

The House Committee on Public Safety and Homeland Security offers the following substitute to HB 246:

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 by the Georgia Peace Officer Standards  
5 and Training Council; to provide for penalties; to provide for submission of a form  
6 completed by the executive director of such council; to provide for an exception; to provide  
7 for attestation that any person qualifying for the office of sheriff who is not a certified peace  
8 officer but holds or has held certain other positions is capable of and will obtain such  
9 certification after obtaining the position; to provide for conforming changes; to provide for  
10 related matters; to provide for an effective date; to repeal conflicting laws; and for other  
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **SECTION 1.**

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

H. B. 246 (SUB)

18       “(J) At the time of qualifying as a candidate for the office of sheriff, Is a registered  
19       peace officer as provided in Code Section 35-8-10 or is a certified peace officer, as  
20       defined in Chapter 8 of Title 35, not under revocation by the Georgia Peace Officer  
21       Standards and Training Council and files with the officer before whom such person  
22       qualifies a form signed by the executive director of the Georgia Peace Officer Standards  
23       and Training Council, or his or her designee, that attests and certifies such; provided,  
24       however, that any person who is not a certified peace officer at the time of qualifying  
25       as a candidate for the office of sheriff but is a first responder, as such term is defined  
26       in Code Section 45-25-2, or former military officer, or is a former or current local, state,  
27       or federal law enforcement officer shall swear or affirm before the officer before whom  
28       such person has qualified to seek the office of sheriff that he or she is capable of and  
29       will complete the requirements for certification within six months after taking office.  
30       Any person such first responder, former military officer, or such former or current  
31       local, state, or federal law enforcement officer who is not a ~~registered~~ or certified peace  
32       officer at the time such person assumes the office of sheriff shall be required to  
33       complete satisfactorily the requirements for certification as a peace officer as provided  
34       in Chapter 8 of Title 35 within six months after such person takes office; provided,  
35       however, that an extension of the time to complete such requirements may be granted  
36       by the Georgia Peace Officer Standards and Training Council upon the presentation of  
37       evidence by a sheriff that he or she was unable to complete the basic training course  
38       and certification requirements due to illness, injury, military service, or other reasons  
39       deemed sufficient by such council. The Georgia Peace Officer Standards and Training  
40       Council shall make every effort to ensure that space is available for newly elected  
41       sheriffs who are not certified ~~or registered~~ peace officers to attend the course as soon  
42       as possible after such persons take office. Such council shall notify the appropriate  
43       judge of the probate court whenever a newly elected sheriff who is not certified fails  
44       to become certified as a peace officer pursuant to the requirements of this subparagraph.

45 (2) Each person offering his or her candidacy for the office of sheriff shall ~~at the time~~  
 46 ~~such person qualifies~~; swear or affirm before the officer before whom such person has  
 47 qualified to seek the office of sheriff that he or she meets all of the qualifications required  
 48 by this subsection, except as otherwise provided in subparagraph (J) of paragraph (1) of  
 49 this subsection, ~~and at the time such person qualifies~~, that he or she has complied or will  
 50 comply with the requirements of subparagraph (G) of paragraph (1) of this subsection no  
 51 later than the close of business on the third business day following the close of such  
 52 qualification period, and that, if applicable, he or she will comply with the requirements  
 53 of subparagraph (J) of paragraph (1) of this subsection within six months of taking office.  
 54 Any person who knowingly provides false information in executing the affidavit required  
 55 by this paragraph commits the offense of false swearing within the meaning of and  
 56 subject to the penalties prescribed in Code Section 16-10-71."

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

## 61 SECTION 2.

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

68 "35-8-8.

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

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

- 71 (2) Be a citizen of the United States;
- 72 (3) Have a high school diploma or its recognized equivalent;
- 73 (4) Not have been convicted by any state or by the federal government of any crime the  
74 punishment for which could have been imprisonment in the federal or state prison or  
75 institution nor have been convicted of sufficient misdemeanors to establish a pattern of  
76 disregard for the law, provided that, for the purposes of this paragraph, violations of  
77 traffic laws and other offenses involving the operation of motor vehicles when the  
78 applicant has received a pardon shall not be considered;
- 79 (5) Be fingerprinted for the purpose of conducting a fingerprint based search at the  
80 Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the  
81 existence of any criminal record;
- 82 (6) Possess good moral character as determined by investigation under procedure  
83 established by the council and fully cooperate during the course of such investigation;
- 84 (7) Be found, after examination by a licensed physician or surgeon, to be free from any  
85 physical, emotional, or mental conditions which might adversely affect his or her exercise  
86 of the powers or duties of a peace officer; and
- 87 (8) Successfully complete a job related academy entrance examination provided for and  
88 administered by the council in conformity with state and federal law. Such examination  
89 shall be administered prior to entrance to the basic course provided for in Code  
90 Sections 35-8-9 and 35-8-11. The council may change or modify such examination and  
91 shall establish the criteria for determining satisfactory performance on such examination.  
92 The provisions of this paragraph establish only the minimum requirements of academy  
93 entrance examinations for peace officer candidates in this state; each law enforcement  
94 unit is encouraged to provide such additional requirements and any preemployment  
95 examination as it deems necessary and appropriate. Any person with a degree from a  
96 postsecondary institution accredited by a regional accrediting agency recognized by the

97 United States Department of Education shall be deemed to have met the requirements of  
98 this paragraph.

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

101 (c) The executive director of the council, or his or her designee, shall promulgate a form  
102 which shall be available to any person seeking election to the office of sheriff. Such form  
103 shall provide for the attestation and certification by the executive director that the person  
104 seeking such form is a certified peace officer who is not under revocation by the council.

105 35-8-8.1.

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

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

122 ~~(3)~~(2) An employer may charge a reasonable fee to cover actual costs incurred in  
123 copying and furnishing documents pursuant to this subsection to a requesting law  
124 enforcement agency, including retrieving and redacting costs, provided such amount shall  
125 not exceed \$25.00 or 25¢ per page, whichever is greater. No employer shall be required  
126 to prepare or create any document not already in the employer's possession at the time a  
127 request for employment related information is received. Any employment related  
128 information provided pursuant to this subsection that is not subject to public disclosure  
129 while in the possession of a prior employer shall continue to be privileged and protected  
130 from public disclosure as a record of the requesting law enforcement agency.

131 ~~(4)~~(3) No employer or law enforcement agency shall be subject to any civil liability for  
132 any cause of action by virtue of disclosing complete and accurate information to a law  
133 enforcement agency in good faith and without malice pursuant to this subsection. In any  
134 such cause of action, malice or bad faith shall only be demonstrated by clear and  
135 convincing evidence. Nothing ~~contained~~ in this subsection shall be construed so as to  
136 affect or limit rights or remedies provided by federal law.

137 ~~(5)~~(4) Before taking final action on an application for employment based, in whole or in  
138 part, on any unfavorable employment related information received from a previous  
139 employer, a law enforcement agency shall inform the applicant, candidate, or peace  
140 officer that it has received such employment related information and that the applicant,  
141 candidate, or peace officer may inspect and respond in writing to such information. Upon  
142 the applicant's, candidate's, or peace officer's request, the law enforcement agency shall  
143 allow him or her to inspect the employment related information and to submit a written  
144 response to such information. The request for inspection shall be made within five  
145 business days from the date that the applicant, candidate, or peace officer is notified of  
146 the law enforcement agency's receipt of such employment related information. The  
147 inspection shall occur not later than ten business days after said notification. Any

148 response to the employment related information shall be made by the applicant,  
149 candidate, or peace officer not later than three business days after his or her inspection.  
150 ~~(6)~~(5) Nothing contained in this ~~Code section~~ subsection shall be construed so as to  
151 require any person to provide self-incriminating information or otherwise to compel any  
152 person to act in violation of his or her right guaranteed by the Fifth Amendment of the  
153 United States Constitution and Article I, Section I, Paragraph XVI of the Georgia  
154 Constitution. It shall not be a violation of this ~~Code section~~ subsection for a person to fail  
155 to provide requested information based on a claim that such information is  
156 self-incriminating provided that notice of such claim is served in lieu of the requested  
157 information. An action against such person to require disclosure on the grounds that the  
158 claim of self-incrimination is not substantiated may be brought in the superior court of  
159 the county of such party's residence or where such information is located."

160 **SECTION 3.**

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

163 **SECTION 4.**

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