

Utah State Legislature

House Law Enforcement and Criminal Justice Committee

House Bill 473 (H.B. 473) (<http://le.utah.gov/%7E2008/htmdoc/hbillhtm/HB0473.htm>)

Firearms Amendments – Oda, C.

Senate Floor Sponsor: Waddoups, M.

Transcript for HSTLAW Debate

(http://www.thegreshams.net/ucc.com/HB473_Firearms_Amendments_64kbps.mp3)

Date: Monday, February 18, 2008

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Bowman, D.: Okay, the first item on the agenda is H.B. 473. Representative Oda. Nice to see you down there.

Oda, C.: Thank you, Mr. Chairman. Ah, thank you. Thank you, Mr. Chairman. H.B. 97 is simply adding, the ah, ah, getting the definition of what a concealed firearm permit is, putting that into the general firearms code for consistency with 53-5-704 of the code.

Chairman: Representative Oda, is this-

Oda, C.: Oh, I'm sorry, 473. H.B. 473.

Chairman: Okay, great.

Oda, C.: 97, was ah...

Chairman: So we are on H.B. 473?

Oda, C.: 473. I had another note here got confused on. The code just didn't have a clear definition and so there was just some discuss with Attorney General Mark Shurtleff on what was needed here. So if I may, I would like to have the General speak to this?

Chairman: Welcome to the committee.

Shurtleff, M.: Thank you. Good to be here. Attorney General Mark Shurtleff. Yes, see we've have had several questions arise among a number of law enforcement agencies as to whether if you have a concealed weapon permit you can then carry open loaded. And I was asked by several to take a look at this. And in looking at it it became clear to me that that, number one, that there is not a definition in the weapons law of what a concealed weapons permit is, number one. Number two, there does seem to be some confusion that can be interpreted by some, in fact some law enforcement agencies have decided to

interpret the statute because there is not a clear definition of a concealed weapon permit, they have interpreted it as to mean that you cannot carry open loaded if you have a concealed weapon permit. So my recommendation was to clarify it so everybody knows up front what the law is and we can be clear about it across the state.

Chairman: Great, thank you. Is there questions from committee? Is that Representative Litvack?

Litvack, D.: Thank you, Mr. Chair, just a question to clarify. I received an e-mail just supporting what was just said in terms of silence on it but there are some concern that the statute's silent on gun owners in general, not just permit holders. So with this clarification, I maybe totally off, I apologize, I'm just kind a going off of an e-mail from a constituent, if, by clarifying, that this would apply to a concealed firearm permit holder to carry open and loaded. Is it already clear in law or does there need to be some clarification in terms of just a gun owner? So say they don't have a permit they can't carry, they can't carry open. That is just kinda the tone of the e-mail I received.

Shurtleff, M.: My opinion on that it is very clear that in Utah you can carry a weapon, open, as long as it is unloaded. Meaning, nothing in the chamber, you can have a full magazine in it but as long as there is nothing in the chamber. That is what "unloaded" is defined as. You don't have to have a permit. Anybody in this state, if they are of the right age to own a weapon-

Oda, C.: And law biding,

Shurtleff, M.: And they're law biding and meet all of the other requirements, as far as mental illness and so forth, then you qualify to carry open unloaded. The question comes is to when and if you can carry it open and loaded. The law says that if you get a concealed weapon permit then you can conceal it. By the way it is illegal to conceal a weapon unless you get the permit. So, you can clearly, one of the exemptions from the weapon's law is that when you get the permit you can conceal it. So you are exempt from the weapon's law that says you can't conceal it. Secondly, the question comes up then, well let's say you are concealing it, you're carrying it, it's loaded, as you would expect it to be a concealed weapon and, you know, your jacket comes open and whatever. If your jackets you're now carrying open, are you in violation of the law? And since firearm permit, a concealed weapon permit is not defined there has been some confusion in some agencies and it has been interpreted differently. My understanding from the Department of Public Safety is that they interpret it to mean that, indeed, the law is that if you have a concealed weapon permit you are exempt from all weapons laws and you can carry it open loaded. But there have been other local jurisdictions who have interpreted it otherwise so they're stopping people and creating a problem. So I think that, my recommendation was to clarify it up front. That is the best thing you can do.

Litvack, D.: If I could follow-up. One, where, if you could, clarify where in the statute, if I wanted to go back and find out about the open unloaded.

Shurtleff, M.: 76-10-505: “Unless otherwise authorized by law, a person may not carry a loaded firearm: in or on a vehicle; on any public street; or in a posted prohibited area.” So the prohibition is that you can’t carry it loaded. Ergo you can carry it unloaded. That is how it’s always been interpreted. Then if you look at section 76-10-523 is the list of persons exempt from weapons laws. So going to that first clause I just read to read, “unless otherwise authorized by law,” here is the exemptions. And of course it lists officers, peace officers, law enforcement officials, and down in sub-section 2 those who have a permit carry concealed firearm “pursuant to Section 53-5-704.” That then allows you to carry it concealed. The question is can you then carry it open and loaded?

Litvack, D.: Just two quick questions: have there been any court cases to clarify the distinction between loaded, cause I understand what you’re saying, because it says you can’t carry loaded, the interpretation has been you can now carry open and unloaded. But has there been any court clarification, I mean, that’s your opinion as the attorney general would a different attorney general interpret that differently?

Shurtleff, M.: To answer your question, I have looked I am not aware of any court cases or even any challenges, frankly, to the open unloaded. There have been some of late in the last six months, some agencies, who have stopped people. There was an incident that came out of, I think, the Gay Pride Parade in Salt Lake; there was an issue with the University of Utah; there was an issue at Utah Valley State College, I believe, or one of those others where questions are raised and where I heard, where I’ve been told the agencies, police agencies in those have interpreted this differently than the Department of Public Safety and me. No, but there are no-

Litvack, D.: Meaning loaded or unloaded?

Shurtleff, M.: Yes, both.

Litvack, D.: Both.

Oda, C.: And those who do not have permits it specifically, it is very specific that they cannot conceal it unless it’s stored, k? And then there are specific places they can store it if it’s in a vehicle. So, with that, they have to keep it open but in order to maintain it openly it has to be considered unloaded, which is two mechanical actions.

Litvack, D.: If I could just ask Representative Oda, in your opinion, philosophically, why not, why not go the other way? So we’re clarifying it in statute that to say that if you have a concealed weapons permit that you can conceal, that you can carry open and loaded, so why not the other way? Why not clarify that it needs to be concealed?

Oda, C.: Because practice has always been exactly what we’re trying to clarify here.

Litvack, D.: Thank you.

Chairman: Further discussion from committee. Representative Lockhart.

Lockhart, R.: Thank you. I need real world examples in this thing. So just let me ask this question: so right now, under the law, as long as I'm law-bidding, no felons, you know felonies, whatever, I can strap on six-shooters and walk down Center Street?

Shurtleff, M.: As long as you didn't have one ready to fire by one pull of the trigger in your six-shooter. You had to have one chamber empty.

Lockhart, R.: Whether I have a permit or not?

Shurtleff, M.: Right. That's correct.

Lockhart, R.: If I have a permit can I do that? Or by virtue of my permit I'm not allowed to carry open at all?

Oda, C.: You can.

Lockhart, R.: I can, as long as it's not loaded.

Oda, C.: No, with a permit you can carry it loaded.

Shurtleff, M.: That's how-

Lockhart, R.: But not open-

Oda, C.: No-

Lockhart, R.: With this bill.

Oda, C.: You can open or concealed. If a person without a permit can carry it openly, why not somebody with a permit?

Lockhart, R.: That's what I'm trying to clarify. Having a permit doesn't force you to carry concealed.

Oda, C.: No.

Lockhart, R.: You can do either way. Okay.

Oda, C.: Only those without a permit cannot conceal.

Lockhart, R.: And have to, if they want carry they have to carry open and unloaded?

Oda, C.: Correct.

Lockhart, R.: Thank you.

Chairman: Thank you, Representative Lockhart. Any further discussion on the committee? Seeing none we'll take this to the audience. Anyone in the audience want to speak to for or against this bill? Come, come on up. Go ahead and state your name, Clark.

Aposhian, C.: My name is Clark Aposhian, chairman of the Utah Shooting Sports Council and I would like to thank the committee and the chairman for allowing me this opportunity. There is a lot of confusion as to open carry, concealed carry, loaded, unloaded. I think what this bill will actually do is clear up the confusion. It does not give any more ability, any more rights to a firearm owner, a permit holder, somebody who just wants to carry a firearm it does not give them any additional rights whatsoever. Which is why I think this amendment or this bill was put into the definitions portion. It just clarifies existing law but since there was so much confusion that's why we recommended this bill. As far as, if I may reference Representative Litvack's very good question, why, you know, if this was teetering on the edge, right in the middle, why didn't we go the other way and just say, "It's got to be concealed."? I don't think it was teetering on the edge, respectfully. What we had is the default, I think in all law, is that unless there is something specifically restricted or specifically required you can do what you want. And there has, there is no statute in existing law right now that requires concealment or that provides a penalty if you fail to conceal it. In the same way, let's say, let's say a person does not have a firearms permit, a concealed carry permit and they say, they want to openly carry, they may do so. There is a requirement that the weapon be unloaded, Utah unloaded is at least more than one manual action of the firearm to fire it. Then they decide they want to get a permit. They want to go ahead they attend a class by a certified Utah Concealed Carry Instructor, they're photographed, they're fingerprint and they submit themselves to a daily criminal history check. Does it make sense that the person then lose the ability that they had before previously before that to openly carry a firearm? To me it doesn't make sense. They merely add to that ability to conceal it, if they choose to, but it's not required to. The permit also, for that matter, allows you to carry a firearm fully loaded. But I don't think anyone would believe that you have to carry the firearm fully loaded in the same way you that you don't have to carry concealed. It also allows a person, and the permit is the only thing here in Utah that allows a person, other than law enforcement, to carry a firearm on or about elementary or post-secondary institutions. Does that mean then since that a permit allows me to do it does that mean every time I go to a school that I have to carry a firearm? Certainly not. It merely allows but does not require it. And I think that there maybe some other people to speak but I think I've clarified what our position is.

Chairman: Thank you very much. Is there anyone else in the audience that would like to speak to this bill? Seeing none we'll bring it back to committee. Representative Morley.

Morley, M.: Thank you, Mr. Chairman. I move that we pass 473, H.B. 473 out with a favorable recommendation.

Chairman: We have a motion to move this out with a favorable recommendation. Any discussion to that motion? Seeing none we'll come back to the sponsor for summation?

Oda, C.: I'll wave.

Chairman: Back to the maker of the motion.

Morley, M.: I'll wave.

Chairman: All those in favor of passing this bill out favorable say aye.

Aye!

Chairman: Any opposed?

None.

Chairman: Pass unanimous.

<p>Transcribed By Charles A. Hall E-mail: cah@charlesahall.com Phone Number: 360-477-7461</p>
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Those Having Talked in This Debate (In Order of Appearance)

- Rep. DeMar Bud Bowman (Chairman)
Chair, House Law Enforcement and Criminal Justice Committee
- Rep. Curtis Oda, Vice Chair (Oda, C.)
Vice Chair, House Law Enforcement and Criminal Justice Committee
- Mark Shurtleff (Shurtleff, M.), Attorney General, State of Utah
- Rep. David Litvack (Litvack, D.)
- Rep. Rebecca D. Lockhart (Lockhart, R.)
- Clark Aposhian (Aposhian, C.)
Chairman, Utah Shooting Sports Council (www.utahshootingsports.com)
- Rep. Michael T. Morley (Morley, M.)

Utah Code Cited

53-5-704: http://le.utah.gov/~code/TITLE53/htm/53_05_070400.htm

76-10-505: http://le.utah.gov/~code/TITLE76/htm/76_10_050500.htm

76-10-523: http://le.utah.gov/~code/TITLE76/htm/76_10_052300.htm