

HB0213S01 compared with HB0213

~~text~~ shows text that was in HB0213 but was deleted in HB0213S01.

text shows text that was not in HB0213 but was inserted into HB0213S01.

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Representative Richard A. Greenwood proposes the following substitute bill:

PEACE OFFICER STANDARDS AND TRAINING

AMENDMENTS

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: _____

LONG TITLE

General Description:

This bill amends peace officer standards and training.

Highlighted Provisions:

This bill:

- ▶ requires all applicants for admission and certification as a peace officer to be eligible to possess a firearm under state law;
- ▶ allows the Peace Officer Standards and Training Council to suspend or revoke a peace officer's certification if the peace officer is not eligible to possess a firearm;
- ▶ allows federal agencies to exercise law enforcement authority related to misdemeanor offenses under Utah law;

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- ▶ requires that federal officers with authority to enforce federal laws and state and local laws complete a 20-hour course on Utah law and process; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

53-6-211, as repealed and reenacted by Laws of Utah 2010, Chapter 313

53-13-106, as last amended by Laws of Utah 2010, Chapter 411

53-13-106.5, as enacted by Laws of Utah 2010, Chapter 411

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

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

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

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

- (a) be a United States citizen;
- (b) be at least 21 years old at the time of appointment as a peace officer;
- (c) be a high school graduate or furnish evidence of successful completion of an examination indicating an equivalent achievement;
- (d) have not been convicted of a crime for which the applicant could have been punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of this or another state;
- (e) have demonstrated good moral character, as determined by a background investigation; ~~and~~
- (f) be free of any physical, emotional, or mental condition that might adversely affect

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the performance of the applicant's duties as a peace officer[~~:-~~]; and

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

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

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

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

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

(4) Any background check or background investigation performed pursuant to the requirements of this section shall be to determine eligibility for admission to training programs or qualification for certification examinations and may not be used as a replacement for any background investigations that may be required of an employing agency.

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

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

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

Grounds -- Notice to employer -- Reporting.

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

(a) willfully falsifies any information to obtain certification;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) The division shall notify the chief, sheriff, or administrative officer of the police agency which employs the involved peace officer of the investigation and shall provide any information or comments concerning the peace officer received from that agency regarding the

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peace officer to the council before a peace officer's certification may be suspended or revoked.

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

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

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

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

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

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

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

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

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

†

Legislative Review Note

~~as of 2-1-13 11:49 AM~~

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~~Office of Legislative Research and General Counsel~~; Section 3. Section 53-13-106 is amended to read:

53-13-106. Federal officers -- State law enforcement authority.

(1) (a) "Federal officer" includes:

(i) a special agent of the Federal Bureau of Investigation;

(ii) a special agent of the United States Secret Service;

(iii) a special agent of the United States Department of Homeland Security, excluding a customs inspector or detention removal officer;

(iv) a special agent of the Bureau of Alcohol, Tobacco and Firearms;

(v) a special agent of the Drug Enforcement Administration;

(vi) a United States marshal, deputy marshal, and special deputy United States marshal;

and

(vii) a U.S. Postal Inspector of the United States Postal Inspection Service.

(b) (i) Federal officers listed in Subsection (1)(a) have statewide law enforcement authority relating to felony offenses under the laws of this state. This Subsection (1)(b)(i) takes precedence over Subsection (2).

(ii) Federal agencies and federal employees as defined in Subsection 53-13-106.5(1) may exercise law enforcement authority related to misdemeanor and felony offenses under Utah law only as established by an agreement under Subsection 53-13-106.5(7). This Subsection (1)(b)(ii) takes precedence over Subsection (2).

(c) The council may designate other federal peace officers, as necessary, if the officers:

(i) are persons employed full-time by the United States government as federally recognized law enforcement officers primarily responsible for the investigation and enforcement of the federal laws;

(ii) have successfully completed formal law enforcement training offered by an agency of the federal government consisting of not less than 400 hours; and

(iii) maintain in-service training in accordance with the standards set forth in Section 53-13-103.

(2) Except as otherwise provided under Title 63L, Chapter 1, Federal Jurisdiction, and Title 77, Chapter 9, Uniform Act on Fresh Pursuit, a federal officer may exercise state law enforcement authority only if:

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(a) the state law enforcement agencies and county sheriffs with jurisdiction enter into an agreement with the federal agency to be given authority; and

(b) except as provided in Subsection (3), each federal officer employed by the federal agency meets the waiver requirements set forth in Section 53-6-206.

(3) A federal officer working as such in the state on or before July 1, 1995, may exercise state law enforcement authority without meeting the waiver requirement.

(4) At any time, consistent with any contract with a federal agency, a state or local law enforcement authority may withdraw state law enforcement authority from any individual federal officer by sending written notice to the federal agency and to the division.

(5) The authority of a federal officer under this section is limited to the jurisdiction of the authorizing state or local agency, and may be further limited by the state or local agency to enforcing specific statutes, codes, or ordinances.

Section 4. Section 53-13-106.5 is amended to read:

53-13-106.5. State limitations on functions of federal law enforcement officers.

(1) As used in this section:

(a) "Federal agency" means a federal agency that manages federally managed land.

(b) "Federal employee" means an employee of:

(i) the Bureau of Land Management;

(ii) the United States Forest Service; or

(iii) the National Park Service.

(c) "Federally managed land" means land managed by the following federal agencies:

(i) Bureau of Land Management;

(ii) United States Forest Service; and

(iii) the National Park Service.

(2) Unless otherwise provided by Utah law, federal employees performing their duties in Utah:

(a) may not exercise law enforcement authority solely because the land on which they exercise the authority is federally managed; and

(b) may exercise only law enforcement authority:

(i) expressly granted by federal statute; and

(ii) consistent with the Constitution of the United States.

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(3) Utah does not authorize federal employees to exercise law enforcement powers to enforce the laws of Utah, either on or off federally managed land except as authorized under this section or other provisions of state statute.

(4) (a) Utah does not recognize the authority of employees or agents of the United States Department of Interior to exercise law enforcement powers beyond those powers strictly necessary for the management, use, and protection of federally managed lands, including property located on these lands, as limited by 43 U.S.C. 1733(a) and 1733(c)(2).

(b) As required by Congress in 43 U.S.C. 1733(c)(1), when the Secretary of Interior determines that state or local assistance is necessary in enforcing federal laws and regulations relating to federally managed lands or the resources on those lands, the secretary shall offer a contract to appropriate state or local law enforcement agencies of the state with the purpose of achieving maximum feasible reliance upon state or local law enforcement officials in enforcing the federal laws and regulations.

(5) Utah does not authorize federal employees to take action based on the Utah Code, Utah Administrative Rules, or county or municipal ordinances as a basis to arrest or cite persons for prosecution in the federal criminal justice system, unless the action:

(a) has been expressly granted by federal statute; and

(b) is consistent with the Constitution of the United States.

(6) State and local government agencies may not allow any federal agency access to or use of the correctional and communication facilities and equipment of any state or local law enforcement agency without the express written consent of the appropriate responsible official of the state or local law enforcement agency.

(7) State and local law enforcement agencies may enter into agreements with federal agencies granting concurrent authority to enforce federal laws and state and local laws, provided the agreements are limited to a term not to exceed two years and the officers granted authority have completed a 20-hour course focusing on Utah law and process approved by the director of the Peace Officer Standards and Training Division.

(8) (a) County sheriffs shall regularly review the duties and activities of federal agencies that have law enforcement responsibilities and that are acting within the jurisdictional area of the county to ascertain whether the federal agencies are acting consistently with this section.

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(b) County sheriffs shall annually report to the county attorney or district attorney of their jurisdiction the results of all reviews conducted under this Subsection (8).