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POST CERTIFICATION AMENDMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Andrew Stoddard

Senate Sponsor: _____

LONG TITLE

General Description:

This bill adds additional grounds for suspending or revoking the certification of a peace officer.

Highlighted Provisions:

This bill:

▶ adds the following grounds to the council's authority to issue a Letter of Caution, suspend, or revoke the certification of a peace officer:

- conduct involving dishonesty or deception; or
- violation of employer's use of force policy; and

▶ modifies when separations from an employer must be reported to the division.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-6-211, as last amended by Laws of Utah 2020, Chapter 35

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

Section 1. Section **53-6-211** is amended to read:



28 **53-6-211. Suspension or revocation of certification -- Right to a hearing --**
29 **Grounds -- Notice to employer -- Reporting -- Judicial appeal.**

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

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

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

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

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

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

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

43 (g) is certified as a law enforcement peace officer, as defined in Section 53-13-102, and
44 is unable to possess a firearm under state or federal law[?];

45 (h) is found to have engaged in conduct that involves dishonesty or deception;

46 (i) is found by a court to have provided dishonest or deceptive testimony;

47 (j) violates any use of force policy of the peace officer's employer; or

48 (k) engages in biased or prejudicial conduct against one or more individuals based on
49 the individual's race, color, sex, pregnancy, age, religion, national origin, disability, sexual
50 orientation, or gender identity.

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

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

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

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

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

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

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

70 (f) The division shall notify the chief, sheriff, or administrative officer of the police
71 agency which employs the involved peace officer of the investigation and shall provide any
72 information or comments concerning the peace officer received from that agency regarding the
73 peace officer to the council before a Letter of Caution is issued, or a peace officer's certification
74 may be suspended or revoked.

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

78 (4) (a) The council shall:

79 (i) accept the administrative law judge's findings of fact and conclusions of law, and
80 the information concerning the peace officer provided by the officer's employing agency; and

81 (ii) choose whether to issue a Letter of Caution, or suspend or revoke the officer's
82 certification.

83 (b) Before making a decision, the council may consider aggravating and mitigating
84 circumstances.

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

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

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

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

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

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

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

103 (b) If a peace officer who is the subject of an ~~[internal or administrative investigation~~
104 ~~into allegations that include]~~ allegation that includes any of the conditions or circumstances
105 outlined in Subsection (1) resigns, retires, or otherwise separates from the investigating law
106 enforcement agency before the conclusion of the investigation, the chief, sheriff, or
107 administrative officer of that law enforcement agency shall report the allegations and any
108 investigation results to the division.

109 (7) The council's issuance of a Letter of Caution, or suspension or revocation of an
110 officer's certification under Subsection (4) may be appealed under Title 63G, Chapter 4, Part 4,
111 Judicial Review.