

Senate Bill 139

By: Senators Seay of the 34th, Butler of the 55th, Anderson of the 43rd and Harrell of the 40th

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to
2 employment and training of peace officers, so as to provide for the establishment of a
3 state-wide data base of peace officer disciplinary actions and complaints of misconduct; to
4 provide for definitions; to provide for conditions and procedures relating to submission of
5 information for such data base; to require a waiver; to provide for penalties; to provide for
6 related matters; to repeal conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

8 **SECTION 1.**

9 Chapter 8 of Title 35 of the Official Code of Georgia Annotated, relating to employment and
10 training of peace officers, is amended by revising Code Section 35-8-8, relating to
11 requirements for appointment or certification of persons as peace officers and
12 preemployment attendance at basic training course and "employment related information"
13 defined, as follows:

14 "35-8-8.

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

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

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

- 18 (3) Have a high school diploma or its recognized equivalent;
- 19 (4) Not have been convicted by any state or by the federal government of any crime the
20 punishment for which could have been imprisonment in the federal or state prison or
21 institution nor have been convicted of sufficient misdemeanors to establish a pattern of
22 disregard for the law, provided that, for the purposes of this paragraph, violations of
23 traffic laws and other offenses involving the operation of motor vehicles when the
24 applicant has received a pardon shall not be considered;
- 25 (5) Be fingerprinted for the purpose of conducting a fingerprint based search at the
26 Georgia Bureau of Investigation and the Federal Bureau of Investigation to determine the
27 existence of any criminal record;
- 28 (6) Possess good moral character as determined by investigation under procedure
29 established by the council and fully cooperate during the course of such investigation;
- 30 (7) Be found, after examination by a licensed physician or surgeon, to be free from any
31 physical, emotional, or mental conditions which might adversely affect his or her exercise
32 of the powers or duties of a peace officer; and
- 33 (8) Successfully complete a job related academy entrance examination provided for and
34 administered by the council in conformity with state and federal law. Such examination
35 shall be administered prior to entrance to the basic course provided for in Code
36 Sections 35-8-9 and 35-8-11. The council may change or modify such examination and
37 shall establish the criteria for determining satisfactory performance on such examination.
38 The provisions of this paragraph establish only the minimum requirements of academy
39 entrance examinations for peace officer candidates in this state; each law enforcement
40 unit is encouraged to provide such additional requirements and any preemployment
41 examination as it deems necessary and appropriate. Any person with a degree from a
42 postsecondary institution accredited by a regional accrediting agency recognized by the
43 United States Department of Education shall be deemed to have met the requirements of
44 this paragraph.

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

47 35-8-8.1.

48 ~~(c)(1)(a)~~ For purposes of this ~~subsection~~ Code section, the term '~~employment related~~
49 ~~information~~':

50 (1) 'Data base' means the data base established pursuant to subsection (c) of this Code
51 section.

52 (2) 'Employment related information' means written information contained in a prior
53 employer's records or personnel files that relates to an applicant's, candidate's, or peace
54 officer's performance or behavior while employed by such prior employer, including
55 performance evaluations, records of disciplinary actions, and eligibility for rehire. Such
56 term shall not include information prohibited from disclosure by federal law or any
57 document not in the possession of the employer at the time a request for such information
58 is received.

59 ~~(2)(b)(1)~~ Where an investigation is conducted for the purpose of hiring, certifying, or
60 continuing the certification of a peace officer, an employer shall disclose employment
61 related information to the investigating law enforcement agency upon receiving a written
62 request from such agency. Disclosure of employment related information other than
63 records relating to disciplinary actions or complaints of misconduct shall only be required
64 under this subsection if the law enforcement agency's request is accompanied by a copy
65 of a signed, notarized statement from the applicant, candidate, or peace officer releasing
66 and holding harmless such employer from any and all liability for disclosing complete
67 and accurate information to the law enforcement agency.

68 ~~(3)(2)~~ An employer may charge a reasonable fee to cover actual costs incurred in
69 copying and furnishing documents to a requesting law enforcement agency, including
70 retrieving and redacting costs, provided such amount shall not exceed \$25.00 or 25¢ per

71 page, whichever is greater. No employer shall be required to prepare or create any
72 document not already in the employer's possession at the time a request for employment
73 related information is received. Any employment related information provided pursuant
74 to this subsection that is not subject to public disclosure while in the possession of a prior
75 employer shall continue to be privileged and protected from public disclosure as a record
76 of the requesting law enforcement agency.

77 ~~(4)~~(3) No employer or law enforcement agency shall be subject to any civil liability for
78 any cause of action by virtue of disclosing complete and accurate information to a law
79 enforcement agency in good faith and without malice pursuant to this subsection. In any
80 such cause of action, malice or bad faith shall only be demonstrated by clear and
81 convincing evidence. Nothing contained in this subsection shall be construed so as to
82 affect or limit rights or remedies provided by federal law.

83 ~~(5)~~(4) Before taking final action on an application for employment based, in whole or in
84 part, on any unfavorable employment related information other than records relating to
85 disciplinary actions or complaints of misconduct received from a previous employer, a
86 law enforcement agency shall inform the applicant, candidate, or peace officer that it has
87 received such employment related information and that the applicant, candidate, or peace
88 officer may inspect and respond in writing to such information. Upon the applicant's,
89 candidate's, or peace officer's request, the law enforcement agency shall allow him or her
90 to inspect ~~the~~ such employment related information and to submit a written response to
91 such information. The request for inspection shall be made within five business days
92 from the date that the applicant, candidate, or peace officer is notified of the law
93 enforcement agency's receipt of such employment related information. The inspection
94 shall occur not later than ten business days after said notification. Any response to the
95 employment related information shall be made by the applicant, candidate, or peace
96 officer not later than three business days after his or her inspection.

97 ~~(6)~~(5) Nothing contained in this ~~Code section~~ subsection shall be construed so as to
98 require any person to provide self-incriminating information or otherwise to compel any
99 person to act in violation of his or her right guaranteed by the Fifth Amendment of the
100 United States Constitution and Article I, Section I, Paragraph XVI of the Georgia
101 Constitution. It shall not be a violation of this ~~Code section~~ subsection for a person to fail
102 to provide requested information based on a claim that such information is
103 self-incriminating provided that notice of such claim is served in lieu of the requested
104 information. An action against such person to require disclosure on the grounds that the
105 claim of self-incrimination is not substantiated may be brought in the superior court of
106 the county of such party's residence or where such information is located.

107 (c)(1) The council shall establish and maintain an electronic data base of employment
108 related information relating to disciplinary actions or complaints of misconduct for all
109 peace officers in this state which shall be accessible to all law enforcement units in this
110 state.

111 (2) By January 1, 2024, each law enforcement unit shall submit employment related
112 information relating to disciplinary actions or complaints of misconduct to the council for
113 any law enforcement officer currently employed by the law enforcement unit. On and
114 after January 1, 2024, a law enforcement unit shall submit any employment related
115 information relating to disciplinary actions or complaints of misconduct which occurs
116 after such date to the council within 15 days from when a complaint was received or
117 action was taken. Any law enforcement unit that fails to comply with the requirements
118 of this subsection shall be subject to the withholding of state funding and state
119 administered federal funding.

120 (3) The council shall establish a procedure by which a law enforcement agency from
121 outside of this state may request and obtain records maintained in the data base. The
122 council shall document all requests from such law enforcement agencies.

123 (4) Any information maintained within the data base or disseminated to a law
124 enforcement agency outside of this state from the data base shall not be subject to
125 Article 4 of Chapter 18 of Title 50, relating to open records.

126 (5) Neither the council nor any law enforcement unit shall be subject to civil liability for
127 the disclosure of complete and accurate information required pursuant to this subsection
128 when such disclosure was made in good faith and without malice.

129 (d)(1) A peace officer or applicant or candidate shall provide the signed waiver described
130 in paragraph (2) of this subsection to his or her law enforcement unit or a prospective law
131 enforcement unit upon an offer of employment.

132 (2) A waiver executed under this subsection shall expressly allow a law enforcement unit
133 to submit employment related information relating to disciplinary actions or complaints
134 of misconduct to the council for inclusion in the data base. The waiver required by this
135 subsection shall be upon a form developed by the council for such purposes. A copy of
136 the waiver executed pursuant to this subsection shall be provided to the council within
137 15 days of its execution."

138 **SECTION 2.**

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