WEST VIRGINIA LEGISLATURE
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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.

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

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

2. "Chief executive" means the superintendent of the State Police; the chief natural resources police officer of the Division of Natural Resources; the sheriff of any West Virginia county; any administrative deputy appointed by the chief natural resources police officer of the Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement agency;

3. "County" means the fifty-five major political subdivisions of the state;

4. "Exempt rank" means any noncommissioned or commissioned rank of sergeant or above;

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

6. "Law-enforcement officer" means any duly authorized member of a law-enforcement agency who is authorized to maintain public peace and order, prevent and detect crime,
...make arrests and enforce the laws of the state or any county or municipality thereof, other than parking ordinances, and includes those persons employed as campus police officers at state institutions of higher education in accordance with the provisions of section five, article four, chapter eighteen-b of this code, and persons employed by the Public Service Commission as motor carrier inspectors and weight enforcement officers charged with enforcing commercial motor vehicle safety and weight restriction laws although those institutions and agencies may not be considered law-enforcement agencies. The term also includes those persons employed as rangers by the Hatfield-McCoy Regional Recreation Authority in accordance with the provisions of section six, article fourteen, chapter twenty of this code, although the authority may not be considered a law-enforcement agency: Provided, That the subject rangers shall pay the tuition and costs of training. As used in this article, the term "law-enforcement officer" does not apply to the chief executive of any West Virginia law-enforcement agency or any watchman or special natural resources police officer;

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

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

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

(10) "West Virginia law-enforcement agency" means any duly authorized state, county or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof: Provided, That neither the Hatfield-McCoy Regional Recreation Authority, the Public Service Commis-
§30-29-2. Law-enforcement professional standards subcommittee.

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

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

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

(b) The subcommittee shall be comprised of eleven members of the Governor's committee including one representative of each of the following:

(1) West Virginia State Police;

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

(3) West Virginia Sheriffs Association;

(4) West Virginia Association of Chiefs of Police;

(5) West Virginia Deputy Sheriffs Association;

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

(7) West Virginia Municipal League;

(8) West Virginia Association of county officials;
(9) Human Rights Commission;

(10) West Virginia Trooper's Association; and

(11) the public at large.

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

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

1 Upon recommendation of the subcommittee, the Governor's committee shall, by or pursuant to rules proposed for legislative approval in accordance with article three, chapter twenty-nine-a of this code:

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

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

(c) Establish minimum law-enforcement instructor qualifications;

(d) Certify qualified law-enforcement instructors;

(e) Maintain a list of approved law-enforcement instructors;

(f) Promulgate standards governing the qualification of law-enforcement officers and the entry-level law-enforcement training curricula. These standards shall require
satisfactory completion of a minimum of four hundred classroom hours, shall provide for credit to be given for relevant classroom hours earned pursuant to training other than training at an established law-enforcement training academy if earned within five years immediately preceding the date of application for certification, and shall provide that the required classroom hours can be accumulated on the basis of a part-time curricula spanning no more than twelve months, or a full-time curricula;

(g) Establish standards governing in-service law-enforcement officer training curricula and in-service supervisory level training curricula;

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

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

(j) Establish, no later than July 1, 2011, procedures for implementation of a course in investigation of organized criminal enterprises which includes an anti-racial training module to be available on the Internet or otherwise to all law-enforcement officers. The procedures shall include the frequency with which a law-enforcement officer shall receive training in investigation of organized criminal enterprises and anti-racial profiling, and a time frame for which all law-enforcement officers must receive such training: Provided, that all law-enforcement officers in this state shall receive such training no later than July 1, 2012. In order to implement and carry out the intent of this section, the Governor's
committee may promulgate emergency rules pursuant to section fifteen, article three, chapter twenty-nine-a of this code;

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

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

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

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

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

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

(o) Submit, on or before September 30 of each year, to the Governor, and upon request to individual members of the Legislature, a report on its activities during the previous year and an accounting of funds paid into and disbursed from the special revenue account established pursuant to section four of this article.
§30-29-5. Certification requirements and power to decertify or reinstate.

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

(b) Except as provided in subsection (g) below, a person who is not certified, or certifiable in one of the manners specified in subsections (c) through (e) below, may be conditionally employed as a law-enforcement officer until certified: Provided, That within ninety calendar days of the commencement of employment or the effective date of this article if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy. The person's employer shall provide notice, in writing, of the ninety-day deadline to file a written application to the academy within thirty calendar days of that person's commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. An applicant who satisfactorily
completes the program shall, within thirty days of comple-
tion, make written application to the Governor's committee
requesting certification as having met the minimum entry
level law-enforcement qualification and training program
requirements. Upon determining that an applicant has met
the requirements for certification, the Governor's committee
shall forward to the applicant documentation of certifica-
tion. An applicant who fails to complete the training pro-
gram to which he or she is first admitted, or was admitted
upon reapplication, may not be certified by the Governor's
committee: Provided, however, That an applicant who has
completed the minimum training required by the Governor's
committee may be certified as a law-enforcement officer,
notwithstanding the applicant's failure to complete addi-
tional training hours required in the training program to
which he or she originally applied.

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

(d) Any person who is employed as a law-enforcement
officer on the effective date of this article and is not a
graduate of the West Virginia basic police training course,
the West Virginia State Police Cadet Training Program, or
other approved law-enforcement training academy, is
certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from the requirement of attending a law-enforcement training academy if the person has been employed as a law-enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the Governor's committee requesting certification. The application shall include notarized statements as to the applicant's years of employment as a law-enforcement officer. The Governor's committee shall review the application and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.

(e) Any person who begins employment on or after the effective date of this article as a law-enforcement officer is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from attending a law-enforcement training academy if the person has satisfactorily completed a course of instruction in law enforcement equivalent to or exceeding the minimum applicable law-enforcement training curricula promulgated by the Governor's committee. To receive certification, the person shall make written application within ninety calendar days following the commencement of employment to the Governor's committee requesting certification. The application shall include a notarized statement of the applicant's satisfactory completion of the course of instruction in law enforcement, a notarized transcript of the applicant's relevant scholastic records, and a notarized copy of the curriculum of the completed course of instruction. The Governor's committee shall review the application and, if it finds the applicant has met the requirements for certification shall forward to the applicant documentation of certification.
(f) Except as provided in subdivisions (1) through (3) below, any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state: Provided, That if a person is terminated under this subsection because an application was not timely filed to the academy, and the person's employer failed to provide notice or disclosure to that person as set forth in subsection (b) of this section, the employer shall pay the full cost of attending the academy if the person's application to the subcommittee as a private citizen is subsequently approved.

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

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

(3) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of dismissal from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of dismissal from an academy program may not be conditionally em-
ployed as a law-enforcement officer for a period of five years from the date of dismissal and receiving approval from the subcommittee.

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

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

(i) The requirement of this section for qualification, training and certification of law-enforcement officers shall not be mandatory during the two years next succeeding July 9, 1981 for the law-enforcement officers of a law-enforcement agency which employs a civil service system for its law-enforcement personnel, nor shall such provisions be mandatory during the five years next succeeding July 9, 1981 for law-enforcement officers of a law-enforcement agency which does not employ a civil service system for its law-enforcement personnel: Provided, That these requirements are mandatory for all such law-enforcement officers until their law-enforcement officials apply for their exemption by submitting a written plan to the Governor's committee which will reasonably assure compliance of all law-enforcement officers of their agencies within the applicable two or five-year period of exemption.

(j) Any person aggrieved by a decision of the Governor's committee made pursuant to this article may contest the decision in accordance with the provisions of article five, chapter twenty-nine-a of this code.
(k) Any person terminated from employment for not filing an application to the law-enforcement training academy within ninety days after commencing employment as a law-enforcement officer may appeal the termination to the Governor's committee for reconsideration on an individual basis.

(l) Beginning July 1, 2002 until June 13, 2003, any applicant who has been conditionally employed as a law-enforcement officer who failed to submit a timely application pursuant to the provisions of this section, may be conditionally employed as a law-enforcement officer and may resubmit an application pursuant to subsection (b) of this section to an approved law-enforcement training academy. If the applicant is accepted, the employer shall pay compensation to the employee for attendance at the law-enforcement training academy at the rate provided in section eight of this article.

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

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

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

(c) A person whose law-enforcement certification has become inactive pursuant to subsection (a), may apply to the subcommittee to have his or her certification reactivated.
(d) At the time of his or her application, an applicant for
the reactivation of his or her certification, whether for
employment purposes or otherwise, shall provide the sub-
committee with an authorization for the release of his or her
personnel file from the law-enforcement agency with which
they were most recently employed.

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

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

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

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

(i) Within thirty days of the receipt of the applicant’s
personnel file or any other information provided by the law-
enforcement agency, the subcommittee shall review the
information and issue a final decision.
For the purpose of making a determination on an application for reactivation, the subcommittee is authorized to examine witnesses and to subpoena persons, books, records or documents from law-enforcement agencies in this state.

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

An applicant whose certification is not reactivated pursuant to a final decision of the subcommittee, may appeal the final decision of the subcommittee to the Governor's committee.

Nothing in this section shall be construed to require the rehiring of a person by a law enforcement agency from which he or she was separated, even though the subcommittee authorizes his or her certification to be reactivated.

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

The provisions of this section apply only to those certified law-enforcement officers who are separated from employment with a West Virginia law enforcement agency after the effective date of this section during the 2011 Regular Session of the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within ............... this the ........ Day of ............... , 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 23 2011

Time 3:45