

House Bill 246

By: Representatives Gaines of the 120th, Crowe of the 118th, Greene of the 154th, Erwin of the 32nd, Mathis of the 133rd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Code Section 15-16-1 and Chapter 8 of Title 35 of the Official Code of Georgia
2 Annotated, relating to qualification requirements for sheriff and exemptions and employment
3 and training of peace officers, respectively, so as to require a person qualifying as a candidate
4 for sheriff be a peace officer not under revocation or suspension by the Georgia Peace
5 Officer Standards and Training Council; to provide for a penalty; to provide for submission
6 of a form completed by the executive director of such council; to provide for related matters;
7 to provide for an effective date; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Code Section 15-16-1 of the Official Code of Georgia Annotated, relating to qualification
11 requirements for sheriff and exemptions, is amended in subsection (c) by revising
12 subparagraph (J) of paragraph (1) and paragraph (2) and by revising subsection (d) as
13 follows:

14 "(J) At the time of qualifying as a candidate for the office of sheriff, Is a registered
15 peace officer as provided in Code Section 35-8-10 or is a certified peace officer, as
16 defined in Chapter 8 of Title 35, not under revocation or suspension by the Georgia

17 Peace Officer Standards and Training Council and files with the officer before whom
18 such person qualifies a form signed by the executive director of the Georgia Peace
19 Officer Standards and Training Council, or his or her designee, that attests and
20 certifies such. ~~Any person who is not a registered or certified peace officer at the time~~
21 ~~such person assumes the office of sheriff shall be required to complete satisfactorily~~
22 ~~the requirements for certification as a peace officer as provided in Chapter 8 of Title~~
23 ~~35 within six months after such person takes office; provided, however, that an~~
24 ~~extension of the time to complete such requirements may be granted by the Georgia~~
25 ~~Peace Officer Standards and Training Council upon the presentation of evidence by~~
26 ~~a sheriff that he or she was unable to complete the basic training course and~~
27 ~~certification requirements due to illness, injury, military service, or other reasons~~
28 ~~deemed sufficient by such council. The Georgia Peace Officer Standards and~~
29 ~~Training Council shall make every effort to ensure that space is available for newly~~
30 ~~elected sheriffs who are not certified or registered peace officers to attend the course~~
31 ~~as soon as possible after such persons take office. Such council shall notify the~~
32 ~~appropriate judge of the probate court whenever a newly elected sheriff who is not~~
33 ~~certified fails to become certified as a peace officer pursuant to the requirements of~~
34 ~~this subparagraph.~~

35 (2) Each person offering his or her candidacy for the office of sheriff shall, at the time
36 such person qualifies, swear or affirm before the officer before whom such person has
37 qualified to seek the office of sheriff that he or she meets all of the qualifications
38 required by this subsection, ~~except as otherwise provided in subparagraph (J) of~~
39 ~~paragraph (1) of this subsection,~~ and that he or she has complied or will comply with
40 the requirements of subparagraph (G) of paragraph (1) of this subsection no later than
41 the close of business on the third business day following the close of such qualification
42 period. Any person who knowingly provides false information in executing the

43 affidavit required by this paragraph commits the offense of false swearing within the
 44 meaning of and subject to the penalties prescribed in Code Section 16-10-71."

45 "(d) **Exemption.** The requirements of subparagraphs (c)(1)(D), ~~(c)(1)(E)~~,
 46 through (c)(1)(F), (c)(1)(H), and (c)(1)(I), ~~and (c)(1)(J)~~ of this Code section shall be
 47 deemed to have been met by any person who is currently serving as a duly qualified and
 48 elected sheriff of one of the several counties of this state."

49 **SECTION 2.**

50 Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and
 51 training of peace officers, is amended by revising Code Section 35-8-8, relating to
 52 requirements for appointment or certification of persons as peace officers and
 53 preemployment attendance at basic training course and "employment related information"
 54 defined, and by redesignating the current provisions of subsection (c) of said Code section
 55 as a new Code section to read as follows:

56 "35-8-8.

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

58 (1) Be at least 18 years of age;

59 (2) Be a citizen of the United States;

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

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

- 67 (5) Be fingerprinted for the purpose of conducting a fingerprint based search at the
68 Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the
69 existence of any criminal record;
- 70 (6) Possess good moral character as determined by investigation under procedure
71 established by the council and fully cooperate during the course of such investigation;
- 72 (7) Be found, after examination by a licensed physician or surgeon, to be free from any
73 physical, emotional, or mental conditions which might adversely affect his or her exercise
74 of the powers or duties of a peace officer; and
- 75 (8) Successfully complete a job related academy entrance examination provided for and
76 administered by the council in conformity with state and federal law. Such examination
77 shall be administered prior to entrance to the basic course provided for in Code
78 Sections 35-8-9 and 35-8-11. The council may change or modify such examination and
79 shall establish the criteria for determining satisfactory performance on such examination.
80 The provisions of this paragraph establish only the minimum requirements of academy
81 entrance examinations for peace officer candidates in this state; each law enforcement
82 unit is encouraged to provide such additional requirements and any preemployment
83 examination as it deems necessary and appropriate. Any person with a degree from a
84 postsecondary institution accredited by a regional accrediting agency recognized by the
85 United States Department of Education shall be deemed to have met the requirements of
86 this paragraph.
- 87 (b) Any person authorized to attend the basic training course prior to employment as a
88 peace officer shall meet the requirements of subsection (a) of this Code section.
- 89 (c) The executive director of the council, or his or her designee, shall promulgate a form
90 which shall be available to any person seeking election to the office of sheriff. Such form
91 shall provide for the attestation and certification by the executive director that the person
92 seeking such form is a certified peace officer who is not under revocation or suspension by
93 the council.

94 35-8-8.1.

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

103 ~~(2)(b)(1)~~ Where an investigation is conducted for the purpose of hiring, certifying, or
104 continuing the certification of a peace officer, an employer shall disclose employment
105 related information to the investigating law enforcement agency upon receiving a written
106 request from such agency. Disclosure shall only be required under this subsection if the
107 law enforcement agency's request is accompanied by a copy of a signed, notarized
108 statement from the applicant, candidate, or peace officer releasing and holding harmless
109 such employer from any and all liability for disclosing complete and accurate information
110 to the law enforcement agency.

111 ~~(3)(2)~~ An employer may charge a reasonable fee to cover actual costs incurred in
112 copying and furnishing documents pursuant to this subsection to a requesting law
113 enforcement agency, including retrieving and redacting costs, provided such amount shall
114 not exceed \$25.00 or 25¢ per page, whichever is greater. No employer shall be required
115 to prepare or create any document not already in the employer's possession at the time a
116 request for employment related information is received. Any employment related
117 information provided pursuant to this subsection that is not subject to public disclosure
118 while in the possession of a prior employer shall continue to be privileged and protected
119 from public disclosure as a record of the requesting law enforcement agency.

120 ~~(4)~~(3) No employer or law enforcement agency shall be subject to any civil liability for
121 any cause of action by virtue of disclosing complete and accurate information to a law
122 enforcement agency in good faith and without malice pursuant to this subsection. In any
123 such cause of action, malice or bad faith shall only be demonstrated by clear and
124 convincing evidence. Nothing ~~contained~~ in this subsection shall be construed so as to
125 affect or limit rights or remedies provided by federal law.

126 ~~(5)~~(4) Before taking final action on an application for employment based, in whole or in
127 part, on any unfavorable employment related information received from a previous
128 employer, a law enforcement agency shall inform the applicant, candidate, or peace
129 officer that it has received such employment related information and that the applicant,
130 candidate, or peace officer may inspect and respond in writing to such information. Upon
131 the applicant's, candidate's, or peace officer's request, the law enforcement agency shall
132 allow him or her to inspect the employment related information and to submit a written
133 response to such information. The request for inspection shall be made within five
134 business days from the date that the applicant, candidate, or peace officer is notified of
135 the law enforcement agency's receipt of such employment related information. The
136 inspection shall occur not later than ten business days after said notification. Any
137 response to the employment related information shall be made by the applicant,
138 candidate, or peace officer not later than three business days after his or her inspection.

139 ~~(6)~~(5) Nothing ~~contained~~ in this ~~Code section~~ subsection shall be construed so as to
140 require any person to provide self-incriminating information or otherwise to compel any
141 person to act in violation of his or her right guaranteed by the Fifth Amendment of the
142 United States Constitution and Article I, Section I, Paragraph XVI of the Georgia
143 Constitution. It shall not be a violation of this ~~Code section~~ subsection for a person to fail
144 to provide requested information based on a claim that such information is
145 self-incriminating provided that notice of such claim is served in lieu of the requested
146 information. An action against such person to require disclosure on the grounds that the

147 claim of self-incrimination is not substantiated may be brought in the superior court of
148 the county of such party's residence or where such information is located."

149 **SECTION 3.**

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

152 **SECTION 4.**

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