

HB0268S02 compared with HB0268S01

~~text~~ shows text that was in HB0268S01 but was deleted in HB0268S02.

Inserted text shows text that was not in HB0268S01 but was inserted into HB0268S02.

DISCLAIMER: This document is provided to assist you in your comparison of the two bills. Sometimes this automated comparison will NOT be completely accurate. Therefore, you need to read the actual bills. This automatically generated document could contain inaccuracies caused by: limitations of the compare program; bad input data; or other causes.

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: _____

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 ~~off-duty~~ secondary employment; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

HB0268S02 compared with HB0268S01

None

Utah Code Sections Affected:

~~{AMENDS}~~ 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:

Section 1. Section **53-13-114** is ~~{amended to read: 53-13-114. Off-duty peace officer working as a security}~~ repealed and reenacted to read:

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

(1) As used in this section:

(a) ~~"{Contract security company}Extra-duty secondary employment"~~ means any secondary employment by a law enforcement officer that is conditioned on the actual or potential use of law enforcement powers by the officer, and for which law enforcement powers are a condition of employment, including:

(i) traffic control and pedestrian safety;

(ii) crowd control;

(iii) protection of life or property;

(iv) law enforcement activities for governmental agencies; and

(v) plain clothes assignments.

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

(c) "Law enforcement agency" means the same as that term is defined in ~~{Section 58-63-102}~~ Subsection 53-1-102(1)(c).

~~{b}~~d) "Law enforcement officer" means the same as that term is defined in Section 53-13-103.

~~{c}~~ "Off-duty employment" means the employment of a}e) "Secondary employer" means an individual, corporation, business, or other entity, other than the law enforcement agency that regularly employs the law enforcement officer ~~{ while off-duty as an off-duty}~~, that hires or contracts with a law enforcement officer or ~~{as a security officer. (d) (i) "Off-duty}~~a

HB0268S02 compared with HB0268S01

law enforcement agency for secondary employment.

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

(g) "Unrelated secondary employment" means any secondary employment by a law enforcement officer ~~{who is employed while off-duty to provide}~~ that will not require the ~~{services}~~ actual or potential use of ~~{a}~~ law enforcement powers by the officer ~~{. (ii) "Off-duty} and for which~~ law enforcement ~~{officer" includes any law enforcement officer who is wearing the uniform of a law enforcement agency while engaging in off-duty employment.~~

~~———— (e) "Security officer" means a law enforcement officer who is employed while off-duty to provide the services of}~~ powers are not a condition of employment, including secondary employment as a security officer as described in ~~{the definition of security officer in Section} Subsection 58-63-102(16).~~

~~(2) ~~{[A peace] A law enforcement officer may only engage in off-duty employment as a security officer [under Section 58-63-304 only] or as an off-duty}~~ A law enforcement officer may engage in secondary employment only if:~~

~~~~{(1)}~~ (a) in accordance with ~~{Subsection} Subsections (3) ~~{, the law enforcement agency employing the [peace officer: (a)] law enforcement officer has a written policy regarding [peace] a law enforcement officer [employees] employee working while off-duty as [security officers] a security officer or as an off-duty law enforcement officer; and~~ ~~———— [(b) the policy under Subsection (1)(a) is:]~~ ~~———— [(i) posted and publicly available on the appropriate city, county, or state website; or]~~ ~~———— [(ii) posted on the Utah Public Notice Website created in Section 63F-1-701 if the law enforcement agency does not have access to a website under Subsection (1)(b)(i).]~~ [(2) the agency's chief administrative officer, or that officer's designee, provides written authorization for an off-duty peace officer to work as a security officer; and] [(3) the business or entity employing the off-duty peace officer to work as a security officer complies with state and federal income reporting and withholding requirements regarding the off-duty officer's wages.] ~~———— (b) in accordance with Subsection (4), the law enforcement officer or}~~ through (6), the law enforcement agency that regularly employs the law enforcement officer ~~{enters into a written employment agreement with the contract security company or other business or entity providing the off-duty employment}~~ has a~~~~

## HB0268S02 compared with HB0268S01

written policy permitting a law enforcement officer to engage in secondary employment pursuant to the terms and conditions specified in the policy;

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

(c) the secondary employment does not:

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

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

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

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

(B) a gambling or gaming establishment;

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

or

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

(3) (a) A law enforcement agency's written policy regarding ~~{a law enforcement officer employee working while off-duty as a security officer or as an off-duty law enforcement officer}~~ secondary employment shall include:

(i) the scope of ~~{the duties}~~ services that may be provided ~~{while engaging in off-duty employment, (ii) when}~~ by a law enforcement officer ~~{is authorized to wear the}~~ when engaging in extra-duty secondary employment, intermediate-duty secondary employment, or unrelated secondary employment;

(ii) the circumstances under which a law enforcement officer engaged in extra-duty

## HB0268S02 compared with HB0268S01

secondary employment, intermediate-duty secondary employment, or unrelated secondary employment is authorized or expected to wear the regular on-duty uniform of the law enforcement agency ~~for~~ employing the officer and, if so authorized, how the agency will be reimbursed by the secondary employer for use ~~of other law enforcement agency equipment while engaging in off-duty employment; and~~ (iii) the financial responsibility of the employing law enforcement agency and the contract security company or other entity receiving the off-duty services ~~of~~ of the uniform and its replacement value if lost, damaged, or destroyed in connection with the secondary employment;

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

(iv) a clear description of how a law enforcement officer ~~for as a security officer.~~  
~~(b) A~~ may submit a request for written authorization for the officer to engage in secondary employment, the standards governing the law enforcement ~~agency shall make a written policy regarding a law enforcement office employee working while off-duty as a security officer or as an off-duty~~ agency's approval, denial, or revocation of approval of requests to engage in secondary employment, and an officer's appeal rights, if any, relating to denied requests or revoked approvals.

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

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

(4) A written ~~employment agreement described in Subsection (2)(b)~~ agreement to engage in extra-duty secondary employment shall be between the secondary employer and the contracting authority for the law enforcement agency that regularly employs the law enforcement officer, and shall include:

## HB0268S02 compared with HB0268S01

(a) a general description of ~~{the off-duty services that will be provided by}~~ services the secondary employer expects to receive from the law enforcement agency, the law enforcement officer ~~{engaging in off-duty employment}, or both;~~

(b) ~~{compensation rates}~~ authorization for the law enforcement officer ~~{engaging in off-duty employment};~~ ~~\_\_\_\_\_ (c) a description of whether the law enforcement officer engaging in off-duty employment will wear the}~~ to wear the on-duty uniform of the law enforcement agency ~~{, a uniform provided by a contract security company or other entity, or other clothing while working as a security officer or off-duty law enforcement officer; \_\_\_\_\_ (d) a description of what law enforcement agency equipment may be used while}~~ that regularly employs the officer;

~~(c) authorization for~~ the law enforcement officer ~~{is engaged in off-duty employment; and \_\_\_\_\_ (e) to use equipment and, if applicable, other resources of the law enforcement agency that regularly employs the officer and, as appropriate, a description of the equipment or resources;~~

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

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

~~(f) a clear description of the secondary employer's and the law enforcement {agency's and the contract security company's or other entity's responsibility for: \_\_\_\_\_ (i) financial responsibility, including liability coverage; and \_\_\_\_\_ (ii) }agency's respective obligations for state and federal income reporting and withholding {requirements regarding compensation provided to a} responsibilities in connection with the secondary employment;~~

~~(g) terms for the secondary employer's provision of liability and, if applicable, workers compensation insurance with policy limits sufficient to protect and indemnify the law enforcement agency and the law enforcement officer {engaging in off-duty employment. (5) Notwithstanding any other provision of this section, a law enforcement agency's written policy pursuant to Subsections (3)(a) and (b), and a written employment agreement pursuant to Subsections (4)(a) through (c), shall state that when a law enforcement officer is working as an~~

## HB0268S02 compared with HB0268S01

~~off-duty law enforcement officer or as an off-duty security officer, the contract security company or other business or entity providing the off-duty employment is responsible to provide liability insurance coverage for the off-duty officer and } for any and all claims arising from the officer's secondary employment, including claims relating to personal injury, property damage, and civil rights violations, and all employment, workers compensation, contract, and wage claims;~~

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

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

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

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

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

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

(iv) terms for the secondary employer's provision of liability and, if applicable, workers

## HB0268S02 compared with HB0268S01

compensation insurance with policy limits sufficient to protect and indemnify the law enforcement officer and, where the law enforcement agency that regularly employs the officer has elected to become a contracting party, the agency, for any and all claims arising from the ~~{off-duty} officer's secondary employment}.~~ (6) Notwithstanding the language of

Subsection (5), a law enforcement agency is not prohibited from entering into a written agreement with a public or private entity to provide law enforcement services and to assume liability for those services:

†, including claims for personal injury, property damage, or civil rights violations, and all employment, workers compensation, contract, or wage claims; and

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

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

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

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

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

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

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



## HB0268S02 compared with HB0268S01

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

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

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

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