

1 **PEACE OFFICER STANDARDS AND TRAINING**
2 **AMENDMENTS**
3 2013 GENERAL SESSION
4 STATE OF UTAH

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

6 Senate Sponsor: Daniel W. Thatcher

8 **LONG TITLE**

9 **General Description:**

10 This bill amends peace officer standards and training.

11 **Highlighted Provisions:**

12 This bill:

- 13 ▶ requires all applicants for admission and certification as a peace officer to be
- 14 eligible to possess a firearm under state law;
- 15 ▶ allows the Peace Officer Standards and Training Council to suspend or revoke a
- 16 peace officer's certification if the peace officer is not eligible to possess a firearm;
- 17 and
- 18 ▶ makes technical changes.

19 **Money Appropriated in this Bill:**

20 None

21 **Other Special Clauses:**

22 None

23 **Utah Code Sections Affected:**

24 AMENDS:

25 **53-6-203**, as last amended by Laws of Utah 2010, Chapter 313

26 **53-6-211**, as repealed and reenacted by Laws of Utah 2010, Chapter 313



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

29 Section 1. Section **53-6-203** is amended to read:

30 **53-6-203. Applicants for admission to training programs or for certification**
31 **examination -- Requirements.**

32 (1) Before being accepted for admission to the training programs conducted by a
33 certified academy, and before being allowed to take a certification examination, each applicant
34 for admission or certification examination shall meet the following requirements:

35 (a) be a United States citizen;

36 (b) be at least 21 years old at the time of appointment as a peace officer;

37 (c) be a high school graduate or furnish evidence of successful completion of an
38 examination indicating an equivalent achievement;

39 (d) have not been convicted of a crime for which the applicant could have been
40 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of
41 this or another state;

42 (e) have demonstrated good moral character, as determined by a background
43 investigation; [~~and~~]

44 (f) be free of any physical, emotional, or mental condition that might adversely affect
45 the performance of the applicant's duties as a peace officer[-]; and

46 (g) be eligible to possess a firearm under state law.

47 (2) (a) An application for admission to a training program shall be accompanied by a
48 criminal history background check of local, state, and national criminal history files and a
49 background investigation.

50 (b) The costs of the background check and investigation shall be borne by the applicant
51 or the applicant's employing agency.

52 (3) (a) Notwithstanding any expungement statute or rule of any other jurisdiction, any
53 conviction obtained in this state or other jurisdiction, including a conviction that has been
54 expunged, dismissed, or treated in a similar manner to either of these procedures, may be
55 considered for purposes of this section.

56 (b) This provision applies to convictions entered both before and after the effective
57 date of this section.

58 (4) Any background check or background investigation performed pursuant to the

59 requirements of this section shall be to determine eligibility for admission to training programs
60 or qualification for certification examinations and may not be used as a replacement for any
61 background investigations that may be required of an employing agency.

62 (5) An applicant shall be considered to be of good moral character under Subsection
63 (1)(e) if the applicant has not engaged in conduct that would be a violation of Subsection
64 53-6-211(1).

65 Section 2. Section **53-6-211** is amended to read:

66 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**

67 **Grounds -- Notice to employer -- Reporting.**

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

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

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

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

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

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

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

81 [~~(g) is dismissed from the armed forces of the United States under dishonorable~~
82 ~~conditions.~~]

83 (g) is unable to possess a firearm under state law.

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

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

89 (b) The division shall initiate all adjudicative proceedings under this section by

90 providing to the peace officer involved notice and an opportunity for a hearing before an
91 administrative law judge.

92 (c) All adjudicative proceedings under this section are civil actions, notwithstanding
93 whether the issue in the adjudicative proceeding is a violation of statute that may be prosecuted
94 criminally.

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

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

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

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

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

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

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

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

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

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

120 (5) (a) Termination of a peace officer, whether voluntary or involuntary, does not

121 preclude suspension or revocation of a peace officer's certification by the council if the peace
122 officer was terminated for any of the reasons under Subsection (1).

123 (b) Employment by another agency, or reinstatement of a peace officer by the original
124 employing agency after termination by that agency, whether the termination was voluntary or
125 involuntary, does not preclude suspension or revocation of a peace officer's certification by the
126 council if the peace officer was terminated for any of the reasons under Subsection (1).

127 (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made
128 aware of an allegation against a peace officer employed by that agency that involves conduct in
129 violation of Subsection (1) shall investigate the allegation and report to the division if the
130 allegation is found to be true.

Legislative Review Note
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Office of Legislative Research and General Counsel