

# HB0073S01 compared with HB0073

~~text~~ shows text that was in HB0073 but was deleted in HB0073S01.

text shows text that was not in HB0073 but was inserted into HB0073S01.

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Representative Andrew Stoddard proposes the following substitute bill:

## POST CERTIFICATION AMENDMENTS

2022 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Andrew Stoddard**

Senate Sponsor: \_\_\_\_\_

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### LONG TITLE

#### General Description:

This bill modifies the authority of the Peace Officer Standards and Training Council (council) in relation to certain peace officer misconduct.

#### Highlighted Provisions:

This bill:

- ▶ allows the council to take certain action if a peace officer ~~violates~~ is found by the peace officer's employer to have violated minimum use of force standards; and
- ▶ makes technical changes.

#### Money Appropriated in this Bill:

None

#### Other Special Clauses:

None

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### Utah Code Sections Affected:

AMENDS:

**53-6-211**, as last amended by Laws of Utah 2021, Chapters 96 and 311

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

Section 1. 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) engages in conduct constituting a state or federal criminal offense, but not including a traffic offense that is a class C misdemeanor or infraction;

(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);

(e) engages in sexual conduct while on duty;

(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;

(g) is found by a court or ~~[by a]~~ law enforcement agency to have knowingly engaged in conduct that involves dishonesty or deception in violation of a policy of the peace officer's employer or in violation of a state or federal law; ~~[or]~~

(h) is found by a court or ~~[by a]~~ law enforcement agency to have knowingly engaged in biased or prejudicial conduct against one or more individuals based on the individual's race, color, sex, pregnancy, age, religion, national origin, disability, sexual orientation, or gender identity[-]; or

(i) is notified by the peace officer's employer that the peace officer's employer found ~~{by a court or law enforcement agency}~~ the peace officer to have knowingly engaged in conduct in violation of the minimum use of force standards created under Subsection 53-6-107(1)(e) and mandated under Section 53-6-109.

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(2) The council may not issue a Letter of Caution or suspend or revoke the certification of a peace officer for a violation of state or federal law or 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 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

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(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 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 conduct an administrative or internal investigation into the allegation and report the findings of the investigation to the division if the allegation is substantiated.

(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 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.

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