

DISPATCHER SERVICE AMENDMENTS

2011 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Richard A. Greenwood

Senate Sponsor: John L. Valentine

LONG TITLE

General Description:

This bill modifies the Peace Officer Standards and Training Act regarding the certification of dispatchers.

Highlighted Provisions:

This bill:

- ▶ modifies the definition of "good moral character";
- ▶ changes the time period for becoming inactive from one year to 18 months;
- ▶ provides for suspension of a dispatcher's certification if annual training is not satisfactorily completed;
- ▶ revises the process for the suspension or revocation of a dispatcher's certification, including:
 - authorizing the Peace Officer Standards and Training Council to suspend or revoke the certification of a dispatcher;
 - amending the grounds for suspension or revocation; and
 - providing procedures for adjudicative hearings, including burdens of proof and levels of proof required; and
- ▶ provides that if a dispatcher relinquishes certification when a disciplinary procedure against the dispatcher is pending, the dispatcher may not be certified again as a dispatcher in Utah.

Money Appropriated in this Bill:

None

Other Special Clauses:

30 None

31 **Utah Code Sections Affected:**

32 AMENDS:

33 **53-6-302**, as last amended by Laws of Utah 2010, Chapters 283 and 324

34 **53-6-304**, as enacted by Laws of Utah 1995, Chapter 134

35 **53-6-306**, as enacted by Laws of Utah 1995, Chapter 134

36 ENACTS:

37 **53-6-311**, Utah Code Annotated 1953

38 REPEALS AND REENACTS:

39 **53-6-309**, as enacted by Laws of Utah 1995, Chapter 134



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

42 Section 1. Section **53-6-302** is amended to read:

43 **53-6-302. Applicants for certification examination -- Requirements.**

44 (1) Before being allowed to take a dispatcher certification examination, each applicant
45 shall meet the following requirements:

46 (a) be a United States citizen;

47 (b) be 18 years of age or older at the time of employment as a dispatcher;

48 (c) be a high school graduate or have a G.E.D. equivalent;

49 (d) have not been convicted of a crime for which the applicant could have been

50 punished by imprisonment in a federal penitentiary or by imprisonment in the penitentiary of
51 this or another state;

52 (e) have demonstrated good moral character, as determined by a background
53 investigation; and

54 (f) be free of any physical, emotional, or mental condition that might adversely affect
55 the performance of the applicant's duty as a dispatcher.

56 (2) (a) An application for certification shall be accompanied by a criminal history
57 background check of local, state, and national criminal history files and a background

58 investigation.

59 (b) The costs of the background check and investigation shall be borne by the applicant
60 or the applicant's employing agency.

61 ~~[(i) Conviction of any offense not serious enough to be covered under Subsection
62 (1)(d), involving dishonesty, unlawful sexual conduct, physical violence, or the unlawful use,
63 sale, or possession for sale of a controlled substance is an indication that an applicant may not
64 be of good moral character and may be grounds for denial of certification or refusal to give a
65 certification examination.]~~

66 ~~[(ii) An applicant may be allowed to take a certification examination provisionally,
67 pending completion of any background check or investigation required by this
68 Subsection (2)(b).]~~

69 (3) (a) Notwithstanding Title 77, Chapter 40, Utah Expungement Act, regarding
70 expungements, or a similar statute or rule of any other jurisdiction, any conviction obtained in
71 this state or other jurisdiction, including a conviction that has been expunged, dismissed, or
72 treated in a similar manner to either of these procedures, may be considered for purposes of this
73 section.

74 (b) Subsection (3)(a) applies to convictions entered both before and after May 1, 1995.

75 (4) Any background check or background investigation performed pursuant to the
76 requirements of this section shall be to determine eligibility for admission to training programs
77 or qualification for certification examinations and may not be used as a replacement for any
78 background investigations that may be required of an employing agency.

79 (5) An applicant is considered to be of good moral character under Subsection (1)(e) if
80 the applicant has not engaged in conduct that would be a violation of Subsection 53-6-309(1).

81 Section 2. Section **53-6-304** is amended to read:

82 **53-6-304. Waiver of training course requirement.**

83 (1) The director may waive the required basic dispatcher training course and certify an
84 applicant who:

85 (a) provides evidence that the applicant meets the requirements under Section

86 53-6-302, relating to qualifications for admission to the training course;

87 (b) provides evidence that the applicant has completed a basic dispatcher training
88 program that, in the director's judgment, is equivalent to the course required for certification
89 under this part; and

90 (c) passes [~~a written~~] the certification examination [~~; an oral examination, or both, that~~
91 ~~affirms the applicant's ability in public safety communications~~].

92 (2) An applicant who fails the examination under Subsection (1)(c) shall complete the
93 basic dispatcher training course and pass the [~~dispatcher~~] certification examination to become
94 certified.

95 Section 3. Section **53-6-306** is amended to read:

96 **53-6-306. Inactive and lapsed certificates -- Reinstatement -- Continuing**
97 **education requirements.**

98 (1) (a) The certificate of a dispatcher who has not been actively engaged in performing
99 the duties of a dispatcher for [~~one year shall be~~] 18 consecutive months or more is designated
100 "inactive."

101 [~~(b) If a dispatcher having an inactive certificate becomes reemployed or subsequently~~
102 ~~reengaged as a dispatcher, the dispatcher's certificate may be reissued or reinstated by the~~
103 ~~director upon successful completion by that dispatcher of the certification examination.~~]

104 [~~(c) The director may require a dispatcher with an inactive certificate to successfully~~
105 ~~complete the basic dispatcher training course before reissuing or reinstating certification.~~]

106 (b) A dispatcher whose certificate is inactive shall pass the certification examination
107 before the certificate may be reissued or reinstated.

108 (2) (a) The certificate of a dispatcher who has not been actively engaged in performing
109 the duties of a dispatcher for four continuous years shall be designated "lapsed."

110 (b) [~~Subject to Section 53-6-305, a~~] A dispatcher [~~having a lapsed~~] whose certificate
111 has lapsed shall successfully complete the basic training course and pass the certification
112 examination before the certificate may be reissued or reinstated.

113 (3) (a) A certified dispatcher shall complete annual training approved by the director of

114 20 hours or more.

115 ~~[(b) (i) If a certified dispatcher does not complete the annual training requirement, then~~
116 ~~that dispatcher's certificate shall be designated "inactive," and after one year, shall be~~
117 ~~designated "lapsed."]~~

118 ~~[(ii) The reinstatement of an inactive or a lapsed certificate under Subsection (3) shall~~
119 ~~be governed by rules made by the director.]~~

120 (b) If a dispatcher fails to satisfactorily complete the annual training, the dispatcher's
121 certificate shall be suspended until any deficiency in the annual training is remedied.

122 Section 4. Section **53-6-309** is repealed and reenacted to read:

123 **53-6-309. Suspension or revocation of certification -- Right to a hearing --**
124 **Grounds -- Notice to employer -- Reporting.**

125 (1) The council has authority to suspend or revoke the certification of a dispatcher, if
126 the dispatcher:

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

128 (b) has any physical or mental disability affecting the dispatcher's ability to perform
129 duties;

130 (c) is addicted to alcohol or any controlled substance, unless the dispatcher reports the
131 addiction to the employer and to the director as part of a departmental early intervention
132 process;

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

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

137 (f) engages in sexual conduct while on duty.

138 (2) The council may not suspend or revoke the certification of a dispatcher for a
139 violation of the employing agency's policies, general orders, or guidelines of operation that do
140 not amount to a cause of action under Subsection (1).

141 (3) (a) The division is responsible for investigating dispatchers who are alleged to have

142 engaged in conduct in violation of Subsection (1).

143 (b) The division shall initiate all adjudicative proceedings under this section by
144 providing to the dispatcher involved notice and an opportunity for a hearing before an
145 administrative law judge.

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

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

151 (ii) If a dispatcher asserts an affirmative defense, the dispatcher has the burden of proof
152 to establish the affirmative defense by a preponderance of the evidence.

153 (e) If the administrative law judge issues findings of fact and conclusions of law stating
154 there is sufficient evidence to demonstrate that the dispatcher engaged in conduct that is in
155 violation of Subsection (1), the division shall present the findings and conclusions issued by
156 the administrative law judge to the council.

157 (f) The division shall notify the agency that employs the involved dispatcher of the
158 investigation and shall provide any information or comments concerning the dispatcher
159 received from that agency regarding the dispatcher to the council before a dispatcher's
160 certification may be suspended or revoked.

161 (g) If the administrative law judge finds that there is insufficient evidence to
162 demonstrate that the dispatcher is in violation of Subsection (1), the administrative law judge
163 shall dismiss the adjudicative proceeding.

164 (4) (a) The council shall review the findings of fact and conclusions of law and the
165 information concerning the dispatcher provided by the dispatcher's employing agency and
166 determine whether to suspend or revoke the dispatcher's certification.

167 (b) A council member shall recuse himself or herself from consideration of an issue
168 that is before the council if the council member:

169 (i) has a personal bias for or against the dispatcher;

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

172 (iii) employs, supervises, or works for the same agency as the dispatcher whose case is
173 before the council.

174 (5) (a) Termination of a dispatcher, whether voluntary or involuntary, does not
175 preclude suspension or revocation of a dispatcher's certification by the council if the dispatcher
176 was terminated for any of the reasons under Subsection (1).

177 (b) Employment by another agency, or reinstatement of a dispatcher by the original
178 employing agency after termination by that agency, whether the termination was voluntary or
179 involuntary, does not preclude suspension or revocation of a dispatcher's certification by the
180 council if the dispatcher was terminated for any of the reasons under Subsection (1).

181 (6) An agency that is made aware of an allegation against a dispatcher employed by
182 that agency that involves conduct in violation of Subsection (1) shall investigate the allegation
183 and report to the division if the allegation is found to be true.

184 Section 5. Section **53-6-311** is enacted to read:

185 **53-6-311. Voluntary relinquishment of dispatcher certification.**

186 (1) (a) A dispatcher may voluntarily relinquish the dispatcher's certification to the
187 division at any time when a disciplinary issue regarding the dispatcher has been referred to the
188 division.

189 (b) A dispatcher who voluntarily relinquishes certification under this Subsection (1)
190 may not subsequently be certified as a dispatcher in Utah.

191 (2) Subsection (1) does not apply to a dispatcher whose certification has become
192 inactive as provided in Section 53-6-306.