

**JUDICIAL REVIEW OF PEACE OFFICER STANDARDS
AND TRAINING ACTIONS**

2013 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Merrill F. Nelson

Senate Sponsor: Daniel W. Thatcher

LONG TITLE

General Description:

This bill modifies the Public Safety Code regarding peace officer certification.

Highlighted Provisions:

This bill:

► provides for the judicial appeal of a suspension or revocation of the certification of a peace officer by the Peace Officer Standards and Training Council.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

53-6-211, as repealed and reenacted by Laws of Utah 2010, Chapter 313

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 authority to suspend or revoke the certification of a peace officer, if the peace officer:

(a) willfully falsifies any information to obtain certification;

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

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

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

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

39 (f) engages in sexual conduct while on duty; or

40 (g) is dismissed from the armed forces of the United States under dishonorable
41 conditions.

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

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

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

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

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

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

57 (e) If the administrative law judge issues findings of fact and conclusions of law stating

58 there is sufficient evidence to demonstrate that the officer engaged in conduct that is in
59 violation of Subsection (1), the division shall present the finding and conclusions issued by the
60 administrative law judge to the council.

61 (f) The division shall notify the chief, sheriff, or administrative officer of the police
62 agency which employs the involved peace officer of the investigation and shall provide any
63 information or comments concerning the peace officer received from that agency regarding the
64 peace officer to the council before a peace officer's certification may be suspended or revoked.

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

68 (4) (a) The council shall review the findings of fact and conclusions of law and the
69 information concerning the peace officer provided by the officer's employing agency and
70 determine whether to suspend or revoke the officer's certification.

71 (b) A member of the council shall recuse him or herself from consideration of an issue
72 that is before the council if the council member:

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

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

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

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

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

85 (6) A chief, sheriff, or administrative officer of a law enforcement agency who is made

86 aware of an allegation against a peace officer employed by that agency that involves conduct in
87 violation of Subsection (1) shall investigate the allegation and report to the division if the
88 allegation is found to be true.

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