

1 COMMITTEE SUBSTITUTE

2 FOR

3 **Senate Bill No. 193**

4 (By Senators Foster, Kessler (Acting President), Chafin, Hall,
5 Jenkins, Laird, Minard, Palumbo, Snyder, Williams, Unger and
6 Plymale)

7 _____
8 [Originating in the Committee on the Judiciary;
9 reported February , 2011.]
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11
12 A BILL to amend and reenact §30-29-1, §30-29-2, §30-29-3 and §30-
13 29-5 of the Code of West Virginia, 1931, as amended, all
14 relating to certifying law-enforcement officers generally;
15 expanding the responsibilities of the law-enforcement training
16 subcommittee and renaming it the law-enforcement professional
17 standards subcommittee; clarifying the authority to decertify
18 or reactivate a law-enforcement officer's certification;
19 adding the West Virginia Troopers Association to the
20 subcommittee membership; expanding duties of the Governor's
21 committee and the subcommittee; separating from a law-
22 enforcement agency results in an officer's certification
23 becoming inactive; reactivating a law-enforcement officer's
24 certification by the subcommittee, if acting as the Governor's
25 committee's designee; providing a procedure to have an
26 officer's certification reactivated; rehiring of officer

1 reactivated not required; and providing for immunity from
2 civil liability.

3 *Be it enacted by the Legislature of West Virginia:*

4 That §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code of
5 West Virginia, 1931, as amended, be amended and reenacted, all to
6 read as follows:

7 **ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.**

8 **§30-29-1. Definitions.**

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

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

14 (2) "Chief executive" means the superintendent of the State
15 Police; the chief natural resources police officer of the Division
16 of Natural Resources; the sheriff of any West Virginia county; any
17 administrative deputy appointed by the chief natural resources
18 police officer of the Division of Natural Resources; or the chief
19 of any West Virginia municipal law-enforcement agency;

20 (3) "County" means the fifty-five major political subdivisions
21 of the state;

22 (4) "Exempt rank" means any noncommissioned or commissioned
23 rank of sergeant or above;

24 (5) "Governor's committee on crime, delinquency and
25 correction" or "Governor's committee" means the Governor's
26 committee on crime, delinquency and correction established as a

1 state planning agency pursuant to section one, article nine,
2 chapter fifteen of this code;

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

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

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

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

7 (10) "West Virginia law-enforcement agency" means any duly
8 authorized state, county or municipal organization employing one or
9 more persons whose responsibility is the enforcement of laws of the
10 state or any county or municipality thereof: *Provided, That*
11 neither the Hatfield-McCoy Regional Recreation Authority, the
12 Public Service Commission nor any state institution of higher
13 education is a law-enforcement agency.

14 **§30-29-2. Law-enforcement professional standards subcommittee.**

15 (a) ~~Ⓐ~~ The law-enforcement training subcommittee of the
16 Governor's committee on crime, delinquency and corrections is
17 ~~hereby created~~ continued and renamed the Law-Enforcement
18 Professional Standards Subcommittee. The subcommittee has the
19 following responsibilities:

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

23 (2) Receive and review affidavits of separation from law-
24 enforcement officers of this state by the procedure created
25 pursuant to subsection (1), section three of this article. As the
26 Governor's committee designee, pursuant to section five of this

1 article, the subcommittee, pursuant to the procedure set forth in
2 section (n), section five of this article, may consider the
3 application of any law-enforcement officer whose certification is
4 inactive as a result of his or her separation from employment from
5 a law-enforcement agency.

6 (b) As it relates to the application of an officer for
7 reactivation of his or her certification pursuant to section five
8 of this article, the subcommittee is authorized to examine
9 witnesses and to subpoena persons, books, records or documents from
10 law-enforcement agencies in this state.

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

14 (1) ~~The department of public safety,~~ West Virginia State
15 Police;

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

18 (3) ~~the~~ West Virginia Sheriffs Association;

19 (4) ~~the~~ West Virginia Association of Chiefs of Police;

20 (5) ~~the~~ West Virginia Deputy Sheriffs Association;

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

22 (7) ~~the~~ West Virginia Municipal League;

23 (8) ~~the~~ West Virginia Association of county officials;

24 (9) ~~the~~ Human Rights Commission;

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

26 (11) the public at large.

1 ~~(b)~~ (d) The subcommittee shall elect a chairperson and a vice
2 chairperson. Special meetings may be held upon the call of the
3 chairperson, vice chairperson or a majority of the members of the
4 subcommittee. A majority of the members of the subcommittee
5 constitutes a quorum.

6 **§30-29-3. Duties of the Governor's committee and the subcommittee.**

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

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

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

18 (c) Establish minimum law-enforcement instructor
19 qualifications;

20 (d) Certify qualified law-enforcement instructors;

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

22 (f) Promulgate standards governing the qualification of law-
23 enforcement officers and the entry-level law-enforcement training
24 curricula. These standards shall require satisfactory completion
25 of a minimum of four hundred classroom hours, shall provide for
26 credit to be given for relevant classroom hours earned pursuant to

1 training other than training at an established law-enforcement
2 training academy if earned within five years immediately preceding
3 the date of application for certification, and shall provide that
4 the required classroom hours can be accumulated on the basis of a
5 part-time curricula spanning no more than twelve months, or a full-
6 time curricula;

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

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

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

20 (j) Establish, no later than July 1, 2011, procedures for
21 implementation of a course in investigation of organized criminal
22 enterprises which includes an anti-racial training module to be
23 available on the Internet or otherwise to all law-enforcement
24 officers. The procedures shall include the frequency with which a
25 law-enforcement officer shall receive training in investigation of
26 organized criminal enterprises and anti-racial profiling, and a

1 time frame for which all law-enforcement officers must receive such
2 training: *Provided*, That all law-enforcement officers in this
3 state shall receive such training no later than July 1, 2012. In
4 order to implement and carry out the intent of this section, the
5 Governor's committee may promulgate emergency rules pursuant to
6 section fifteen, article three, chapter twenty-nine-a of this code;

7 (k) Certify or de-certify or reactivate law-enforcement
8 officers, as provided in section five of this article;

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

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

20 (2) The information in the database which contains personnel
21 or personal information not resulting in a criminal charge or
22 conviction are not subject to the provisions of chapter twenty-
23 nine-b of this code.

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

1 a law-enforcement officer until certified: *Provided*, That within
2 ninety calendar days of the commencement of employment or the
3 effective date of this article if the person is already employed on
4 the effective date, he or she makes a written application to attend
5 an approved law-enforcement training academy. The person's
6 employer shall provide notice, in writing, of the ninety-day
7 deadline to file a written application to the academy within thirty
8 calendar days of that person's commencement of employment. The
9 employer shall provide full disclosure as to the consequences of
10 failing to file a timely written application. The academy shall
11 notify the applicant in writing of the receipt of the application
12 and of the tentative date of the applicant's enrollment. Any
13 applicant who, as the result of extenuating circumstances
14 acceptable to his or her law-enforcement official, is unable to
15 attend the scheduled training program to which he or she was
16 admitted may reapply and shall be admitted to the next regularly
17 scheduled training program. An applicant who satisfactorily
18 completes the program shall, within thirty days of completion, make
19 written application to the Governor's committee requesting
20 certification as having met the minimum entry level law-enforcement
21 qualification and training program requirements. Upon determining
22 that an applicant has met the requirements for certification, the
23 Governor's committee shall forward to the applicant documentation
24 of certification. An applicant who fails to complete the training
25 program to which he or she is first admitted, or was admitted upon
26 reapplication, may not be certified by the Governor's committee:

1 *Provided, however,* That an applicant who has completed the minimum
2 training required by the Governor's committee may be certified as
3 a law-enforcement officer, notwithstanding the applicant's failure
4 to complete additional training hours required in the training
5 program to which he or she originally applied.

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

20 (d) Any person who is employed as a law-enforcement officer on
21 the effective date of this article and is not a graduate of the
22 West Virginia basic police training course, the West Virginia State
23 Police Cadet Training Program, or other approved law-enforcement
24 training academy, is certifiable as having met the minimum entry
25 level law-enforcement training program requirements and is exempt
26 from the requirement of attending a law-enforcement training

1 academy if the person has been employed as a law-enforcement
2 officer for a period of not less than five consecutive years
3 immediately preceding the date of application for certification. To
4 receive certification, the person shall make written application
5 within ninety calendar days following the effective date of this
6 article to the Governor's committee requesting certification. The
7 application shall include notarized statements as to the
8 applicant's years of employment as a law-enforcement officer. The
9 Governor's committee shall review the application and, upon
10 determining that the applicant has met the requirements for
11 certification, shall forward to the applicant documentation of
12 certification.

13 (e) Any person who begins employment on or after the effective
14 date of this article as a law-enforcement officer is certifiable as
15 having met the minimum entry level law-enforcement training program
16 requirements and is exempt from attending a law-enforcement
17 training academy if the person has satisfactorily completed a
18 course of instruction in law enforcement equivalent to or exceeding
19 the minimum applicable law-enforcement training curricula
20 promulgated by the Governor's committee. To receive certification,
21 the person shall make written application within ninety calendar
22 days following the commencement of employment to the Governor's
23 committee requesting certification. The application shall include
24 a notarized statement of the applicant's satisfactory completion of
25 the course of instruction in law enforcement, a notarized
26 transcript of the applicant's relevant scholastic records, and a

1 notarized copy of the curriculum of the completed course of
2 instruction. The Governor's committee shall review the application
3 and, if it finds the applicant has met the requirements for
4 certification shall forward to the applicant documentation of
5 certification.

6 (f) Any person who is employed as a law-enforcement officer on
7 or after the effective date of this article and fails to be
8 certified shall be automatically terminated and no further
9 emoluments shall be paid to such officer by his or her employer.
10 Any person terminated shall be entitled to reapply, as a private
11 citizen, to the subcommittee for training and certification, and
12 upon being certified may again be employed as a law-enforcement
13 officer in this state: *Provided*, That if a person is terminated
14 under this subsection because an application was not timely filed
15 to the academy, and the person's employer failed to provide notice
16 or disclosure to that person as set forth in subsection (b) of this
17 section, the employer shall pay the full cost of attending the
18 academy if the person's application to the subcommittee as a
19 private citizen is subsequently approved.

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

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

5 ~~(h)~~ (i) The requirement of this section for qualification,
6 training and certification of law-enforcement officers shall not be
7 mandatory during the two years next succeeding ~~the effective date~~
8 ~~of this article~~ July 9, 1981 for the law-enforcement officers of a
9 law-enforcement agency which employs a civil service system for its
10 law-enforcement personnel, nor shall such provisions be mandatory
11 during the five years next succeeding ~~the effective date of this~~
12 ~~article~~ July 9, 1981 for law-enforcement officers of a law-
13 enforcement agency which does not employ a civil service system for
14 its law-enforcement personnel: *Provided, That ~~such~~ these*
15 ~~requirements shall be~~ are mandatory for all such law-enforcement
16 officers until their law-enforcement officials apply for their
17 exemption by submitting a written plan to the Governor's committee
18 which will reasonably assure compliance of all law-enforcement
19 officers of their agencies within the applicable two or five-year
20 period of exemption.

21 ~~(i)~~ (j) Any person aggrieved by a decision of the Governor's
22 committee made pursuant to this article may contest ~~such~~ the
23 decision in accordance with the provisions of article five, chapter
24 twenty-nine-a of this code.

25 ~~(j)~~ (k) Any person terminated from employment for not filing
26 an application to the law-enforcement training academy within

1 ninety days after commencing employment as a law-enforcement
2 officer may appeal the termination to the Governor's committee for
3 reconsideration on an individual basis.

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

14 (m) Active certification as a law-enforcement officer is based
15 upon employment with a West Virginia law enforcement agency or
16 agencies. Whenever, after the effective date of the amendments
17 made to this section during the 2011 Regular Session of the
18 Legislature, a law-enforcement officer ceases working in the
19 capacity of a law-enforcement officer, his or her certification
20 shall become inactive. The certification shall remain inactive
21 until the subcommittee authorizes reactivation of the officer's
22 certification pursuant to the procedure set forth in subsection (n)
23 of this section

24 (n) A person whose law-enforcement certification has become
25 inactive pursuant to the provisions of this section may make
26 application to the subcommittee to have his or her certification

1 reactivated prior to accepting employment with a law-enforcement
2 agency in this state. Any person who makes application to the
3 subcommittee for reactivation of his or her certification, whether
4 for employment purposes or otherwise, shall sign a waiver
5 authorizing his or her previous law-enforcement employer to release
6 his or her personnel file to the subcommittee which the
7 subcommittee is to consider in determining whether the reactivation
8 of his or her certification is appropriate. A copy of the
9 information submitted to the subcommittee shall be provided to the
10 person seeking to be reactivated. Upon receipt of the application,
11 the subcommittee is to notify the law-enforcement agency from which
12 the person was separated of the application to be reactivated and
13 the law-enforcement official, or his or her designee, shall provide
14 the subcommittee with an affidavit of separation stating the reason
15 or reasons for the separation from employment. A presumption shall
16 be created that an officer is eligible for reactivation if the
17 affidavit of separation indicates that the separation from
18 employment did not arise from circumstances that would make the
19 officer ineligible from being certified and the subcommittee may
20 issue a temporary reactivation certificate, subject to a final
21 decision by the subcommittee. After considering the information
22 presented, the subcommittee, if acting as the designee of the
23 Governor's committee, shall, within thirty days from receipt of the
24 information, and in writing, make a finding as to whether the
25 person should have his or her certification reactivated. Nothing
26 in this section shall be construed as requiring the rehiring of an

1 officer by the law enforcement agency from which the officer
2 separated even though the subcommittee authorizes his or her
3 certification to be reactivated.

4 (o) A law-enforcement official, or appointing officer, or his
5 or her designee, is immune from civil liability for providing to
6 the subcommittee the information required or requested in this
7 section.