

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 **Senate Bill No. 193**

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

7 _____
8 [Passed March 12, 2011; in effect ninety days from passage.]
9 _____

10
11 AN ACT to amend and reenact §30-29-1, §30-29-2, §30-29-3 and §30-
12 29-5 of the Code of West Virginia, 1931, as amended; and to
13 amend said code by adding thereto a new section, designated
14 §30-29-11, all relating to certifying law-enforcement
15 officers generally; expanding the responsibilities of the
16 law-enforcement training subcommittee and renaming it the
17 law-enforcement professional standards subcommittee;
18 clarifying the authority to decertify or reactivate a law-
19 enforcement officer's certification; adding the West
20 Virginia Troopers Association to the subcommittee
21 membership; expanding duties of the Governor's committee and
22 the subcommittee; providing consequences for the failure to
23 be certified process for making inactive the certification
24 of officers who separate from their employment; reactivating
25 a law-enforcement officer's certification; rehiring of
26 officer reactivated not required; and providing for immunity

1 from civil liability.

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

3 That §30-29-1, §30-29-2, §30-29-3 and §30-29-5 of the Code
4 of West Virginia, 1931, as amended, be amended and reenacted; and
5 that said code be amended by adding thereto a new section,
6 designated §30-29-11, all to 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
13 law-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
16 Division of Natural Resources; the sheriff of any West Virginia
17 county; any administrative deputy appointed by the chief natural
18 resources police officer of the Division of Natural Resources; or
19 the chief of any West Virginia municipal law-enforcement agency;

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

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

1 duly authorized designee;

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

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

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

15 **§30-29-2. Law-enforcement professional standards subcommittee.**

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

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

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

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

4 (1) West Virginia State Police;

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

7 (3) West Virginia Sheriffs Association;

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

9 (5) West Virginia Deputy Sheriffs Association;

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

11 (7) West Virginia Municipal League;

12 (8) West Virginia Association of County Officials;

13 (9) Human Rights Commission;

14 (10) West Virginia Troopers Association; and

15 (11) the public at large.

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

21 **§30-29-3. Duties of the Governor's committee and the**
22 **subcommittee.**

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

- 1 (a) Provide funding for the establishment and support of
2 law-enforcement training academies in the state;
- 3 (b) Establish standards governing the establishment and
4 operation of the law-enforcement training academies, including
5 regional locations throughout the state, in order to provide
6 access to each law-enforcement agency in the state in accordance
7 with available funds;
- 8 (c) Establish minimum law-enforcement instructor
9 qualifications;
- 10 (d) Certify qualified law-enforcement instructors;
- 11 (e) Maintain a list of approved law-enforcement instructors;
- 12 (f) Promulgate standards governing the qualification of law-
13 enforcement officers and the entry-level law-enforcement training
14 curricula. These standards shall require satisfactory completion
15 of a minimum of four hundred classroom hours, shall provide for
16 credit to be given for relevant classroom hours earned pursuant
17 to training other than training at an established law-enforcement
18 training academy if earned within five years immediately
19 preceding the date of application for certification, and shall
20 provide that the required classroom hours can be accumulated on
21 the basis of a part-time curricula spanning no more than twelve
22 months, or a full-time curricula;
- 23 (g) Establish standards governing in-service law-enforcement
24 officer training curricula and in-service supervisory level
25 training curricula;
- 26 (h) Certify organized criminal enterprise investigation

1 techniques with a qualified anti-racial profiling training course
2 or module;

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

11 (j) Establish, no later than July 1, 2011, procedures for
12 implementation of a course in investigation of organized criminal
13 enterprises which includes an anti-racial training module to be
14 available on the Internet or otherwise to all law-enforcement
15 officers. The procedures shall include the frequency with which
16 a law-enforcement officer shall receive training in investigation
17 of organized criminal enterprises and anti-racial profiling, and
18 a time frame for which all law-enforcement officers must receive
19 such training: *Provided*, That all law-enforcement officers in
20 this state shall receive such training no later than July 1,
21 2012. In order to implement and carry out the intent of this
22 section, the Governor's committee may promulgate emergency rules
23 pursuant to section fifteen, article three, chapter twenty-nine-a
24 of this code;

25 (k) Certify or decertify or reactivate law-enforcement
26 officers, as provided in sections five and eleven of this

1 article;

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

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

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

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

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

21 (o) Submit, on or before September 30 of each year, to the
22 Governor, and upon request to individual members of the
23 Legislature, a report on its activities during the previous year
24 and an accounting of funds paid into and disbursed from the
25 special revenue account established pursuant to section four of
26 this article.

1 **§30-29-5. Certification requirements and power to decertify or**
2 **reinstate.**

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

16 (b) Except as provided in subsection (g) below, a person who
17 is not certified, or certifiable in one of the manners specified
18 in subsections (c) through (e) below, may be conditionally
19 employed as a law-enforcement officer until certified: *Provided*,
20 That within ninety calendar days of the commencement of
21 employment or the effective date of this article if the person is
22 already employed on the effective date, he or she makes a written
23 application to attend an approved law-enforcement training
24 academy. The person's employer shall provide notice, in writing,
25 of the ninety-day deadline to file a written application to the

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

26 (c) Any person who is employed as a law-enforcement officer

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

14 (d) Any person who is employed as a law-enforcement officer
15 on the effective date of this article and is not a graduate of
16 the West Virginia basic police training course, the West Virginia
17 State Police Cadet Training Program, or other approved law-
18 enforcement training academy, is certifiable as having met the
19 minimum entry level law-enforcement training program requirements
20 and is exempt from the requirement of attending a law-enforcement
21 training academy if the person has been employed as a law-
22 enforcement officer for a period of not less than five
23 consecutive years immediately preceding the date of application
24 for certification. To receive certification, the person shall
25 make written application within ninety calendar days following
26 the effective date of this article to the Governor's committee

1 requesting certification. The application shall include
2 notarized statements as to the applicant's years of employment as
3 a law-enforcement officer. The Governor's committee shall review
4 the application and, upon determining that the applicant has met
5 the requirements for certification, shall forward to the
6 applicant documentation of certification.

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

26 (f) Except as provided in subdivisions (1) through (3)

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

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

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

1 enforcement officer for a period of two years from the date of
2 voluntary separation.

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

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

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

24 (i) The requirement of this section for qualification,
25 training and certification of law-enforcement officers shall not
26 be mandatory during the two years next succeeding July 9, 1981

1 for the law-enforcement officers of a law-enforcement agency
2 which employs a civil service system for its law-enforcement
3 personnel, nor shall such provisions be mandatory during the five
4 years next succeeding July 9, 1981 for law-enforcement officers
5 of a law-enforcement agency which does not employ a civil service
6 system for its law-enforcement personnel: *Provided*, That these
7 requirements are mandatory for all such law-enforcement officers
8 until their law-enforcement officials apply for their exemption
9 by submitting a written plan to the Governor's committee which
10 will reasonably assure compliance of all law-enforcement officers
11 of their agencies within the applicable two or five-year period
12 of exemption.

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

17 (k) Any person terminated from employment for not filing an
18 application to the law-enforcement training academy within ninety
19 days after commencing employment as a law-enforcement officer may
20 appeal the termination to the Governor's committee for
21 reconsideration on an individual basis.

22 (l) Beginning July 1, 2002 until June 30, 2003, any
23 applicant who has been conditionally employed as a law-
24 enforcement officer who failed to submit a timely application
25 pursuant to the provisions of this section, may be conditionally
26 employed as a law-enforcement officer and may resubmit an

1 application pursuant to subsection (b) of this section to an
2 approved law-enforcement training academy. If the applicant is
3 accepted, the employer shall pay compensation to the employee for
4 attendance at the law-enforcement training academy at the rate
5 provided in section eight of this article.

6 **§30-29-11. Certified law-enforcement officers who are separated**
7 **from their employment.**

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

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

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

24 (d) At the time of his or her application, an applicant for
25 the reactivation of his or her certification, whether for
26 employment purposes or otherwise, shall provide the subcommittee

1 with an authorization for the release of his or her personnel
2 file from the law-enforcement agency with which they were most
3 recently employed.

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

14 (f) The subcommittee may request that the law-enforcement
15 agency from which the applicant was most recently separated,
16 provide a copy of the applicants personnel file or other
17 information relevant to the applicant's separation of employment.

18 (g) Upon receipt of a request by the subcommittee, the chief
19 law-enforcement official of the law-enforcement agency with which
20 the applicant was most recently employed, or his or her designee,
21 shall, within eight calendar days, provide the subcommittee with
22 a copy of the applicant's personnel file or other information
23 relevant to the applicant's separation of employment.

24 (h) An applicant shall be entitled to a copy of all
25 documents or other materials submitted to the subcommittee
26 related to the application.

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

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

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

16 (l) An applicant whose certification is not reactivated
17 pursuant to a final decision of the subcommittee, may appeal the
18 final decision of the subcommittee to the Governor's committee.

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

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

1 (o) The provisions of this section apply only to those
2 certified law-enforcement officers who are separated from
3 employment with a West Virginia law enforcement agency after the
4 effective date of this section during the 2011 Regular Session of
5 the Legislature.