

House Bill 366 (AM)

By: Representatives Hitchens of the 161st, Powell of the 32nd, Tanner of the 9th, Fleming of the 121st, Atwood of the 179th, and others

A BILL TO BE ENTITLED
AN ACT

To amend Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to the employment and training of peace officers, so as to clarify the application of provisions relating to disciplining certified officers and the requirements for certification of peace officers; to modify requirements for appointment or certification of persons as peace officers so as to allow for flexibility in taking the basic training examination; to provide for the automatic suspension of officers failing to obtain or report annual training requirements; to provide for related matters; to provide an effective date; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to the employment and training of peace officers, is amended by revising Code Section 35-8-7.1, relating to the authority of the Georgia Peace Officer Standards and Training Council to refuse a certificate to an applicant or to discipline a certified peace officer, as follows:

"35-8-7.1.

(a) The council shall have authority to refuse to grant a certificate to an applicant or to discipline a council certified ~~peace~~ officer or exempt ~~peace~~ officer under this chapter or any antecedent law upon a determination by the council that the applicant, ~~or~~ council certified ~~peace~~ officer, or exempt ~~peace~~ officer has:

(1) Failed to demonstrate the qualifications or standards for a certificate provided in this chapter or in the rules and regulations of the council. It shall be incumbent upon the applicant to demonstrate to the satisfaction of the council that he or she meets all requirements for the issuance of a certificate;

(2) Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of being a ~~peace~~ an officer or in any document connected therewith or practiced

26 fraud or deceit or intentionally made any false statement in obtaining a certificate to
27 practice as ~~a peace~~ an officer;

28 (3) Been convicted of a felony in the courts of this state or any other state, territory,
29 country, or of the United States. As used in this paragraph, the term 'conviction of a
30 felony' shall include a conviction of an offense which if committed in this state would be
31 deemed a felony under either state or federal law without regard to its designation
32 elsewhere. As used in this paragraph, the term 'conviction' shall include a finding or a
33 verdict of guilt, a plea of guilty, or a plea of nolo contendere in a criminal proceeding,
34 regardless of whether the adjudication of guilt or sentence is withheld or not entered
35 thereon. However, the council may not deny a certificate to an applicant with a
36 conviction if the adjudication of guilt or sentence is withheld or not entered thereon;

37 (4) Committed a crime involving moral turpitude, without regard to conviction. The
38 conviction of a crime involving moral turpitude shall be conclusive of the commission
39 of such crime. As used in this paragraph, the term 'conviction' shall have the meaning
40 prescribed in paragraph (3) of this subsection;

41 (5) Had his or her certificate or license to practice as ~~a peace~~ an officer revoked,
42 suspended, or annulled by any lawful certifying or licensing authority; ~~or~~ had other
43 disciplinary action taken against him or her by any lawful certifying or licensing
44 authority; or was denied a certificate or license by any lawful certifying or licensing
45 authority;

46 (6) Engaged in any unprofessional, unethical, deceptive, or deleterious conduct or
47 practice harmful to the public, ~~which;~~ such conduct or practice need not have resulted in
48 actual injury to any person. As used in this paragraph, the term 'unprofessional conduct'
49 shall include any departure from, or failure to conform to, the minimal standards of
50 acceptable and prevailing practice of ~~a peace~~ an officer;

51 (7) Violated or attempted to violate a law, rule, or regulation of this state, any other state,
52 the council, the United States, or any other lawful authority without regard to whether the
53 violation is criminally punishable, ~~which;~~ so long as such law, rule, or regulation relates
54 to or in part regulates the practice of ~~a peace~~ an officer;

55 (8) Committed any act or omission which is indicative of bad moral character or
56 untrustworthiness;

57 (9) Been adjudged mentally incompetent by a court of competent jurisdiction, within or
58 outside this state;

59 (10) Become unable to perform as ~~a peace~~ an officer with reasonable skill and safety to
60 citizens by reason of illness or use of alcohol, drugs, narcotics, chemicals, or any other
61 type of material or as a result of any mental or physical condition; or

(11) Been suspended or discharged by the ~~peace~~ officer's employing law enforcement unit for disciplinary reasons.

(b)(1) When the council finds that any person is unqualified to be granted a certificate or finds that any person should be disciplined pursuant to subsection (a) of this Code section, the council may take any one or more of the following actions:

(A) Refuse to grant a certificate to an applicant;

(B) Administer a public or private reprimand, provided that a private reprimand shall not be disclosed to any person except the ~~peace~~ officer;

(C) Suspend any certificate for a definite period;

(D) Limit or restrict any certificate;

(E) Revoke any certificate; or

(F) Condition the penalty, or withhold formal disposition, upon the ~~peace~~ officer's completing such care, counseling, or treatment, as directed by the council.

(2) In addition to and in conjunction with the foregoing actions, the council may make a finding adverse to the applicant or ~~peace~~ officer but withhold imposition of judgment and penalty or it may impose the judgment and penalty but suspend enforcement thereof and place the ~~peace~~ officer on probation, which ~~probation~~ may be vacated upon noncompliance with such reasonable terms as the council may impose.

(c) In its discretion, the council may restore and reissue a certificate issued under this chapter or any antecedent law to a ~~peace~~ an officer and, as a condition thereof, may impose any disciplinary or corrective measure provided in this chapter.

(d) Upon arrest or indictment of a ~~peace~~ an officer for any crime which is punishable as a felony, the executive director of the council shall order the emergency suspension of such officer's certification upon the executive director's determination that the suspension is in the best interest of the health, safety, or welfare of the public. The order of emergency suspension shall be made in writing and shall specify the basis for the executive director's determination. Following the issuance of an emergency suspension order, proceedings of the council in the exercise of its authority to discipline any ~~peace~~ officer shall be promptly scheduled as provided for in Code Section 35-8-7.2. The emergency suspension order of the executive director shall continue in effect until issuance of the final decision of the council or such order is withdrawn by the executive director.

(e) Upon initiating an investigation of a ~~peace~~ an officer for possible disciplinary action or upon disciplining a ~~peace~~ an officer pursuant to this Code section, the council shall notify the head of the law enforcement agency that employs such ~~peace~~ officer of the investigation or disciplinary action. In the case of an investigation, it shall be sufficient to identify the ~~peace~~ officer and state that a disciplinary investigation has been opened. Notice of the initiation of an investigation shall be sent by priority mail. If the

99 investigation is completed without any further action, notice of the termination of such
100 investigation shall also be provided to the head of the employing agency. In the case of
101 disciplinary action, the notice shall identify the officer and state the nature of the
102 disciplinary action taken. The notice of disposition shall be sent only after the action of the
103 council is deemed final. Such notice shall be sent by priority mail.

104 (f) If the certification of a ~~peace~~ an officer is suspended or revoked by either the executive
105 director or council, then the council shall notify the head of the law enforcement agency
106 that employs the ~~peace~~ officer; the district attorney of the judicial circuit in which such law
107 enforcement agency is located; and the solicitor of the state court, if any, of the county in
108 which such law enforcement agency is located. It shall be sufficient for this notice to
109 identify the officer and state the length of time, if known, that the officer will not have
110 powers of arrest. Such notice shall be sent by priority mail."

111 SECTION 2.

112 Said chapter is further amended by revising paragraph (8) of subsection (a) of Code Section
113 35-8-8, relating to requirements for appointment or certification of persons as peace officers
114 and pre-employment attendance at basic training courses and employment related
115 information, as follows:

116 "(8) Successfully complete a job related academy entrance examination provided for and
117 administered by the council in conformity with state and federal law. Such examination
118 shall be administered prior to entrance to the basic course provided for in Code Sections
119 35-8-9 and 35-8-11. The council may change or modify such examination and shall
120 establish the criteria for determining satisfactory performance on such examination.
121 Peace officers who do not perform satisfactorily on the examination shall be ineligible
122 to retake such examination for a period of ~~six months~~ 30 days after an unsuccessful
123 attempt. The provisions of this paragraph establish only the minimum requirements of
124 academy entrance examinations for peace officer candidates in this state; each law
125 enforcement unit is encouraged to provide such additional requirements and any
126 preemployment examination as it deems necessary and appropriate."

127 SECTION 3.

128 Said chapter is amended further Code Section 35-8-21, relating to training requirements for
129 peace officers, waiver, and exemption for retired peace officers, as follows:

130 "35-8-21.

131 (a) During calendar year 1999 and during each calendar year thereafter, any person
132 employed or appointed as a peace officer shall complete 20 hours of training as provided
133 in this Code section; provided, however, that any peace officer serving with the Department

of Public Safety who is a commissioned officer shall receive annual training as specified by the commissioner of public safety.

(b) The training required by subsection (a) of this Code section shall be completed in sessions approved or recognized by the Georgia Peace Officer Standards and Training Council.

(c) Peace officers who satisfactorily complete the basic course of training in accordance with the provisions of this chapter ~~after April 1 in any calendar year~~ shall be excused from the minimum annual training requirement for the calendar year during which the basic course is completed.

(d) Any peace officer who does not fulfill the training requirements of this Code section shall lose his or her power of arrest.

(e) A waiver of the requirement of training provided in this Code section may be granted by the Georgia Peace Officer Standards and Training Council, in its discretion, upon the presentation of evidence by a peace officer that he or she was unable to complete such training due to medical disability, providential cause, or other reason deemed sufficient by the council.

(f) Any person who is registered or certified with the council as a retired peace officer is excused and exempt from compliance with this Code section for the year in which he or she retires. A retired peace officer may voluntarily comply with the requirements of this Code section and, in that event, such retired peace officer shall receive such minimal annual training without payment of any fees or costs, but only if sufficient class space is available. Nothing in this subsection shall be deemed to grant an exemption to persons required to complete the annual training requirement of this Code section.

(g) Any person required to comply with this Code section shall provide confirmation of his or her training for the previous year to the council in a manner required by the council. Failure to provide the council with confirmation of training in a timely manner or failure to obtain required training in a timely manner shall result in an emergency suspension of the officer's certification by the executive director. The order of emergency suspension issued by the executive director shall be made in writing and shall specify the basis for the determination. The emergency suspension order shall continue in effect until the training requirements are confirmed or a waiver is issued pursuant to subsection (e) of this Code section. An emergency suspension issued pursuant to this subsection shall be automatically withdrawn upon confirmation of required training or the issuance of a waiver by the council."

SECTION 4.

This Act shall become effective on July 1, 2013.

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SECTION 5.

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All laws and parts of laws in conflict with this Act are repealed.