

SB0013S02 compared with SB0013S01

~~deleted text~~ shows text that was in SB0013S01 but was deleted in SB0013S02.

inserted text shows text that was not in SB0013S01 but was inserted into SB0013S02.

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Senator Jani Iwamoto proposes the following substitute bill:

LAW ENFORCEMENT INTERNAL INVESTIGATION

REQUIREMENTS

2021 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Jani Iwamoto

House Sponsor: _____

LONG TITLE

General Description:

This bill adjusts requirements for law enforcement agencies to conduct internal investigations regarding law enforcement officers.

Highlighted Provisions:

This bill:

- ▶ requires an employing law enforcement agency or training academy to provide information to a prospective employer upon request;
- ▶ requires law enforcement agencies to report certain investigations to POST; and
- ▶ makes conforming and technical corrections.

Money Appropriated in this Bill:

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None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-6-209, as renumbered and amended by Laws of Utah 1993, Chapter 234

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

53-14-101, as last amended by Laws of Utah 2004, Chapter 62

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

Section 1. Section **53-6-209** is amended to read:

53-6-209. Termination of employment -- Change of status form.

(1) When a peace officer's employment terminates, the employing agency shall submit a change of status form noting the termination of the peace officer to the division.

(2) The change of status form shall:

(a) be completed and submitted within [~~seven~~] 30 days of the peace officer's termination date;

(b) identify the circumstances of the peace officer's status change by indicating that the peace officer has resigned, retired, terminated, transferred, deceased, or that the peace officer's name has changed;

(c) indicate the effective date of action; and

(d) indicate the name of the new employer, if the status change is due to a transfer.

(3) If a peace officer's employment terminates during an open internal investigation regarding that peace officer and involving an alleged violation of Subsection 53-6-211(1), the employing agency shall notify the division of the investigation in accordance with Subsection 53-6-211(6) within 30 days of the peace officer's termination date and provide a reasonable estimated date of completion for the investigation.

(4) If an employing agency receives credible allegations and opens an internal investigation after a peace officer's employment has been terminated, the employing agency shall notify the division within 30 days of the date of the opening of the investigation and provide a reasonable estimated date of completion for the investigation. If the allegations

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involve alleged violations of Subsection 53-6-211(1), the agency shall report the allegations to the division in accordance with Subsection 53-6-211(6) whether or not the employing agency opens an internal investigation.

~~[(3)]~~ (5) Any person or agency who intentionally falsifies, misrepresents, or fails to give notice of the change of status of a peace officer is liable to the division for any damages that may be sustained by the failure to make the notification.

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 -- Judicial appeal.

(1) The council has the authority to issue a Letter of Caution, or 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;]~~

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

~~[(e)]~~ (d) 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)]~~ (e) engages in sexual conduct while on duty; or

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

(2) The council may not issue a Letter of Caution, or 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

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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 peace officer to the council before a Letter of Caution is issued, or 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:

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

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

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

(c) 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

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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) 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]~~ conduct an administrative or internal investigation into the allegation and report the findings of the investigation to the division ~~{}~~ if the allegation is found to be true ~~{ unless Subsection (6)(b) applies }~~.

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

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

Section 3. Section 53-14-101 is amended to read:

53-14-101. Law enforcement and training academy applicants -- Employer background information.

(1) As used in this section:

(a) "Director" means the director of a certified law enforcement officer training academy.

(b) "Employer" includes a public employer and a private employer and includes the

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human resource officer for the employer.

(c) "Law enforcement agency" has the same definition as in Section 53-1-102.

(d) "Law enforcement officer" has the same definition as in Section 53-13-103, and includes those officers in administrative positions.

(e) "Training academy" means a peace officer training institution certified in accordance with the standards developed under Section 53-6-105.

(2) A current or former employer and the director of any training academy an applicant has attended or graduated from shall provide all available information in accordance with this section regarding an applicant if the request complies with Subsection (3) and is submitted by:

(a) a law enforcement agency regarding an applicant for an employment position; or

(b) the director of a law enforcement training academy for which the applicant requests admission under Section 53-6-203.

(3) The request for information pursuant to Subsection (2) shall be:

(a) in writing;

(b) accompanied by an authorization signed by the applicant and notarized by a notary public, in which the applicant consents to the release of the requested information and releases the employer or training academy providing the information from liability; and

(c) addressed to the employer or director and signed by a sworn officer or other authorized representative of the requesting law enforcement agency or the academy.

(4) The information that a law enforcement agency or the director of an academy [may] shall request pursuant to Subsection (2) includes:

(a) the date on which the [applicant began his] applicant's employment commenced and, if applicable, the date on which [the employment of the applicant] applicant's employment was terminated;

(b) a list of the compensation that the employer provided to the applicant during the course of the employment;

(c) a copy of the application for a position of employment that the applicant submitted to the employer;

(d) a written evaluation of the performance of the applicant;

(e) a record of the attendance of the applicant;

(f) a record of disciplinary action taken against the applicant;

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(g) a statement regarding whether the employer would rehire the applicant and, if the employer would not rehire the applicant, the reasons why;

(h) if applicable, a record setting forth the reason that the employment of the applicant was terminated and whether the termination was voluntary or involuntary;

(i) the record of any final action regarding an applicant's peace officer certification that is based on an investigation concerning the applicant's qualification for certification; and

(j) notice of any pending or ongoing investigation regarding the applicant's certification as a peace officer.

(5) (a) In the absence of fraud or malice, an employer or training academy is not subject to any civil liability for any relevant cause of action by releasing employment information requested under this section.

(b) This section does not in any way or manner abrogate or lessen the existing common law or statutory privileges and immunities of an employer.

(c) An employer or training academy may not provide information pursuant to Subsection (2) if the disclosure of the information is prohibited pursuant to federal or state law.

(6) An employer's refusal to disclose information to a law enforcement agency in accordance with this section constitutes grounds for a civil action by the requesting agency for injunctive relief requiring disclosure on the part of an employer.

(7) (a) (i) A law enforcement agency may use the information received pursuant to this section only to determine the suitability of an applicant for employment.

(ii) A director may use the information received pursuant to this section only to determine the suitability of an applicant for acceptance at the training academy.

(b) Except as otherwise provided in Subsection (7)(c), [a] the recipient law enforcement agency and [a] director shall maintain the confidentiality of information received pursuant to this section.

(c) (i) A law enforcement agency [may] shall share information regarding an applicant that it receives pursuant to this section with another law enforcement agency if:

(A) the information is requested by the other law enforcement agency in accordance with this section;

[(A)] (B) the applicant is also an applicant for any employment position with the other law enforcement agency; and

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~~(B)~~ (C) the confidentiality of the information is otherwise maintained.

(ii) A director ~~[may]~~ shall share information regarding an applicant that is received pursuant to this section with another training academy if:

(A) the information is requested by the other training academy in accordance with this section;

~~(A)~~ (B) the applicant is an applicant for acceptance at the other training academy; and

~~(B)~~ (C) the confidentiality of the information is otherwise maintained.

(iii) A director ~~[may]~~ shall share information regarding an applicant, attendee, or graduate of a training academy that is received pursuant to this section with a law enforcement agency if:

(A) the information is requested by the law enforcement agency in accordance with this section;

~~(A)~~ (B) the applicant is applying for a position as a peace officer with the law enforcement agency; and

~~(B)~~ (C) the confidentiality of the information is otherwise maintained.

(8) This section applies to requests submitted to employers on and after July 1, ~~[2003]~~ 2020 for employment information under this section.