

1 **LAW ENFORCEMENT NOTIFICATION AMENDMENTS**

2 2014 GENERAL SESSION

3 STATE OF UTAH

4 **Chief Sponsor: Richard A. Greenwood**

5 Senate Sponsor: _____

6
7 **LONG TITLE**

8 **General Description:**

9 This bill modifies the Public Safety Code regarding the notification of allegations
10 against a peace officer.

11 **Highlighted Provisions:**

12 This bill:

13 ▶ provides that a chief, sheriff, or administrative officer of a law enforcement agency
14 shall:

15 • notify the director of the Peace Officer Standards and Training Division within
16 90 days of being made aware of an allegation against a peace officer employed
17 by that agency; and

18 • investigate the allegation and report if it is confirmed and whether the conduct
19 amounts to a violation for which the Peace Officer Standards and Training
20 Division may suspend or revoke the peace officer's certification; and

21 ▶ provides that a failure to comply with the notification requirements is a class C
22 misdemeanor.

23 **Money Appropriated in this Bill:**

24 None

25 **Other Special Clauses:**

26 None

27 **Utah Code Sections Affected:**



28 AMENDS:

29 **53-6-211**, as last amended by Laws of Utah 2013, Chapters 115 and 269



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

32 Section 1. Section **53-6-211** is amended to read:

33 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**

34 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

35 (1) The council has authority to suspend or revoke the certification of a peace officer, if
36 the peace officer:

37 (a) willfully falsifies any information to obtain certification;

38 (b) has any physical or mental disability affecting the peace officer's ability to perform
39 duties;

40 (c) is addicted to alcohol or any controlled substance, unless the peace officer reports
41 the addiction to the employer and to the director as part of a departmental early intervention
42 process;

43 (d) engages in conduct which is a state or federal criminal offense, but not including a
44 traffic offense that is a class C misdemeanor or infraction;

45 (e) refuses to respond, or fails to respond truthfully, to questions after having been
46 issued a warning issued based on Garrity v. New Jersey, 385 U.S. 493 (1967);

47 (f) engages in sexual conduct while on duty; or

48 (g) is certified as a law enforcement officer, as defined in Section **53-13-103**, and is
49 unable to possess a firearm under state or federal law.

50 (2) The council may not suspend or revoke the certification of a peace officer for a
51 violation of a law enforcement agency's policies, general orders, or guidelines of operation that
52 do not amount to a cause of action under Subsection (1).

53 (3) (a) The division is responsible for investigating officers who are alleged to have
54 engaged in conduct in violation of Subsection (1).

55 (b) The division shall initiate all adjudicative proceedings under this section by
56 providing to the peace officer involved notice and an opportunity for a hearing before an
57 administrative law judge.

58 (c) All adjudicative proceedings under this section are civil actions, notwithstanding

59 whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted
60 criminally.

61 (d) (i) The burden of proof on the division in an adjudicative proceeding under this
62 section is by clear and convincing evidence.

63 (ii) If a peace officer asserts an affirmative defense, the peace officer has the burden of
64 proof to establish the affirmative defense by a preponderance of the evidence.

65 (e) If the administrative law judge issues findings of fact and conclusions of law stating
66 there is sufficient evidence to demonstrate that the officer engaged in conduct that is in
67 violation of Subsection (1), the division shall present the finding and conclusions issued by the
68 administrative law judge to the council.

69 (f) The division shall notify the chief, sheriff, or administrative officer of the police
70 agency which employs the involved peace officer of the investigation and shall provide any
71 information or comments concerning the peace officer received from that agency regarding the
72 peace officer to the council before a peace officer's certification may be suspended or revoked.

73 (g) If the administrative law judge finds that there is insufficient evidence to
74 demonstrate that the officer is in violation of Subsection (1), the administrative law judge shall
75 dismiss the adjudicative proceeding.

76 (4) (a) The council shall review the findings of fact and conclusions of law and the
77 information concerning the peace officer provided by the officer's employing agency and
78 determine whether to suspend or revoke the officer's certification.

79 (b) A member of the council shall recuse him or herself from consideration of an issue
80 that is before the council if the council member:

81 (i) has a personal bias for or against the officer;

82 (ii) has a substantial pecuniary interest in the outcome of the proceeding and may gain
83 or lose some benefit from the outcome; or

84 (iii) employs, supervises, or works for the same law enforcement agency as the officer
85 whose case is before the council.

86 (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not
87 preclude suspension or revocation of a peace officer's certification by the council if the peace
88 officer was terminated for any of the reasons under Subsection (1).

89 (b) Employment by another agency, or reinstatement of a peace officer by the original

90 employing agency after termination by that agency, whether the termination was voluntary or
91 involuntary, does not preclude suspension or revocation of a peace officer's certification by the
92 council if the peace officer was terminated for any of the reasons under Subsection (1).

93 (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made
94 aware of an allegation against a peace officer employed by that agency that involves conduct in
95 violation of Subsection (1) shall ~~[investigate the allegation and report to the division if the~~
96 ~~allegation is found to be true.];~~

97 (a) notify the director within 90 days of being made aware of an allegation against a
98 peace officer employed by that agency; and

99 (b) investigate the allegation and report to the division if the allegation is confirmed
100 and is a violation of Subsection (1).

101 (7) If a chief, sheriff, or administrative officer of a law enforcement agency fails to
102 report to the director within 90 days as required in Subsection (6)(a), the chief, sheriff, or
103 administrative officer is considered to be in violation of Subsection (6)(a).

104 (8) A violation of Subsection (6)(a) is a class C misdemeanor.

105 ~~[(7)]~~ (9) The council's suspension or revocation of an officer's certification under
106 Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4, Judicial Review.

Legislative Review Note
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Office of Legislative Research and General Counsel