

**Representative Lee B. Perry** proposes the following substitute bill:

**OFF DUTY EMPLOYMENT OF LAW ENFORCEMENT OFFICER**

2018 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Lee B. Perry**

Senate Sponsor: Don L. Ipson

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**LONG TITLE**

**General Description:**

This bill modifies provisions regarding how law enforcement officers engage in secondary employment.

**Highlighted Provisions:**

This bill:

- defines terms;
- modifies provisions related to the requirements for a law enforcement officer to engage in secondary employment; and
- makes technical changes.

**Money Appropriated in this Bill:**

None

**Other Special Clauses:**

None

**Utah Code Sections Affected:**

REPEALS AND REENACTS:

**53-13-114**, as last amended by Laws of Utah 2012, Chapter 196

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



26 Section 1. Section [53-13-114](#) is repealed and reenacted to read:

27 **53-13-114. Secondary employment of law enforcement officer.**

28 (1) As used in this section:

29 (a) "Extra-duty secondary employment" means any secondary employment by a law  
30 enforcement officer that is conditioned on the actual or potential use of law enforcement  
31 powers by the officer, and for which law enforcement powers are a condition of employment,  
32 including:

33 (i) traffic control and pedestrian safety;

34 (ii) crowd control;

35 (iii) protection of life or property;

36 (iv) law enforcement activities for governmental agencies; and

37 (v) plain clothes assignments.

38 (b) "Intermediate-duty secondary employment" means any secondary employment by a  
39 law enforcement officer for which law enforcement powers are not a condition of employment,  
40 but which may involve the infrequent use of law enforcement powers by the officer as  
41 necessary to preserve the peace.

42 (c) "Law enforcement agency" means the same as that term is defined in Subsection  
43 [53-1-102\(1\)\(c\)](#).

44 (d) "Law enforcement officer" means the same as that term is defined in Section  
45 [53-13-103](#).

46 (e) "Secondary employer" means an individual, corporation, business, or other entity,  
47 other than the law enforcement agency that regularly employs the law enforcement officer, that  
48 hires or contracts with a law enforcement officer or a law enforcement agency for secondary  
49 employment.

50 (f) "Secondary employment" means the provision of services by a law enforcement  
51 officer, other than to the law enforcement agency that regularly employs the officer, in  
52 exchange for a fee, salary, wage, discount, or other financial or non-financial remuneration.

53 (g) "Unrelated secondary employment" means any secondary employment by a law  
54 enforcement officer that will not require the actual or potential use of law enforcement powers  
55 by the officer and for which law enforcement powers are not a condition of employment,  
56 including secondary employment as a security officer as described in Subsection

57 [58-63-102\(16\).](#)

58 (2) A law enforcement officer may engage in secondary employment only if:

59 (a) in accordance with Subsections (3) through (6), the law enforcement agency that  
60 regularly employs the law enforcement officer has a written policy permitting a law  
61 enforcement officer to engage in secondary employment pursuant to the terms and conditions  
62 specified in the policy;

63 (b) the law enforcement agency that regularly employs the law enforcement officer  
64 approves in advance and in writing the secondary employment proposed by the law  
65 enforcement officer; and

66 (c) the secondary employment does not:

67 (i) create or reasonably give the appearance of creating an actual or potential conflict of  
68 interest between the law enforcement officer and the law enforcement agency that regularly  
69 employs the officer;

70 (ii) occur during hours when the law enforcement officer is on sick leave or workers  
71 compensation leave, or, without written approval by the law enforcement agency that regularly  
72 employs the officer, on administrative leave; and

73 (iii) present a threat to the status or dignity of the law enforcement profession, which  
74 includes any proposed secondary employment where the law enforcement officer would  
75 provide services to:

76 (A) an establishment dealing primarily in goods, materials, entertainment or services of  
77 an explicit sexual nature;

78 (B) a gambling or gaming establishment;

79 (C) a pawn shop or second-hand store regulated by pawn statutes or local ordinances;

80 or

81 (D) with the exception of liquor stores licensed by the Department of Alcoholic  
82 Beverage Control, an establishment where the sale, consumption, or transport of alcoholic  
83 beverages is the principal activity.

84 (3) (a) A law enforcement agency's written policy regarding secondary employment  
85 shall include:

86 (i) the scope of services that may be provided by a law enforcement officer when  
87 engaging in extra-duty secondary employment, intermediate-duty secondary employment, or

88 unrelated secondary employment;

89 (ii) the circumstances under which a law enforcement officer engaged in extra-duty  
90 secondary employment, intermediate-duty secondary employment, or unrelated secondary  
91 employment is authorized or expected to wear the regular on-duty uniform of the law  
92 enforcement agency employing the officer and, if so authorized, how the agency will be  
93 reimbursed by the secondary employer for use of the uniform and its replacement value if lost,  
94 damaged, or destroyed in connection with the secondary employment;

95 (iii) the circumstances under which a law enforcement officer engaged in extra-duty  
96 secondary employment, intermediate-level secondary employment, or unrelated secondary  
97 employment is authorized to use equipment or other resources of the law enforcement agency  
98 that regularly employs the officer and, if so authorized, how the agency will be reimbursed by  
99 the secondary employer for use of the equipment or other resources and their replacement value  
100 if lost, damaged, or destroyed in connection with the secondary employment; and

101 (iv) a clear description of how a law enforcement officer may submit a request for  
102 written authorization for the officer to engage in secondary employment, the standards  
103 governing the law enforcement agency's approval, denial, or revocation of approval of requests  
104 to engage in secondary employment, and an officer's appeal rights, if any, relating to denied  
105 requests or revoked approvals.

106 (b) A law enforcement agency shall make its written policy regarding secondary  
107 employment publicly available on the:

108 (i) appropriate agency, city, county, or state website; or

109 (ii) Utah Public Notice Website, created in Section [63F-1-701](#), if the law enforcement  
110 agency does not have access to an appropriate agency, city, county, or state website.

111 (4) A written agreement to engage in extra-duty secondary employment shall be  
112 between the secondary employer and the contracting authority for the law enforcement agency  
113 that regularly employs the law enforcement officer, and shall include:

114 (a) a general description of services the secondary employer expects to receive from the  
115 law enforcement agency, the law enforcement officer, or both;

116 (b) authorization for the law enforcement officer to wear the on-duty uniform of the  
117 law enforcement agency that regularly employs the officer;

118 (c) authorization for the law enforcement officer to use equipment and, if applicable,

119 other resources of the law enforcement agency that regularly employs the officer and, as  
120 appropriate, a description of the equipment or resources;

121 (d) the terms and conditions by which the law enforcement agency will be reimbursed  
122 by the secondary employer for use of the uniform, equipment, and other resources, if  
123 applicable, and for their replacement value if lost, damaged, or destroyed in connection with  
124 the secondary employment;

125 (e) the rate and timing of compensation due from the secondary employer to the law  
126 enforcement agency, the law enforcement officer, or both;

127 (f) a clear description of the secondary employer's and the law enforcement agency's  
128 respective obligations for state and federal income reporting and withholding responsibilities in  
129 connection with the secondary employment;

130 (g) terms for the secondary employer's provision of liability and, if applicable, workers  
131 compensation insurance with policy limits sufficient to protect and indemnify the law  
132 enforcement agency and the law enforcement officer for any and all claims arising from the  
133 officer's secondary employment, including claims relating to personal injury, property damage,  
134 and civil rights violations, and all employment, workers compensation, contract, and wage  
135 claims;

136 (h) the secondary employer's agreement to indemnify the law enforcement agency and  
137 the law enforcement officer for any and all claims, including third party claims, arising from  
138 the officer's secondary employment, including claims relating to personal injury, property  
139 damage, and civil rights violations, and all employment, workers compensation, contract, and  
140 wage claims; and

141 (i) unless otherwise prohibited by law, a waiver of liability of any and all claims that  
142 might otherwise be asserted by the secondary employer against the law enforcement agency or  
143 law enforcement officer in connection with the secondary employment.

144 (5) (a) A written agreement to engage in intermediate-duty secondary employment  
145 shall be between the secondary employer and the law enforcement officer or, at the exclusive  
146 option of the law enforcement agency and consistent with the agency's written policy described  
147 in Subsection (3), between the secondary employer and the contracting authority for the law  
148 enforcement agency that regularly employs the officer, or both, and shall include:

149 (i) a general description of services the secondary employer expects to receive from the

150 law enforcement officer;

151 (ii) if considered necessary by the law enforcement agency for the safety of the law  
152 enforcement officer or others, authorization for the officer to wear the officer's on-duty uniform  
153 and to use equipment and other resources of the agency, if applicable, and the terms and  
154 conditions by which the agency will be reimbursed by the secondary employer for use of the  
155 uniform, equipment, and other resources, if applicable, and for their replacement value if lost,  
156 damaged, or destroyed in connection with the secondary employment;

157 (iii) the rate and timing of compensation due from the secondary employer to the law  
158 enforcement officer and, where the law enforcement agency that regularly employs the officer  
159 has elected to become a contracting party, to the law enforcement agency;

160 (iv) terms for the secondary employer's ~~liability~~ **[provision] procurement** of liability and,  
160a if applicable, workers

161 compensation insurance with policy limits sufficient to protect and indemnify the law  
162 enforcement officer and, where the law enforcement agency that regularly employs the officer  
163 has elected to become a contracting party, the agency, for any and all claims arising from the  
164 officer's secondary employment, including claims for personal injury, property damage, or civil  
165 rights violations, and all employment, workers compensation, contract, or wage claims; and

166 (v) unless otherwise prohibited by law, an express waiver of liability of any  
167 and all claims that might otherwise be asserted by the secondary employer against the  
168 law enforcement agency or the law enforcement officer in connection with the secondary  
169 employment.

170 (b) The written agreement, if any, between the secondary employer and the law  
171 enforcement agency in connection with intermediate-duty secondary employment may be  
172 contained within the written agreement between the secondary employer and the law  
173 enforcement officer, or may be executed separately, as the agency considers appropriate.

174 (c) Any agreement between a secondary employer and a law enforcement officer to  
175 which the law enforcement agency that regularly employs the officer is not a contracting party  
176 may not represent or purport to provide or require that the agency assumes any liability for any  
177 act or omission of the officer in connection with the officer's secondary employment.

178 (6) A written agreement to engage in unrelated secondary employment, including  
179 secondary employment as a security officer as described in Section [53-63-102\(16\)](#), shall be  
180 between the secondary employer and the law enforcement officer, and shall include:

181 (a) a general description of services the secondary employer expects to receive from the  
182 law enforcement officer;

183 (b) a prohibition on the law enforcement officer's use of the officer's on-duty uniform,  
184 equipment, or other resources of the law enforcement agency in connection with the secondary  
185 employment;

186 (c) the rate and timing of compensation due from the secondary employer to the law  
187 enforcement officer; and

188 (d) terms for the secondary employer's provision of liability and, if applicable, workers  
189 compensation insurance with policy limits sufficient to protect and indemnify the law  
190 enforcement officer for any and all claims arising from the officer's secondary employment,  
191 including claims for personal injury, property damage, and civil rights violations, and all  
192 employment, workers compensation, contract, or wage claims.

193 (7) Notwithstanding any provision in this section to the contrary, unless the written  
194 agreement between a secondary employer and a law enforcement agency explicitly states  
195 otherwise, the agency is not liable for any act or omission of a law enforcement officer in  
196 connection with the officer's secondary employment unless:

197 (a) within the geographical limits of the law enforcement officer's normal jurisdiction,  
198 the officer engages in actions outside the scope of the written agreement for secondary  
199 employment but within the scope of the officer's law enforcement duties; or

200 (b) outside the geographical limits of the law enforcement officer's normal jurisdiction,  
201 the officer engages in actions outside the scope of the written agreement for secondary  
202 employment but within the scope of duties authorized by Section [77-9-3](#).