

FILED

2011 APR -1 AM 11: 17

WEST VIRGINIA LEGISLATURE WEST VIRGINIA
EIGHTIETH LEGISLATURE GOVERNMENT OF STATE
REGULAR SESSION, 2011

—●—
ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 193

(SENATORS FOSTER, KESSLER (ACTING PRESIDENT),
CHAFIN, HALL, JENKINS, LAIRD, MINARD, PALUMBO, SNYDER,
WILLIAMS, UNGER AND PLYMALE, ORIGINAL SPONSORS)

[PASSED MARCH 12, 2011; IN EFFECT NINETY DAYS FROM PASSAGE.]

SB 193

2011 APR -1 AM 11:17

WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 193

(SENATORS FOSTER, KESSLER (ACTING PRESIDENT),
CHAFIN, HALL, JENKINS, LAIRD, MINARD, PALUMBO, SNYDER,
WILLIAMS, UNGER AND PLYMALE, *original sponsors*)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-29-11, all relating to certifying law-enforcement officers generally; expanding the responsibilities of the law-enforcement training subcommittee and renaming it the law-enforcement professional standards subcommittee; clarifying the authority to decertify or reactivate a law-enforcement officer's certification; adding the West Virginia Troopers Association to the subcommittee membership; expanding duties of the Governor's committee and the subcommittee; providing consequences for the failure to be certified; process for making inactive the certification of officers who separate from their employment; reactivating a law-enforcement officer's certification; rehiring of officer reactivated not required; and providing for immunity from civil liability.

Be it enacted by the Legislature of West Virginia:

That §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §30-29-11, all to read as follows:

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different meaning
2 clearly appears in the context:

3 (1) "Approved law-enforcement training academy" means
4 any training facility which is approved and authorized to
5 conduct law-enforcement training as provided in this article;

6 (2) "Chief executive" means the superintendent of the
7 State Police; the chief natural resources police officer of the
8 Division of Natural Resources; the sheriff of any West
9 Virginia county; any administrative deputy appointed by the
10 chief natural resources police officer of the Division of
11 Natural Resources; or the chief of any West Virginia municipi-
12 pal law-enforcement agency;

13 (3) "County" means the fifty-five major political subdivi-
14 sions of the state;

15 (4) "Exempt rank" means any noncommissioned or
16 commissioned rank of sergeant or above;

17 (5) "Governor's committee on crime, delinquency and
18 correction" or "Governor's committee" means the Governor's
19 committee on crime, delinquency and correction established
20 as a state planning agency pursuant to section one, article
21 nine, chapter fifteen of this code;

22 (6) "Law-enforcement officer" means any duly authorized
23 member of a law-enforcement agency who is authorized to
24 maintain public peace and order, prevent and detect crime,

25 make arrests and enforce the laws of the state or any county
26 or municipality thereof, other than parking ordinances, and
27 includes those persons employed as campus police officers at
28 state institutions of higher education in accordance with the
29 provisions of section five, article four, chapter eighteen-b of
30 this code, and persons employed by the Public Service
31 Commission as motor carrier inspectors and weight enforce-
32 ment officers charged with enforcing commercial motor
33 vehicle safety and weight restriction laws although those
34 institutions and agencies may not be considered law-enforce-
35 ment agencies. The term also includes those persons em-
36 ployed as rangers by the Hatfield-McCoy Regional Recre-
37 ation Authority in accordance with the provisions of section
38 six, article fourteen, chapter twenty of this code, although
39 the authority may not be considered a law-enforcement
40 agency: *Provided*, That the subject rangers shall pay the
41 tuition and costs of training. As used in this article, the term
42 "law-enforcement officer" does not apply to the chief
43 executive of any West Virginia law-enforcement agency or
44 any watchman or special natural resources police officer;

45 (7) "Law-enforcement official" means the duly appointed
46 chief administrator of a designated law-enforcement agency
47 or a duly authorized designee;

48 (8) "Municipality" means any incorporated town or city
49 whose boundaries lie within the geographic boundaries of
50 the state;

51 (9) "Subcommittee" or "law-enforcement professional
52 standards subcommittee" means the subcommittee of the
53 Governor's committee on crime, delinquency and correction
54 created by section two of this article; and

55 (10) "West Virginia law-enforcement agency" means any
56 duly authorized state, county or municipal organization
57 employing one or more persons whose responsibility is the
58 enforcement of laws of the state or any county or municipal-
59 ity thereof: *Provided*, That neither the Hatfield-McCoy
60 Regional Recreation Authority, the Public Service Commis-

61 sion nor any state institution of higher education is a law-
62 enforcement agency.

§30-29-2. Law-enforcement professional standards subcommittee.

1 (a) The law-enforcement training subcommittee of the
2 Governor's committee on crime, delinquency and corrections
3 is continued and renamed the Law-Enforcement Professional
4 Standards Subcommittee. The subcommittee has the follow-
5 ing responsibilities:

6 (1) Review and administer programs for qualification,
7 training and certification of law-enforcement officers in the
8 state; and

9 (2) Consider applications by law-enforcement officers
10 whose certification is deemed inactive as a result of his or
11 her separation from employment with a law-enforcement
12 agency.

13 (b) The subcommittee shall be comprised of eleven mem-
14 bers of the Governor's committee including one representa-
15 tive of each of the following:

16 (1) West Virginia State Police;

17 (2) law-enforcement section of the Department of Natural
18 Resources;

19 (3) West Virginia Sheriffs Association;

20 (4) West Virginia Association of Chiefs of Police;

21 (5) West Virginia Deputy Sheriffs Association;

22 (6) West Virginia State Lodge Fraternal Order of Police;

23 (7) West Virginia Municipal League;

24 (8) West Virginia Association of county officials;

25 (9) Human Rights Commission;

26 (10) West Virginia Trooper's Association; and

27 (11) the public at large.

28 (c) The subcommittee shall elect a chairperson and a vice
29 chairperson. Special meetings may be held upon the call of
30 the chairperson, vice chairperson or a majority of the
31 members of the subcommittee. A majority of the members of
32 the subcommittee constitutes a quorum.

§30-29-3. Duties of the Governor's committee and the subcommittee.

1 Upon recommendation of the subcommittee, the Gover-
2 nor's committee shall, by or pursuant to rules proposed for
3 legislative approval in accordance with article three, chapter
4 twenty-nine-a of this code:

5 (a) Provide funding for the establishment and support of
6 law-enforcement training academies in the state;

7 (b) Establish standards governing the establishment and
8 operation of the law-enforcement training academies,
9 including regional locations throughout the state, in order to
10 provide access to each law-enforcement agency in the state
11 in accordance with available funds;

12 (c) Establish minimum law-enforcement instructor qualifi-
13 cations;

14 (d) Certify qualified law-enforcement instructors;

15 (e) Maintain a list of approved law-enforcement instruc-
16 tors;

17 (f) Promulgate standards governing the qualification of
18 law-enforcement officers and the entry-level law-enforce-
19 ment training curricula. These standards shall require

20 satisfactory completion of a minimum of four hundred
21 classroom hours, shall provide for credit to be given for
22 relevant classroom hours earned pursuant to training other
23 than training at an established law-enforcement training
24 academy if earned within five years immediately preceding
25 the date of application for certification, and shall provide
26 that the required classroom hours can be accumulated on the
27 basis of a part-time curricula spanning no more than twelve
28 months, or a full-time curricula;

29 (g) Establish standards governing in-service law-enforce-
30 ment officer training curricula and in-service supervisory
31 level training curricula;

32 (h) Certify organized criminal enterprise investigation
33 techniques with a qualified anti-racial profiling training
34 course or module;

35 (i) Establish standards governing mandatory training to
36 effectively investigate organized criminal enterprises as
37 defined in article thirteen, chapter sixty-one of this code,
38 while preventing racial profiling, as defined in section ten of
39 this article, for entry level training curricula and for law-
40 enforcement officers who have not received such training as
41 certified by the Governor's committee as required in this
42 section;

43 (j) Establish, no later than July 1, 2011, procedures for
44 implementation of a course in investigation of organized
45 criminal enterprises which includes an anti-racial training
46 module to be available on the Internet or otherwise to all
47 law-enforcement officers. The procedures shall include the
48 frequency with which a law-enforcement officer shall receive
49 training in investigation of organized criminal enterprises
50 and anti-racial profiling, and a time frame for which all law-
51 enforcement officers must receive such training: *Provided,*
52 That all law-enforcement officers in this state shall receive
53 such training no later than July 1, 2012. In order to imple-
54 ment and carry out the intent of this section, the Governor's

55 committee may promulgate emergency rules pursuant to
56 section fifteen, article three, chapter twenty-nine-a of this
57 code;

58 (k) Certify or de-certify or reactivate law-enforcement
59 officers, as provided in sections five and eleven of this
60 article;

61 (l) Establish standards and procedures for the reporting of
62 complaints and certain disciplinary matters concerning law-
63 enforcement officers and for reviewing the certification of
64 law-enforcement officers. These standards and procedures
65 shall provide for preservation of records and access to
66 records by law-enforcement agencies and conditions as to
67 how the information in those records is to be used regarding
68 an officer's law-enforcement employment by another law
69 enforcement agency;

70 (1) The subcommittee shall establish and manage a data-
71 base that is available to all law-enforcement agencies in the
72 state concerning the status of any person's certification.

73 (2) Personnel or personal information not resulting in a
74 criminal conviction is exempt from disclosure pursuant to
75 the provisions of chapter twenty-nine-b of this code.

76 (m) Seek supplemental funding for law-enforcement
77 training academies from sources other than the fees collected
78 pursuant to section four of this article;

79 (n) Any responsibilities and duties as the Legislature may,
80 from time to time, see fit to direct to the committee; and

81 (o) Submit, on or before September 30 of each year, to the
82 Governor, and upon request to individual members of the
83 Legislature, a report on its activities during the previous
84 year and an accounting of funds paid into and disbursed
85 from the special revenue account established pursuant to
86 section four of this article.

§30-29-5. Certification requirements and power to decertify or reinstate.

1 (a) Except as provided in subsections (b) and (g) below, a
2 person may not be employed as a law-enforcement officer by
3 any West Virginia law-enforcement agency or by any state
4 institution of higher education or by the Public Service
5 Commission of West Virginia on or after the effective date of
6 this article unless the person is certified, or is certifiable in
7 one of the manners specified in subsections (c) through (e)
8 below, by the Governor's committee as having met the
9 minimum entry level law-enforcement qualification and
10 training program requirements promulgated pursuant to this
11 article: *Provided*, That the provisions of this section do not
12 apply to persons hired by the Public Service Commission as
13 motor carrier inspectors and weight enforcement officers
14 before July 1, 2007.

15 (b) Except as provided in subsection (g) below, a person
16 who is not certified, or certifiable in one of the manners
17 specified in subsections (c) through (e) below, may be
18 conditionally employed as a law-enforcement officer until
19 certified: *Provided*, That within ninety calendar days of the
20 commencement of employment or the effective date of this
21 article if the person is already employed on the effective
22 date, he or she makes a written application to attend an
23 approved law-enforcement training academy. The person's
24 employer shall provide notice, in writing, of the ninety-day
25 deadline to file a written application to the academy within
26 thirty calendar days of that person's commencement of
27 employment. The employer shall provide full disclosure as to
28 the consequences of failing to file a timely written applica-
29 tion. The academy shall notify the applicant in writing of the
30 receipt of the application and of the tentative date of the
31 applicant's enrollment. Any applicant who, as the result of
32 extenuating circumstances acceptable to his or her law-
33 enforcement official, is unable to attend the scheduled
34 training program to which he or she was admitted may
35 reapply and shall be admitted to the next regularly sched-
36 uled training program. An applicant who satisfactorily

37 completes the program shall, within thirty days of comple-
38 tion, make written application to the Governor's committee
39 requesting certification as having met the minimum entry
40 level law-enforcement qualification and training program
41 requirements. Upon determining that an applicant has met
42 the requirements for certification, the Governor's committee
43 shall forward to the applicant documentation of certifica-
44 tion. An applicant who fails to complete the training pro-
45 gram to which he or she is first admitted, or was admitted
46 upon reapplication, may not be certified by the Governor's
47 committee: *Provided, however,* That an applicant who has
48 completed the minimum training required by the Governor's
49 committee may be certified as a law-enforcement officer,
50 notwithstanding the applicant's failure to complete addi-
51 tional training hours required in the training program to
52 which he or she originally applied.

53 (c) Any person who is employed as a law-enforcement
54 officer on the effective date of this article and is a graduate
55 of the West Virginia basic police training course, the West
56 Virginia State Police cadet training program, or other
57 approved law-enforcement training academy, is certifiable
58 as having met the minimum entry level law-enforcement
59 training program requirements and is exempt from the
60 requirement of attending a law-enforcement training
61 academy. To receive certification, the person shall make
62 written application within ninety calendar days of the
63 effective date of this article to the Governor's committee
64 requesting certification. The Governor's committee shall
65 review the applicant's relevant scholastic records and, upon
66 determining that the applicant has met the requirements for
67 certification, shall forward to the applicant documentation
68 of certification.

69 (d) Any person who is employed as a law-enforcement
70 officer on the effective date of this article and is not a
71 graduate of the West Virginia basic police training course,
72 the West Virginia State Police Cadet Training Program, or
73 other approved law-enforcement training academy, is

74 certifiable as having met the minimum entry level law-
75 enforcement training program requirements and is exempt
76 from the requirement of attending a law-enforcement
77 training academy if the person has been employed as a law-
78 enforcement officer for a period of not less than five consecu-
79 tive years immediately preceding the date of application for
80 certification. To receive certification, the person shall make
81 written application within ninety calendar days following
82 the effective date of this article to the Governor's committee
83 requesting certification. The application shall include
84 notarized statements as to the applicant's years of employ-
85 ment as a law-enforcement officer. The Governor's commit-
86 tee shall review the application and, upon determining that
87 the applicant has met the requirements for certification,
88 shall forward to the applicant documentation of certifica-
89 tion.

90 (e) Any person who begins employment on or after the
91 effective date of this article as a law-enforcement officer is
92 certifiable as having met the minimum entry level law-
93 enforcement training program requirements and is exempt
94 from attending a law-enforcement training academy if the
95 person has satisfactorily completed a course of instruction in
96 law enforcement equivalent to or exceeding the minimum
97 applicable law-enforcement training curricula promulgated
98 by the Governor's committee. To receive certification, the
99 person shall make written application within ninety calendar
100 days following the commencement of employment to the
101 Governor's committee requesting certification. The applica-
102 tion shall include a notarized statement of the applicant's
103 satisfactory completion of the course of instruction in law
104 enforcement, a notarized transcript of the applicant's
105 relevant scholastic records, and a notarized copy of the
106 curriculum of the completed course of instruction. The
107 Governor's committee shall review the application and, if it
108 finds the applicant has met the requirements for certification
109 shall forward to the applicant documentation of certifica-
110 tion.

111 (f) Except as provided in subdivisions (1) through (3)
112 below, any person who is employed as a law-enforcement
113 officer on or after the effective date of this article and fails
114 to be certified shall be automatically terminated and no
115 further emoluments shall be paid to such officer by his or her
116 employer. Any person terminated shall be entitled to reap-
117 ply, as a private citizen, to the subcommittee for training and
118 certification, and upon being certified may again be em-
119 ployed as a law-enforcement officer in this state: *Provided,*
120 That if a person is terminated under this subsection because
121 an application was not timely filed to the academy, and the
122 person's employer failed to provide notice or disclosure to
123 that person as set forth in subsection (b) of this section, the
124 employer shall pay the full cost of attending the academy if
125 the person's application to the subcommittee as a private
126 citizen is subsequently approved.

127 (1) Any person who is employed as a law-enforcement
128 officer on or after the effective date of this article and fails
129 to be certified as a result of hardship and/or circumstance
130 beyond his or her control may apply to the director of a
131 training academy for reentry to the next available academy.

132 (2) Any person who is employed as a law-enforcement
133 officer on or after the effective date of this article and fails
134 to be certified as a result of voluntary separation from an
135 academy program shall be automatically terminated and no
136 further emoluments may be paid to such officer by his or her
137 employer. Any person terminated as a result of voluntary
138 separation from an academy program may not be condition-
139 ally employed as a law-enforcement officer for a period of
140 two years from the date of voluntary separation.

141 (3) Any person who is employed as a law-enforcement
142 officer on or after the effective date of this article and fails
143 to be certified as a result of dismissal from an academy
144 program shall be automatically terminated and no further
145 emoluments may be paid to such officer by his or her
146 employer. Any person terminated as a result of dismissal
147 from an academy program may not be conditionally em-

148 ployed as a law-enforcement officer for a period of five years
149 from the date of dismissal and receiving approval from the
150 subcommittee.

151 (g) Nothing in this article may be construed as prohibiting
152 any governing body, Civil Service Commission or chief
153 executive of any West Virginia law-enforcement agency from
154 requiring their law-enforcement officers to meet qualifica-
155 tions and satisfactorily complete a course of law-enforce-
156 ment instruction which exceeds the minimum entry level
157 law-enforcement qualification and training curricula
158 promulgated by the Governor's committee.

159 (h) The Governor's committee, or its designee, may de-
160 certify or reactivate a law-enforcement officer pursuant to
161 the procedure contained in this article and legislative rules
162 promulgated by the Governor's committee.

163 (i) The requirement of this section for qualification,
164 training and certification of law-enforcement officers shall
165 not be mandatory during the two years next succeeding July
166 9, 1981 for the law-enforcement officers of a law-enforce-
167 ment agency which employs a civil service system for its law-
168 enforcement personnel, nor shall such provisions be manda-
169 tory during the five years next succeeding July 9, 1981 for
170 law-enforcement officers of a law-enforcement agency which
171 does not employ a civil service system for its law-enforce-
172 ment personnel: *Provided*, That these requirements are
173 mandatory for all such law-enforcement officers until their
174 law-enforcement officials apply for their exemption by
175 submitting a written plan to the Governor's committee which
176 will reasonably assure compliance of all law-enforcement
177 officers of their agencies within the applicable two or five-
178 year period of exemption.

179 (j) Any person aggrieved by a decision of the Governor's
180 committee made pursuant to this article may contest the
181 decision in accordance with the provisions of article five,
182 chapter twenty-nine-a of this code.

183 (k) Any person terminated from employment for not filing
184 an application to the law-enforcement training academy
185 within ninety days after commencing employment as a law-
186 enforcement officer may appeal the termination to the
187 Governor's committee for reconsideration on an individual
188 basis.

189 (l) Beginning July 1, 2002 until June 13, 2003, any appli-
190 cant who has been conditionally employed as a law-enforce-
191 ment officer who failed to submit a timely application
192 pursuant to the provisions of this section, may be condition-
193 ally employed as a law-enforcement officer and may resub-
194 mit an application pursuant to subsection (b) of this section
195 to an approved law-enforcement training academy. If the
196 applicant is accepted, the employer shall pay compensation
197 to the employee for attendance at the law-enforcement
198 training academy at the rate provided in section eight of this
199 article.

**§30-29-11. Certified law-enforcement officers who are separated
from their employment.**

1 (a) The certification of a law-enforcement officer who is
2 separated from his or her employment with a West Virginia
3 law-enforcement agency, shall immediately become inactive
4 and remain inactive until the subcommittee authorizes
5 reactivation of the officer's certification pursuant to the
6 procedure set forth in this section.

7 (b) Whenever a law-enforcement officer is separated from
8 his or her employment with a West Virginia law-enforcement
9 agency, the chief law-enforcement officer of that law-
10 enforcement agency shall notify the subcommittee of the
11 separation within ten days of the date of separation. The
12 notification of the separation from employment shall include
13 reason or reasons the officer is no longer employed.

14 (c) A person whose law-enforcement certification has
15 become inactive pursuant to subsection (a), may apply to the
16 subcommittee to have his or her certification reactivated.

17 (d) At the time of his or her application, an applicant for
18 the reactivation of his or her certification, whether for
19 employment purposes or otherwise, shall provide the sub-
20 committee with an authorization for the release of his or her
21 personnel file from the law-enforcement agency with which
22 they were most recently employed.

23 (e) Upon receipt of an application for reactivation, the
24 subcommittee shall review the notification of separation
25 received from the law-enforcement agency with which the
26 applicant was most recently employed, and unless the
27 notification indicates that the separation from employment
28 was based on circumstances that would result in the appli-
29 cant being ineligible for certification pursuant to section five
30 of this article, the subcommittee shall grant the applicant a
31 temporary reactivation of his or her certification until a final
32 determination is made pursuant to subsection (i).

33 (f) The subcommittee may request that the law-enforce-
34 ment agency from which the applicant was most recently
35 separated, provide a copy of the applicants personnel file or
36 other information relevant to the applicant's separation of
37 employment.

38 (g) Upon receipt of a request by the subcommittee, the
39 chief law-enforcement official of the law-enforcement
40 agency with which the applicant was most recently em-
41 ployed, or his or her designee, shall, within eight calendar
42 days, provide the subcommittee with a copy of the appli-
43 cant's personnel file or other information relevant to the
44 applicant's separation of employment.

45 (h) An applicant shall be entitled to a copy of all docu-
46 ments or other materials submitted to the subcommittee
47 related to the application.

48 (i) Within thirty days of the receipt of the applicant's
49 personnel file or any other information provided by the law-
50 enforcement agency, the subcommittee shall review the
51 information and issue a final decision.

52 (j) For the purpose of making a determination on an
53 application for reactivation, the subcommittee is authorized
54 to examine witnesses and to subpoena persons, books,
55 records or documents from law-enforcement agencies in this
56 state.

57 (k) An application for reactivation shall be approved unless
58 the subcommittee affirmatively demonstrates, in writing,
59 that the applicant has engaged in conduct that may result in
60 his or her decertification. Where information available to the
61 subcommittee indicates that the applicant has engaged in
62 conduct that is in violation of this article or other laws or
63 rules, the application for reactivation may not be granted.

64 (l) An applicant whose certification is not reactivated
65 pursuant to a final decision of the subcommittee, may appeal
66 the final decision of the subcommittee to the Governor's
67 committee.

68 (m) Nothing in this section shall be construed to require
69 the rehiring of a person by a law enforcement agency from
70 which he or she was separated, even though the subcommit-
71 tee authorizes his or her certification to be reactivated.

72 (n) A law-enforcement official, or appointing officer, or his
73 or her designee, is immune from civil liability for providing
74 to the subcommittee any information required or requested
75 by this section.

76 (o) The provisions of this section apply only to those
77 certified law-enforcement officers who are separated from
78 employment with a West Virginia law enforcement agency
79 after the effective date of this section during the 2011
80 Regular Session of the Legislature.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....

Chairman Senate Committee

[Handwritten Signature]
.....

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]
.....

Clerk of the Senate

[Handwritten Signature]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
Acting President of the Senate

[Handwritten Signature]
.....
Speaker of the House of Delegates

2011 APR - 1 AM 11:17
SECRETARY OF STATE

The within *is approved* this the *3/8*

Day of *March*, 2011.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 23 2011

Time 3:45 pm