

HB0179S01 compared with HB0179

~~text~~ shows text that was in HB0179 but was deleted in HB0179S01.

inserted text shows text that was not in HB0179 but was inserted into HB0179S01.

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Representative Richard A. Greenwood proposes the following substitute bill:

PEACE OFFICER RECERTIFICATION AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies the Peace Officer Standards and Training Act regarding certification of peace officers.

Highlighted Provisions:

This bill:

- ▶ clarifies required qualifications in order to be certified as a peace officer;
- ▶ modifies the requirements and procedures for the waiver of any portion of the requirements for certification as a peace officer;
- ▶ provides that a peace officer's certification becomes inactive after 18 months of not being active as a peace officer, which adds six months to the current period of one year;
- ▶ clarifies all requirements for reinstatement of a certification that has lapsed or

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become inactive; and

- ▶ amends related code sections.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

17-22-1.5, as last amended by Laws of Utah 2009, Chapter 5

20A-9-201, as last amended by Laws of Utah 2010, Chapter 12

53-6-205, as renumbered and amended by Laws of Utah 1993, Chapter 234

53-6-208, as renumbered and amended by Laws of Utah 1993, Chapter 234

53-13-103, as last amended by Laws of Utah 2009, Chapter 344

REPEALS AND REENACTS:

53-6-206, as renumbered and amended by Laws of Utah 1993, Chapter 234

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

Section 1. Section **17-22-1.5** is amended to read:

17-22-1.5. County sheriff qualifications.

(1) Each person filing a declaration of candidacy for the office of county sheriff shall submit to the county clerk, at the time of filing a declaration of candidacy, a certificate issued by the Peace Officer Standards and Training Division created under Section 53-6-103 stating that the candidate has:

(a) (i) successfully met the standards and training requirements established for peace officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(ii) [~~passed a certification examination as provided~~] met the waiver requirements in Section 53-6-206; and

(b) met the qualifications to be certified as a law enforcement officer, as defined in Section 53-13-103.

(2) In addition to the general qualifications required of county officers by Title 17, Chapter 16, County Officers, each county sheriff shall:

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(a) at the time of taking office:

(i) (A) have successfully met the standards and training requirements established for peace officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(B) have [~~passed a certification examination as provided~~] met the waiver requirements in Section 53-6-206; and

(ii) be qualified to be certified as:

(A) a law enforcement officer, as defined in Section 53-13-103; and

(B) if the person is elected to the office of county sheriff in any election held after the 2008 general election:

(I) a correctional officer, as defined in Section 53-13-104; or

(II) a correctional facility manager by having successfully completed a correctional facility management course that is offered by a certified academy in both an online web-based format and in a classroom format and that is approved by the Peace Officer Standards and Training Council created in Section 53-6-106;

(b) satisfactorily complete annual certified training as required in Section 53-13-103; and

(c) after certification as provided in Subsection (2)(a), remain certified during the sheriff's term of office as:

(i) a law enforcement officer; and

(ii) if the person is elected to the office of county sheriff in any election held after the 2008 general election:

(A) a correctional officer; or

(B) a correctional facility manager by having completed a correctional facility management course approved by the Peace Officer Standards and Training Council.

(3) If a sheriff resigns, retires, dies, or otherwise does not complete the term of office, the person appointed to serve for the remainder of the term shall within 60 days after the date of appointment complete the training and exam required under Subsection (2)(a)(ii)(B).

(4) The county legislative body shall declare the office of sheriff to be vacant if at any time the incumbent sheriff fails to meet the qualifications for office under Subsection (2).

Section 2. Section **20A-9-201** is amended to read:

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20A-9-201. Declarations of candidacy -- Candidacy for more than one office or of more than one political party prohibited with exceptions -- General filing and form requirements -- Affidavit of impecuniosity.

(1) Before filing a declaration of candidacy for election to any office, a person shall:

- (a) be a United States citizen; and
- (b) meet the legal requirements of that office.

(2) (a) Except as provided in Subsection (2)(b), a person may not:

(i) file a declaration of candidacy for, or be a candidate for, more than one office in Utah during any election year; or

(ii) appear on the ballot as the candidate of more than one political party.

(b) A person may file a declaration of candidacy for, or be a candidate for, President or Vice President of the United States and another office, if the person resigns the person's candidacy for the other office after the person is officially nominated for President or Vice President of the United States.

(3) (a) (i) Except for presidential candidates, before the filing officer may accept any declaration of candidacy, the filing officer shall:

(A) read to the prospective candidate the constitutional and statutory qualification requirements for the office that the candidate is seeking; and

(B) require the candidate to state whether or not the candidate meets those requirements.

(ii) Before accepting a declaration of candidacy for the office of county attorney, the county clerk shall ensure that the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the county in which ~~he~~ the person is seeking office; and

(D) a current resident of the county in which ~~he~~ the person is seeking office and either has been a resident of that county for at least one year or was appointed and is currently serving as county attorney and became a resident of the county within 30 days after appointment to the office.

(iii) Before accepting a declaration of candidacy for the office of district attorney, the

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county clerk shall ensure that, as of the date of the election, the person filing that declaration of candidacy is:

(A) a United States citizen;

(B) an attorney licensed to practice law in Utah who is an active member in good standing of the Utah State Bar;

(C) a registered voter in the prosecution district in which ~~[he]~~ the person is seeking office; and

(D) a current resident of the prosecution district in which ~~[he]~~ the person is seeking office and either will have been a resident of that prosecution district for at least one year as of the date of the election or was appointed and is currently serving as district attorney and became a resident of the prosecution district within 30 days after receiving appointment to the office.

(iv) Before accepting a declaration of candidacy for the office of county sheriff, the county clerk shall ensure that the person filing the declaration of candidacy:

(A) as of the date of filing:

(I) is a United States citizen;

(II) is a registered voter in the county in which the person seeks office;

(III) (Aa) has successfully met the standards and training requirements established for law enforcement officers under Title 53, Chapter 6, Part 2, Peace Officer Training and Certification Act; or

(Bb) has ~~[passed a certification examination as provided]~~ met the waiver requirements in Section 53-6-206; and

(IV) is qualified to be certified as a law enforcement officer, as defined in Section 53-13-103; and

(B) as of the date of the election, shall have been a resident of the county in which the person seeks office for at least one year.

(v) Before accepting a declaration of candidacy for the office of governor, lieutenant governor, state auditor, state treasurer, attorney general, state legislator, or State Board of Education member, the filing officer shall ensure:

(A) that the person filing the declaration of candidacy also files the financial disclosure required by Section 20A-11-1603; and

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(B) if the filing officer is not the lieutenant governor, that the financial disclosure is provided to the lieutenant governor according to the procedures and requirements of Section 20A-11-1603.

(b) If the prospective candidate states that [~~he does not meet~~] the qualification requirements for the office are not met, the filing officer may not accept the prospective candidate's declaration of candidacy.

(c) If the candidate meets the requirements of Subsection (3)(a) and states that [~~he meets~~] the requirements of candidacy are met, the filing officer shall:

(i) inform the candidate that:

(A) the candidate's name will appear on the ballot as it is written on the declaration of candidacy;

(B) the candidate may be required to comply with state or local campaign finance disclosure laws; and

(C) the candidate is required to file a financial statement before the candidate's political convention under:

(I) Section 20A-11-204 for a candidate for constitutional office;

(II) Section 20A-11-303 for a candidate for the Legislature; or

(III) local campaign finance disclosure laws, if applicable;

(ii) provide the candidate with a copy of the current campaign financial disclosure laws for the office the candidate is seeking and inform the candidate that failure to comply will result in disqualification as a candidate and removal of the candidate's name from the ballot;

(iii) provide the candidate with a copy of Section 20A-7-801 regarding the Statewide Electronic Voter Information Website Program and inform the candidate of the submission deadline under Subsection 20A-7-801(4)(a);

(iv) provide the candidate with a copy of the pledge of fair campaign practices described under Section 20A-9-206 and inform the candidate that:

(A) signing the pledge is voluntary; and

(B) signed pledges shall be filed with the filing officer;

(v) accept the candidate's declaration of candidacy; and

(vi) if the candidate has filed for a partisan office, provide a certified copy of the declaration of candidacy to the chair of the county or state political party of which the

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candidate is a member.

(d) If the candidate elects to sign the pledge of fair campaign practices, the filing officer shall:

(i) accept the candidate's pledge; and

(ii) if the candidate has filed for a partisan office, provide a certified copy of the candidate's pledge to the chair of the county or state political party of which the candidate is a member.

(4) Except for presidential candidates, the form of the declaration of candidacy shall be substantially as follows:

"State of Utah, County of ____

I, _____, declare my intention of becoming a candidate for the office of ____ as a candidate for the ____ party. I do solemnly swear that: I will meet the qualifications to hold the office, both legally and constitutionally, if selected; I reside at _____ in the City or Town of _____, Utah, Zip Code _____ Phone No. _____; I will not knowingly violate any law governing campaigns and elections; I will file all campaign financial disclosure reports as required by law; and I understand that failure to do so will result in my disqualification as a candidate for this office and removal of my name from the ballot. The mailing address that I designate for receiving official election notices is _____.

Subscribed and sworn before me this _____(month\day\year).

Notary Public (or other officer qualified to administer oath.)"

(5) (a) Except for presidential candidates, the fee for filing a declaration of candidacy is:

(i) \$25 for candidates for the local school district board; and

(ii) 1/8 of 1% of the total salary for the full term of office legally paid to the person holding the office, but not less than \$5, for all other federal, state, and county offices.

(b) Except for presidential candidates, the filing officer shall refund the filing fee to any candidate:

(i) who is disqualified; or

(ii) who the filing officer determines has filed improperly.

(c) (i) The county clerk shall immediately pay to the county treasurer all fees received

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from candidates.

(ii) The lieutenant governor shall:

(A) apportion to and pay to the county treasurers of the various counties all fees received for filing of nomination certificates or acceptances; and

(B) ensure that each county receives that proportion of the total amount paid to the lieutenant governor from the congressional district that the total vote of that county for all candidates for representative in Congress bears to the total vote of all counties within the congressional district for all candidates for representative in Congress.

(d) (i) A person who is unable to pay the filing fee may file a declaration of candidacy without payment of the filing fee upon a prima facie showing of impecuniosity as evidenced by an affidavit of impecuniosity filed with the filing officer and, if requested by the filing officer, a financial statement filed at the time the affidavit is submitted.

(ii) A person who is able to pay the filing fee may not claim impecuniosity.

(iii) (A) False statements made on an affidavit of impecuniosity or a financial statement filed under this section shall be subject to the criminal penalties provided under Sections 76-8-503 and 76-8-504 and any other applicable criminal provision.

(B) Conviction of a criminal offense under Subsection (5)(d)(iii)(A) shall be considered an offense under this title for the purposes of assessing the penalties provided in Subsection 20A-1-609(2).

(iv) The filing officer shall ensure that the affidavit of impecuniosity is printed in substantially the following form:

"Affidavit of Impecuniosity

Individual Name

_____Address_____

Phone Number _____

I, _____(name), do solemnly [swear] [affirm], under penalty of law for false statements, that, owing to my poverty, I am unable to pay the filing fee required by law.

Date _____ Signature _____

Affiant

Subscribed and sworn to before me on _____ (month\day\year)

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(signature)

Name and Title of Officer Authorized to Administer Oath _____"

(v) The filing officer shall provide to a person who requests an affidavit of impecuniosity a statement printed in substantially the following form, which may be included on the affidavit of impecuniosity:

"Filing a false statement is a criminal offense. In accordance with Section 20A-1-609, a candidate who is found guilty of filing a false statement, in addition to being subject to criminal penalties, will be removed from the ballot."

(vi) The filing officer may request that a person who makes a claim of impecuniosity under this Subsection (5)(d) file a financial statement on a form prepared by the election official.

(6) Any person who fails to file a declaration of candidacy or certificate of nomination within the time provided in this chapter is ineligible for nomination to office.

(7) A declaration of candidacy filed under this section may not be amended or modified after the final date established for filing a declaration of candidacy.

Section 3. Section **53-6-205** is amended to read:

53-6-205. Completion of training course required -- Persons affected.

~~[(1)(a) Except as provided in Subsection (2), a peace officer in this state must successfully complete the basic course at a certified academy, or successfully pass a state certification examination according to the requirements of Section 53-6-206, before that person can be certified.]~~

(1) (a) Except as provided in Subsection (2), before a person may be certified as a peace officer in Utah the person shall:

(i) successfully complete the basic training course at a certified academy;

(ii) pass the certification examination; and

(iii) pass a physical fitness test.

(b) A person may not exercise peace officer ~~[powers]~~ authority until certified.

(2) Subsection (1) applies only to persons not previously certified and who receive their first employment appointment or election as a peace officer in ~~[this state]~~ Utah on or after January 1, 1985.

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Section 4. Section **53-6-206** is repealed and reenacted to read:

53-6-206. Waiver of training course requirement.

(1) The director may waive the required basic peace officer training course and certify an applicant who:

(a) provides proof that the applicant meets the requirements under Section 53-6-203 relating to qualifications for admission to the training course;

(b) provides proof that the applicant has completed a basic peace officer training program that, in the director's judgment, is equivalent to the course required for certification under this part;

(c) passes the certification examination; and

(d) passes a physical fitness test.

(2) A waiver applicant may not exercise peace officer authority until all waiver process requirements have been met and the applicant has been certified.

(3) If an applicant fails the examination under Subsection (1)(c), the director may not waive the required basic peace officer training course and the applicant shall comply with all of the requirements in Subsection 53-6-205(1) to be certified as a peace officer in Utah.

Section 5. Section **53-6-208** is amended to read:

53-6-208. Inactive certificates -- Lapse of certificate -- Reinstatement.

(1) (a) The certificate of a peace officer who has not been actively engaged in performing the duties of a peace officer for ~~[one year shall be]~~ 18 consecutive months or more is designated "inactive."

~~[(b) If a peace officer having an inactive certificate becomes reemployed or subsequently reengaged as a peace officer, his certificate may be reissued or reinstated by the director upon successful completion by that peace officer of the waiver process established by the director.]~~

~~[(c) The director may require a peace officer with an inactive certificate to successfully complete the basic training course before reissuing or reinstating certification.]~~

(b) A peace officer whose certificate is inactive shall pass the certification examination and a physical fitness test before the certificate may be reissued or reinstated.

(2) (a) The certificate of a peace officer ~~[lapses if he]~~ who has not been actively engaged in performing the duties of a peace officer for four continuous years~~[-]~~ or more is

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designated as "lapsed."

~~[(b) Subject to Section 53-6-206, the peace officer shall successfully complete the basic training course before the certificate may be reissued or reinstated.]~~

(b) A peace officer whose certificate is lapsed shall pass the basic training course at a certified academy, the certification examination, and a physical fitness test before the certificate may be reissued or reinstated.

Section 6. Section **53-13-103** is amended to read:

53-13-103. Law enforcement officer.

(1) (a) "Law enforcement officer" means a sworn and certified peace officer who is an employee of a law enforcement agency that is part of or administered by the state or any of its political subdivisions, and whose primary and principal duties consist of the prevention and detection of crime and the enforcement of criminal statutes or ordinances of this state or any of its political subdivisions.

(b) "Law enforcement officer" specifically includes the following:

(i) any sheriff or deputy sheriff, chief of police, police officer, or marshal of any county, city, or town;

(ii) the commissioner of public safety and any member of the Department of Public Safety certified as a peace officer;

(iii) all persons specified in Sections 23-20-1.5 and 79-4-501;

(iv) any police officer employed by any college or university;

(v) investigators for the Motor Vehicle Enforcement Division;

(vi) special agents or investigators employed by the attorney general, district attorneys, and county attorneys;

(vii) employees of the Department of Natural Resources designated as peace officers by law;

(viii) school district police officers as designated by the board of education for the school district;

(ix) the executive director of the Department of Corrections and any correctional enforcement or investigative officer designated by the executive director and approved by the commissioner of public safety and certified by the division;

(x) correctional enforcement, investigative, or adult probation and parole officers

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employed by the Department of Corrections serving on or before July 1, 1993;

(xi) members of a law enforcement agency established by a private college or university provided that the college or university has been certified by the commissioner of public safety according to rules of the Department of Public Safety;

(xii) airport police officers of any airport owned or operated by the state or any of its political subdivisions; and

(xiii) transit police officers designated under Section 17B-2a-823.

(2) Law enforcement officers may serve criminal process and arrest violators of any law of this state and have the right to require aid in executing their lawful duties.

(3) (a) A law enforcement officer has statewide full-spectrum peace officer authority, but the authority extends to other counties, cities, or towns only when the officer is acting under Title 77, Chapter 9, Uniform Act on Fresh Pursuit, unless the law enforcement officer is employed by the state.

(b) (i) A local law enforcement agency may limit the jurisdiction in which its law enforcement officers may exercise their peace officer authority to a certain geographic area.

(ii) Notwithstanding Subsection (3)(b)(i), a law enforcement officer may exercise [his] authority outside of the limited geographic area, pursuant to Title 77, Chapter 9, Uniform Act on Fresh Pursuit, if the officer is pursuing an offender for an offense that occurred within the limited geographic area.

(c) The authority of law enforcement officers employed by the Department of Corrections is regulated by Title 64, Chapter 13, Department of Corrections - State Prison.

(4) A law enforcement officer shall, prior to exercising peace officer authority[; satisfactorily complete]:

~~[(a) the basic course at a certified law enforcement officer training academy or pass a certification examination as provided]~~

(a) (i) have satisfactorily completed the requirements of Section 53-6-205; or

(ii) have met the waiver requirements in Section 53-6-206~~[; and be certified];~~ and

(b) shall have satisfactorily completed annual certified training of at least 40 hours per year as directed by the director of the division, with the advice and consent of the council.

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~~Legislative Review Note~~

~~———— as of 1-28-11 12:20 PM~~

~~————— Office of Legislative Research and General Counsel}~~