
130 Subsection (8)(c)(i) twice every year.

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

133 (d) (i) Each applicant for certification under this Subsection (8) shall pay a fee of
134 \$50.00 at the time of application for initial certification.

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

136 (iii) The fees paid under Subsections (8)(d)(i) and (ii) may be used by the bureau as a
137 dedicated credit to cover the cost incurred in maintaining and improving the instruction
138 program required for concealed firearm instructors under this Subsection (8).

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

141 (10) (a) (i) A concealed firearms instructor is required to provide a signed certificate to
142 a person successfully completing the offered course of instruction.

143 (ii) The instructor shall sign the certificate with the exact name indicated on the
144 instructor's certification issued by the bureau under Subsection (8).

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

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

149 (C) The bureau shall determine the design and content of the seal to include at least the
150 following:

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

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

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

155 (D) The seal shall be affixed to each student certificate issued by the instructor in a
156 manner that does not obscure or render illegible any information or signatures contained in the
157 document.

158 (b) The applicant shall provide the certificate to the bureau in compliance with
159 Subsection (5)(d).

160 (11) The division may deny, suspend, or revoke the certification of an applicant or a
161 concealed firearms instructor if it has reason to believe the applicant or the instructor has:

162 (a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or

163 (b) knowingly and willfully provided false information to the bureau.

164 (12) An applicant for certification or a concealed firearms instructor has the same
165 appeal rights as set forth in Subsection (15).

166 (13) In providing instruction and issuing a permit under this part, the concealed
167 firearms instructor and the bureau are not vicariously liable for damages caused by the permit
168 holder.

169 (14) An individual who knowingly and willfully provides false information on an
170 application filed under this part is guilty of a class B misdemeanor, and the application may be
171 denied, or the permit may be suspended or revoked.

172 (15) (a) In the event of a denial, suspension, or revocation of a permit, the applicant or
173 permit holder may file a petition for review with the board within 60 days from the date the
174 denial, suspension, or revocation is received by the applicant or permit holder by certified mail,
175 return receipt requested.

176 (b) The bureau's denial of a permit shall be in writing and shall include the general
177 reasons for the action.

178 (c) If an applicant or permit holder appeals the denial to the review board, the applicant
179 or permit holder may have access to the evidence upon which the denial is based in accordance
180 with Title 63G, Chapter 2, Government Records Access and Management Act.

181 (d) On appeal to the board, the bureau has the burden of proof by a preponderance of
182 the evidence.

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

185 (ii) The final order shall be in the form prescribed by Subsection 63G-4-203(1)(i).

186 (iii) The final order is final bureau action for purposes of judicial review under Section
187 63G-4-402.

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

190 Section 2. Section **76-10-503** is amended to read:

191 **76-10-503. Restrictions on possession, purchase, transfer, and ownership of**
192 **dangerous weapons by certain persons.**

193 (1) For purposes of this section:

194 (a) A Category I restricted person is a person who:

195 (i) has been convicted of any violent felony as defined in Section 76-3-203.5;

196 (ii) is on probation or parole for any felony;

197 (iii) is on parole from a secure facility as defined in Section 62A-7-101; or

198 (iv) within the last 10 years has been adjudicated delinquent for an offense which if
199 committed by an adult would have been a violent felony as defined in Section 76-3-203.5.

200 (b) A Category II restricted person is a person who:

201 (i) has been convicted of [~~or is under indictment for~~] any felony;

202 (ii) within the last seven years has been adjudicated delinquent for an offense which if
203 committed by an adult would have been a felony;

204 (iii) is an unlawful user of a controlled substance as defined in Section 58-37-2;

205 (iv) is in possession of a dangerous weapon and is knowingly and intentionally in
206 unlawful possession of a Schedule I or II controlled substance as defined in Section 58-37-2;

207 (v) has been found not guilty by reason of insanity for a felony offense;

208 (vi) has been found mentally incompetent to stand trial for a felony offense;

209 (vii) has been adjudicated as mentally defective as provided in the Brady Handgun
210 Violence Prevention Act, Pub. L. No. 103-159, 107 Stat. 1536 (1993), or has been committed
211 to a mental institution;

212 (viii) is an alien who is illegally or unlawfully in the United States;

213 (ix) has been dishonorably discharged from the armed forces; [~~or~~]

214 (x) has renounced his citizenship after having been a citizen of the United States[-]; or
215 (xi) (A) is under indictment for a violent crime; and
216 (B) has been prohibited by order of the court in which criminal charges are pending,
217 after an individualized determination by the court, from possessing a firearm or other
218 dangerous weapon.

219 (2) A Category I restricted person who intentionally or knowingly agrees, consents,
220 offers, or arranges to purchase, transfer, possess, use, or have under [his] the person's custody
221 or control, or who intentionally or knowingly purchases, transfers, possesses, uses, or has under
222 [his] the person's custody or control:

- 223 (a) any firearm is guilty of a second degree felony; or
- 224 (b) any dangerous weapon other than a firearm is guilty of a third degree felony.

225 (3) A Category II restricted person who intentionally or knowingly purchases, transfers,
226 possesses, uses, or has under [his] the person's custody or control:

- 227 (a) any firearm is guilty of a third degree felony; or
- 228 (b) any dangerous weapon other than a firearm is guilty of a class A misdemeanor.
- 229 (4) A person may be subject to the restrictions of both categories at the same time.

230 (5) If a higher penalty than is prescribed in this section is provided in another section
231 for one who purchases, transfers, possesses, uses, or has under this custody or control any
232 dangerous weapon, the penalties of that section control.

233 (6) It is an affirmative defense to a charge based on the definition in Subsection
234 (1)(b)(iv) that the person was:

- 235 (a) in possession of a controlled substance pursuant to a lawful order of a practitioner
236 for use of a member of the person's household or for administration to an animal owned by the
237 person or a member of the person's household; or
- 238 (b) otherwise authorized by law to possess the substance.

239 (7) It is an affirmative defense to a charge based on the actions prohibited under
240 Subsections (2) and (3) that the person engaged in the prohibited action primarily for the
241 purpose of attempting to comply with the intended purpose of Subsections (2) and (3), which is
242 to keep restricted persons from possessing , using, or having under their custody or control
243 firearms or other dangerous weapons.

Legislative Review Note
as of 2-16-11 6:57 PM

Office of Legislative Research and General Counsel

FISCAL NOTE

H.B. 122

SHORT TITLE: **Firearms Amendments**

SPONSOR: **Sandstrom, S.**

2011 GENERAL SESSION, STATE OF UTAH

STATE GOVERNMENT (UCA 36-12-13(2)(b))

Enactment of this bill likely will not materially impact the state budget.

LOCAL GOVERNMENTS (UCA 36-12-13(2)(c))

Enactment of this bill likely will not result in direct, measurable costs for local governments.

DIRECT EXPENDITURES BY UTAH RESIDENTS AND BUSINESSES (UCA 36-12-13(2)(d))

Enactment of this bill likely will not result in direct, measurable expenditures by Utah residents or businesses.