

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

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

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 Section [53-13-114](#) is repealed and reenacted to read: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 provision of liability and, 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](#).