

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4540

BY DELEGATES CAPITO, MILLER, SHOTT, KELLY, GRAVES,

BYRD AND NELSON

[Introduced January 24, 2020; Referred to the
Committee on the Judiciary then Finance]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
 2 designated §16-5B-19; to amend and reenact §17C-1-6 of said code; and to amend and
 3 reenact §30-29-1, §30-29-5, and §30-29-8 of said code, all relating to the authorization by
 4 governing boards of public and private hospitals to appoint and employ hospital police
 5 officers, providing for the qualifications, training, authority, compensation, and removal of
 6 hospital police officers; allowing for the assistance of local law-enforcement agencies upon
 7 request; and providing limitations on liability of hospital police officers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law enforcement grants; limitations on liability.

1 (a) The governing board of a hospital licensed under §16-5B-2 of this code may establish
 2 a hospital police department and appoint qualified individuals to serve as hospital police officers
 3 upon any premises owned or leased by the hospital and under the jurisdiction of the governing
 4 board, subject to the conditions and restrictions established in this section.

5 (1) A person who fulfills the certification requirements for law-enforcement officers under
 6 §30-29-5 of this code is considered qualified for appointment as a hospital police officer.

7 (2) A retired police officer may qualify for appointment as a hospital police officer if he or
 8 she meets the certification requirements under §30-29-5 of this code.

9 (3) Before performing duties as a hospital police officer in any county, a person shall
 10 qualify as is required of county police officers by:

11 (A) Taking and filing an oath of office as required by §6-1-1 et seq. of this code; and

12 (B) Posting an official bond as required by §6-2-1 et seq. of this code.

13 (b) A hospital police officer may carry a gun and any other dangerous weapon while on
14 duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5
15 of this code.

16 (c) It is the duty of a hospital police officer to preserve law and order:

17 (1) On the premises under the jurisdiction of the governing board and its affiliated
18 properties; and

19 (2) On any street, road, or thoroughfare, except controlled access highways, immediately
20 adjacent to or passing through the premises under the jurisdiction of the governing board, to which
21 the officer is assigned by the chief executive officer or his or her designee: *Provided, That a*
22 hospital police officer may only enforce the provisions of §17C-2-3 of this code upon request of a
23 local law-enforcement agency.

24 (A) For the purposes of this subdivision, the hospital police officer is a law-enforcement
25 officer pursuant to the provisions of §30-29-1 *et seq.* of this code;

26 (B) The hospital police officer has and may exercise all the powers and authority of a law-
27 enforcement officer as to offenses committed within the area assigned;

28 (C) The hospital police officer is subject to all the requirements and responsibilities of a
29 law-enforcement officer;

30 (D) Authority assigned pursuant to this subdivision does not supersede in any way the
31 authority or duty of other law-enforcement officers to preserve law and order on such hospital
32 premises;

33 (E) Hospital police officers may assist a local law-enforcement agency on public highways.
34 The assistance may be provided to control traffic in and around premises owned by the state or
35 political subdivision when:

36 (i) Traffic is generated as a result of activities or events conducted or sponsored by the
37 hospital;

38 (ii) The assistance has been requested by the local law-enforcement agency; and

39 (F) Hospital police officers may assist a local law-enforcement agency in any location
40 under the agency's jurisdiction at the specific request of the agency; and

41 (G) Hospital police officers shall enforce the general policies and procedures of the
42 hospital as established by the chief executive officer or his or her designee.

43 (d) The salary of a hospital police officer is paid by the employing hospital's governing
44 board. The hospital shall furnish each hospital police officer with a firearm and an official uniform
45 to be worn while on duty. The hospital shall furnish and require each officer while on duty to wear
46 a shield with the appropriate inscription and to carry credentials certifying the person's identity
47 and authority as a hospital police officer.

48 (e) The governing board of the employing hospital may at its pleasure revoke the authority
49 of any hospital police officer and such officers serve at the will and pleasure of the governing
50 board. The chief executive officer of the hospital or his or her designee shall report the termination
51 of employment of a hospital police officer by filing a notice to that effect in the office of the clerk
52 of each county in which the hospital police officer's oath of office was filed.

53 (f) Notwithstanding any other provisions of this code to the contrary, and only for the
54 purposes of enhancing the ability of hospital police officers to perform their duties, a governing
55 board of a hospital may apply for and receive any public or private grant or other financial award
56 that is available to other law-enforcement agencies in the state.

57 (g) For the purpose of hospital police officers appointed and established in this section,
58 the civil service provisions of §8-14-1 et seq. of this code and the investigation and interrogation
59 provisions of §8-14A-1 et seq. of this code shall not apply.

60 (h) A hospital police officer is immune from civil liability unless one of the following applies:

61 (1) His or her acts or omissions were manifestly outside the scope of employment or official
62 responsibilities;

63 (2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton
64 or reckless manner; or

65 (3) Civil liability is expressly imposed upon the hospital police officer by any other provision
66 of this code.

67 (i) In any civil action involving a hospital police officer as a party defendant, the provisions
68 of §29-12A-7 of this code shall apply.

CHAPTER 17C. TRAFFIC REGULATIONS AND LAWS OF THE ROAD.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§17C-1-6. Authorized emergency vehicle.

1 “Authorized emergency vehicle” means vehicles of a fire department, duly chartered
2 rescue squad, police department, ambulance service, hospital police department, state, county
3 or municipal agency and such privately owned ambulances, tow trucks, wreckers, flag car
4 services, vehicles providing road service to disabled vehicles, service vehicles of a public service
5 corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters,
6 Class A vehicles of members of ambulance services, and Class A vehicles of members of duly
7 chartered rescue squads, and all other emergency vehicles as are designated by the agency
8 responsible for the operation and control of these persons or organizations. Class A vehicles are
9 as defined by §17A-10-1 of this code. Agency authorization and emergency equipment are
10 defined in §17C-15-26 of this code. Agencies responsible for issuing authorization for emergency
11 vehicle permits may promulgate such regulations that are necessary for the issuance of permits
12 for emergency vehicles.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 29. LAW-ENFORCEMENT TRAINING AND CERTIFICATION.

§30-29-1. Definitions.

1 For the purposes of this article, unless a different meaning clearly appears in the context:
2 ~~(4)~~ “Approved law-enforcement training academy” means any training facility which is
3 approved and authorized to conduct law-enforcement training as provided in this article;

4 ~~(2)~~ “Chief executive” means the Superintendent of the State Police; the chief natural
5 resources police officer of the Division of Natural Resources; the sheriff of any West Virginia
6 county; any administrative deputy appointed by the chief natural resources police officer of the
7 Division of Natural Resources; or the chief of any West Virginia municipal law-enforcement
8 agency;

9 ~~(3)~~ “County” means the 55 major political subdivisions of the state;

10 ~~(4)~~ “Exempt rank” means any noncommissioned or commissioned rank of sergeant or
11 above;

12 ~~(5)~~ “Governor’s Committee on Crime, Delinquency, and Correction” or “Governor’s
13 committee” means the Governor’s Committee on Crime, Delinquency, and Correction established
14 as a state planning agency pursuant to §15-9-1 of this code;

15 ~~(6)~~ “Law-enforcement officer” means any duly authorized member of a law-enforcement
16 agency who is authorized to maintain public peace and order, prevent and detect crime, make
17 arrests, and enforce the laws of the state or any county or municipality thereof, other than parking
18 ordinances, and includes those persons employed as campus police officers at state institutions
19 of higher education in accordance with the provisions of §18B-4-5 of this code, persons employed
20 as hospital police officers in accordance with the provisions of §16-5B-19 of this code, and
21 persons employed by the Public Service Commission as motor carrier inspectors and weight-
22 enforcement officers charged with enforcing commercial motor vehicle safety and weight
23 restriction laws, although those institutions and agencies may not be considered law-enforcement
24 agencies. The term also includes those persons employed as county litter control officers charged
25 with enforcing litter laws: *Provided*, That those persons have been trained and certified as law-
26 enforcement officers and that certification is currently active. The term also includes those
27 persons employed as rangers by resort area districts in accordance with the provisions of §7-25-
28 23 of this code, although no resort area district may be considered a law-enforcement agency:
29 *Provided, however*, That the subject rangers shall pay the tuition and costs of training. As used in

30 this article, the term “law-enforcement officer” does not apply to the chief executive of any West
31 Virginia law-enforcement agency or any watchman or special natural resources police officer;

32 ~~(7)~~ “Law-enforcement official” means the duly appointed chief administrator of a
33 designated law-enforcement agency or a duly authorized designee;

34 ~~(8)~~ “Municipality” means any incorporated town or city whose boundaries lie within the
35 geographic boundaries of the state;

36 ~~(9)~~ “Subcommittee” or “law-enforcement professional standards subcommittee” means
37 the subcommittee of the Governor’s Committee on Crime, Delinquency, and Correction created
38 by §30-29-2 of this code; and

39 ~~(10)~~ “West Virginia law-enforcement agency” means any duly authorized state, county, or
40 municipal organization employing one or more persons whose responsibility is the enforcement
41 of laws of the state or any county or municipality thereof: *Provided*, That neither the Public Service
42 Commission nor any state institution of higher education nor any resort area district is a law-
43 enforcement agency.

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

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

10 (b) Except as provided in subsection (g) of this section, a person who is not certified, or
11 certifiable in one of the manners specified in subsections (c) through (e), inclusive, of this section,

12 may be conditionally employed as a law-enforcement officer until certified: *Provided*, That within
13 ~~ninety~~ 90 calendar days of the commencement of employment or the effective date of this article
14 if the person is already employed on the effective date, he or she makes a written application to
15 attend an approved law-enforcement training academy. The person's employer shall provide
16 notice, in writing, of the 90-day deadline to file a written application to the academy within ~~thirty~~
17 30 calendar days of that person's commencement of employment. The employer shall provide full
18 disclosure as to the consequences of failing to file a timely written application. The academy shall
19 notify the applicant in writing of the receipt of the application and of the tentative date of the
20 applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable
21 to his or her law-enforcement official, is unable to attend the scheduled training program to which
22 he or she was admitted may reapply and shall be admitted to the next regularly scheduled training
23 program. An applicant who satisfactorily completes the program shall, within ~~thirty~~ 30 days of
24 completion, make written application to the subcommittee requesting certification as having met
25 the minimum entry level law-enforcement qualification and training program requirements. Upon
26 determining that an applicant has met the requirements for certification, the subcommittee shall
27 forward to the applicant documentation of certification. An applicant who fails to complete the
28 training program to which he or she is first admitted, or was admitted upon reapplication, may not
29 be certified by the subcommittee: *Provided, however*, That an applicant who has completed the
30 minimum training required by the subcommittee may be certified as a law-enforcement officer,
31 notwithstanding the applicant's failure to complete additional training hours required in the training
32 program to which he or she originally applied.

33 (c) Any person who is employed as a law-enforcement officer on the effective date of this
34 article and is a graduate of the West Virginia basic police training course, the West Virginia State
35 Police cadet training program, or other approved law-enforcement training academy, is certifiable
36 as having met the minimum entry level law-enforcement training program requirements and is
37 exempt from the requirement of attending a law-enforcement training academy. To receive

38 certification, the person shall make written application within 90 calendar days of the effective
39 date of this article to the subcommittee requesting certification. The subcommittee shall review
40 the applicant's relevant scholastic records and, upon determining that the applicant has met the
41 requirements for certification, shall forward to the applicant documentation of certification.

42 (d) Any person who is employed as a law-enforcement officer on the effective date of this
43 article and is not a graduate of the West Virginia basic police training course, the West Virginia
44 State Police Cadet Training Program or other approved law-enforcement training academy, is
45 certifiable as having met the minimum entry level law-enforcement training program requirements
46 and is exempt from the requirement of attending a law-enforcement training academy if the person
47 has been employed as a law-enforcement officer for a period of not less than five consecutive
48 years immediately preceding the date of application for certification. To receive certification, the
49 person shall make written application within ~~ninety~~ 90 calendar days following the effective date
50 of this article to the subcommittee requesting certification. The application shall include notarized
51 statements as to the applicant's years of employment as a law-enforcement officer. The
52 subcommittee shall review the application and, upon determining that the applicant has met the
53 requirements for certification, shall forward to the applicant documentation of certification.

54 (e) Any person who begins employment on or after the effective date of this article as a
55 law-enforcement officer is certifiable as having met the minimum entry level law-enforcement
56 training program requirements and is exempt from attending a law-enforcement training academy
57 if the person has satisfactorily completed a course of instruction in law enforcement equivalent to
58 or exceeding the minimum applicable law-enforcement training curricula promulgated by the
59 subcommittee. To receive certification, the person shall make written application within ~~ninety~~ 90
60 calendar days following the commencement of employment to the subcommittee requesting
61 certification. The application shall include a notarized statement of the applicant's satisfactory
62 completion of the course of instruction in law enforcement, a notarized transcript of the applicant's
63 relevant scholastic records and a notarized copy of the curriculum of the completed course of

64 instruction. The subcommittee shall review the application and, if it finds the applicant has met
65 the requirements for certification, shall forward to the applicant documentation of certification. The
66 subcommittee may set the standards for required records to be provided by or on behalf of the
67 applicant officer to verify his or her training, status, or certification as a law-enforcement officer.
68 The subcommittee may allow an applicant officer to participate in the approved equivalent
69 certification program to gain certification as a law-enforcement officer in this state.

70 (f) Except as provided in subdivisions (1) through (3), inclusive, of this subsection, any
71 person who is employed as a law-enforcement officer on or after the effective date of this article
72 and fails to be certified shall be automatically terminated and no further emoluments shall be paid
73 to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a
74 private citizen, to the subcommittee for training and certification, and upon being certified may
75 again be employed as a law-enforcement officer in this state: *Provided*, That if a person is
76 terminated under this subsection because an application was not timely filed to the academy, and
77 the person's employer failed to provide notice or disclosure to that person as set forth in
78 subsection (b) of this section, the employer shall pay the full cost of attending the academy if the
79 person's application to the subcommittee as a private citizen is subsequently approved.

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

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

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

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

101 (h) The subcommittee, or its designee, may decertify or reactivate a law-enforcement
102 officer pursuant to the procedure contained in this article and legislative rules promulgated by the
103 subcommittee.

104 (i) Any person aggrieved by a decision of the subcommittee made pursuant to this article
105 may contest the decision in accordance with the provisions of ~~article five, chapter twenty-nine-a~~
106 §29A-5-1 et seq. of this code.

107 (j) The subcommittee may issue subpoenas for the attendance of witnesses and the
108 production of necessary evidence or documents in any proceeding, review or investigation
109 relating to certification or hearing before the subcommittee.

**§30-29-8. Compensation for employees attending law-enforcement training academy;
limitations; agreements to reimburse employers for wages and expenses of
employees trained but not continuing employment.**

1 (a) A West Virginia law-enforcement agency shall, and a governing board may, pay
2 compensation to employees, including wages, salaries, benefits, tuition and expenses, for the
3 employees' attendance at a law-enforcement training academy. The compensation paid to the

4 employees for such attendance may not include overtime compensation under the provisions of
5 §21-5C-3 of this code and shall be at the regular rate to which each employee would be entitled
6 for a workweek of 40 hours in regular employment with the employer.

7 (b) In consideration for such compensation, the governing board, hospital, county
8 commission or municipal government may require each employee to enter into a written
9 agreement in advance of such attendance that obligates the employee to repay the employer if
10 he or she voluntarily discontinues employment within one year immediately following completion
11 of the training curriculum. The amount of repayment shall be a pro rata portion of the total
12 compensation which is equal to the portion of the year which the employee chose not to remain
13 employed.”(c) As used in this section, “governing board” has the meaning ascribed in §18B-1-2
14 of this code.

NOTE: The purpose of this bill is to authorize the appointment, qualifications, certification, authority, compensation, and training of hospital police officers and hospital police departments by licensed public and private hospitals and further permits hospital police officers to assist local law-enforcement agencies. The bill also provides for limitations on the civil liability of hospital police officers in certain circumstances.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.