

Senate Bill 95

By: Senators Carter of the 1st, Grant of the 25th, Mullis of the 53rd and Murphy of the 27th

AS PASSED

**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 provide for the authority to investigate the employment history of an applicant applying for appointment or certification as a peace officer; to provide immunities relating thereto; 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 35-8-8, relating to the requirements for appointment or certification of persons as peace officers and pre-employment attendance at a basic training course, as follows:

"35-8-8.

(a) Any person employed or certified as a peace officer shall:

(1) Be at least 18 years of age;

(2) Be a citizen of the United States;

(3) Have a high school diploma or its recognized equivalent;

(4) Not have been convicted by any state or by the federal government of any crime the punishment for which could have been imprisonment in the federal or state prison or institution nor have been convicted of sufficient misdemeanors to establish a pattern of disregard for the law, provided that, for the purposes of this paragraph, violations of traffic laws and other offenses involving the operation of motor vehicles when the applicant has received a pardon shall not be considered;

(5) Be fingerprinted for the purpose of conducting a fingerprint based search at the Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the existence of any criminal record;

(6) Possess good moral character as determined by investigation under procedure established by the council and fully cooperate during the course of such investigation;

(7) Be found, after examination by a licensed physician or surgeon, to be free from any physical, emotional, or mental conditions which might adversely affect his or her ~~exercising~~ exercise of the powers or duties of a peace officer; and

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

(b) Any person authorized to attend the basic training course prior to employment as a peace officer shall meet the requirements of subsection (a) of this Code section.

(c)(1) For purposes of this subsection, the term 'employment related information' means written information contained in a prior employer's records or personnel files that relates to an applicant's, candidate's, or peace officer's performance or behavior while employed by such prior employer, including performance evaluations, records of disciplinary actions, and eligibility for rehire. Such term shall not include information prohibited from disclosure by federal law or any document not in the possession of the employer at the time a request for such information is received.

(2) Where an investigation is conducted for the purpose of hiring, certifying, or continuing the certification of a peace officer, an employer shall disclose employment related information to the investigating law enforcement agency upon receiving a written request from such agency. Disclosure shall only be required under this subsection if the law enforcement agency's request is accompanied by a copy of a signed, notarized statement from the applicant, candidate, or peace officer releasing and holding harmless such employer from any and all liability for disclosing complete and accurate information to the law enforcement agency.

(3) An employer may charge a reasonable fee to cover actual costs incurred in copying and furnishing documents to a requesting law enforcement agency, including retrieving and redacting costs, provided such amount shall not exceed \$25.00 or \$0.25 per page, whichever is greater. No employer shall be required to prepare or create any document

63 not already in the employer's possession at the time a request for employment related
64 information is received. Any employment related information provided pursuant to this
65 subsection that is not subject to public disclosure while in the possession of a prior
66 employer shall continue to be privileged and protected from public disclosure as a record
67 of the requesting law enforcement agency.

68 (4) No employer or law enforcement agency shall be subject to any civil liability for any
69 cause of action by virtue of disclosing complete and accurate information to a law
70 enforcement agency in good faith and without malice pursuant to this subsection. In any
71 such cause of action, malice or bad faith shall only be demonstrated by clear and
72 convincing evidence. Nothing contained in this subsection shall be construed so as to
73 affect or limit rights or remedies provided by federal law.

74 (5) Before taking final action on an application for employment based, in whole or in
75 part, on any unfavorable employment related information received from a previous
76 employer, a law enforcement agency shall inform the applicant, candidate, or peace
77 officer that it has received such employment related information and that the applicant,
78 candidate, or peace officer may inspect and respond in writing to such information. Upon
79 the applicant's, candidate's, or peace officer's request, the law enforcement agency shall
80 allow him or her to inspect the employment related information and to submit a written
81 response to such information. The request for inspection shall be made within five
82 business days from the date that the applicant, candidate, or peace officer is notified of
83 the law enforcement agency's receipt of such employment related information. The
84 inspection shall occur not later than ten business days after said notification. Any
85 response to the employment related information shall be made by the applicant,
86 candidate, or peace officer not later than three business days after his or her inspection.
87 (6) Nothing contained in this Code section shall be construed so as to require any person
88 to provide self-incriminating information or otherwise to compel any person to act in
89 violation of his or her right guaranteed by the Fifth Amendment of the United States
90 Constitution and Article I, Section I, Paragraph XVI of the Georgia Constitution. It shall
91 not be a violation of this Code section for a person to fail to provide requested
92 information based on a claim that such information is self-incriminating provided that
93 notice of such claim is served in lieu of the requested information. An action against such
94 person to require disclosure on the grounds that the claim of self-incrimination is not
95 substantiated may be brought in the superior court of the county of such party's residence
96 or where such information is located."

97 **SECTION 2.**

98 This Act shall become effective upon its approval by the Governor or upon its becoming law
99 without such approval.

100 **SECTION 3.**

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