

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 193

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

[Originating in the Committee on the Judiciary;
reported February 17, 2011.]

A BILL 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, 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; separating from a law-

enforcement agency results in an officer's certification becoming inactive; reactivating a law-enforcement officer's certification by the subcommittee, if acting as the Governor's committee's designee; providing a procedure to have an officer's certification reactivated; 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, 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 munici-
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 training profes-
52 sional standards subcommittee” means the subcommittee of
53 the Governor’s committee on crime, delinquency and
54 correction 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 hereby created~~ continued and renamed the Law-Enforce-
4 ment Professional Standards Subcommittee. The subcommit-
5 tee has the following responsibilities:

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

9 (2) Receive and review affidavits of separation from law-
10 enforcement officers of this state by the procedure created
11 pursuant to subsection (l), section three of this article. As the
12 Governor’s committee designee, pursuant to section five of
13 this article, the subcommittee, pursuant to the procedure set

14 forth in section (n), section five of this article, may consider
15 the application of any law-enforcement officer whose
16 certification is inactive as a result of his or her separation
17 from employment from a law-enforcement agency.

18 (b) As it relates to the application of an officer for reactiva-
19 tion of his or her certification pursuant to section five of this
20 article, the subcommittee is authorized to examine witnesses
21 and to subpoena persons, books, records or documents from
22 law-enforcement agencies in this state.

23 (c) The subcommittee shall be comprised of eleven mem-
24 bers of the Governor's committee including one representa-
25 tive of each of the following:

26 (1) ~~The department of public safety,~~ West Virginia State
27 Police;

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

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

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

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

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

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

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

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

38 ~~(10) West Virginia Trooper's Association; and~~

39 ~~(11)~~ the public at large.

40 ~~(b)~~ (d) The subcommittee shall elect a chairperson and a
41 vice chairperson. Special meetings may be held upon the call
42 of the chairperson, vice chairperson or a majority of the
43 members of the subcommittee. A majority of the members of
44 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
2 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 section five of this article;

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

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

72 (2) The information in the database which contains
73 personnel or personal information not resulting in a criminal
74 charge or conviction are not subject to the provisions of
75 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
80 may, from time to time, see fit to direct to the committee; and

81 ~~(n)~~ (o) Submit, on or before September 30 of each year, to
82 the 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
reinststate.**

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

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

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

138 ~~(h)~~ (i) The requirement of this section for qualification,
139 training and certification of law-enforcement officers shall
140 not be mandatory during the two years next succeeding ~~the~~
141 ~~effective date of this article~~ July 9, 1981 for the law-enforce-
142 ment officers of a law-enforcement agency which employs a
143 civil service system for its law-enforcement personnel, nor
144 shall such provisions be mandatory during the five years
145 next succeeding ~~the effective date of this article~~ July 9, 1981
146 for law-enforcement officers of a law-enforcement agency
147 which does not employ a civil service system for its law-

148 enforcement personnel: *Provided*, That ~~such~~ these require-
149 ments ~~shall be~~ are mandatory for all such law-enforcement
150 officers until their law-enforcement officials apply for their
151 exemption by submitting a written plan to the Governor's
152 committee which will reasonably assure compliance of all
153 law-enforcement officers of their agencies within the
154 applicable two or five-year period of exemption.

155 (†) (j) Any person aggrieved by a decision of the Governor's
156 committee made pursuant to this article may contest ~~such~~ the
157 decision in accordance with the provisions of article five,
158 chapter twenty-nine-a of this code.

159 (†) (k) Any person terminated from employment for not
160 filing an application to the law-enforcement training
161 academy within ninety days after commencing employment
162 as a law-enforcement officer may appeal the termination to
163 the Governor's committee for reconsideration on an individ-
164 ual basis.

165 (†) (l) Beginning July 1, 2002 until June 13, 2003, any
166 applicant who has been conditionally employed as a law-
167 enforcement officer who failed to submit a timely application
168 pursuant to the provisions of this section, may be condition-
169 ally employed as a law-enforcement officer and may resub-

170 mit an application pursuant to subsection (b) of this section
171 to an approved law-enforcement training academy. If the
172 applicant is accepted, the employer shall pay compensation
173 to the employee for attendance at the law-enforcement
174 training academy at the rate provided in section eight of this
175 article.

176 (m) Active certification as a law-enforcement officer is
177 based upon employment with a West Virginia law enforce-
178 ment agency or agencies. Whenever, after the effective date
179 of the amendments made to this section during the 2011
180 Regular Session of the Legislature, a law-enforcement officer
181 ceases working in the capacity of a law-enforcement officer,
182 his or her certification shall become inactive. The certifica-
183 tion shall remain inactive until the subcommittee authorizes
184 reactivation of the officer's certification pursuant to the
185 procedure set forth in subsection (n) of this section

186 (n) A person whose law-enforcement certification has
187 become inactive pursuant to the provisions of this section
188 may make application to the subcommittee to have his or her
189 certification reactivated prior to accepting employment with
190 a law-enforcement agency in this state. Any person who
191 makes application to the subcommittee for reactivation of his

192 or her certification, whether for employment purposes or
193 otherwise, shall sign a waiver authorizing his or her previous
194 law-enforcement employer to release his or her personnel file
195 to the subcommittee which the subcommittee is to consider
196 in determining whether the reactivation of his or her certifi-
197 cation is appropriate. A copy of the information submitted to
198 the subcommittee shall be provided to the person seeking to
199 be reactivated. Upon receipt of the application, the subcom-
200 mittee is to notify the law-enforcement agency from which
201 the person was separated of the application to be reactivated
202 and the law-enforcement official, or his or her designee, shall
203 provide the subcommittee with an affidavit of separation
204 stating the reason or reasons for the separation from employ-
205 ment. A presumption shall be created that an officer is
206 eligible for reactivation if the affidavit of separation indi-
207 cates that the separation from employment did not arise from
208 circumstances that would make the officer ineligible from
209 being certified and the subcommittee may issue a temporary
210 reactivation certificate, subject to a final decision by the
211 subcommittee. After considering the information presented,
212 the subcommittee, if acting as the designee of the Governor's
213 committee, shall, within thirty days from receipt of the

214 information, and in writing, make a finding as to whether the
215 person should have his or her certification reactivated.
216 Nothing in this section shall be construed as requiring the
217 rehiring of an officer by the law enforcement agency from
218 which the officer separated even though the subcommittee
219 authorizes his or her certification to be reactivated.
220 (o) A law-enforcement official, or appointing officer, or his
221 or her designee, is immune from civil liability for providing
222 to the subcommittee the information required or requested
223 in this section.