A BILL FOR AN ACT

CONCERNING THE P.O.S.T. BOARD REVOKING THE CERTIFICATION OF A PEACE OFFICER WHO IS FOUND TO HAVE MADE AN UNTRUTHFUL STATEMENT, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at http://leg.colorado.gov.)

The bill requires the peace officers standards and training board (P.O.S.T. board), which certifies peace officers, to revoke the certification of a peace officer if:
The P.O.S.T. board receives notification from a law enforcement agency that employs or employed the peace officer that the peace officer knowingly made an untruthful statement concerning a material fact or omitted a material fact on an official criminal justice record, while testifying under oath, or during an internal affairs investigation or comparable administrative investigation; and

The law enforcement agency certifies that it completed an administrative process defined by a published policy of the law enforcement agency and through that process, the law enforcement agency determined by a clear and convincing standard of the evidence that the officer knowingly made an untruthful statement concerning a material fact or knowingly omitted a material fact on an official criminal justice record, while testifying under oath, or during an internal affairs investigation or comparable administrative investigation.

The bill allows a person whose P.O.S.T. certification is revoked to appeal the revocation in accordance with rules of the P.O.S.T. board.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, 24-31-305, add (2.5) as follows:

24-31-305. Certification - issuance - renewal - revocation - rules - definition. (2.5) (a) Notwithstanding the provisions of subsection (2) of this section, the P.O.S.T. board shall revoke a certification issued to a person pursuant to subsection (1) or (1.3) of this section or section 24-31-308 if:

(I) The law enforcement agency that employs or employed the certificate holder notifies the P.O.S.T. board that, on or after the effective date of this subsection (2.5), the certificate holder knowingly made an untruthful statement concerning a material fact or knowingly omitted a material fact on an official criminal justice record, while testifying under oath, or
DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS; AND

(II) THE LAW ENFORCEMENT AGENCY CERTIFIES THAT:

(A) IT COMPLETED AN ADMINISTRATIVE PROCESS DEFINED BY A PUBLISHED POLICY OF THE LAW ENFORCEMENT AGENCY, WHICH POLICY WAS IN EFFECT AT THE TIME THAT THE ALLEGED UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED OF MATERIAL FACT OCCURRED;

(B) THROUGH THAT ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, THE LAW ENFORCEMENT AGENCY DETERMINED BY A CLEAR AND CONVINCING STANDARD OF THE EVIDENCE THAT, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR COMPARABLE ADMINISTRATIVE INVESTIGATION; AND

(C) THE CERTIFICATE HOLDER HAS ELECTED NOT TO EXERCISE, OR HAS EXHAUSTED, THE INTERNAL DISCIPLINARY APPEAL RIGHTS PROVIDED BY THE OFFICER’S EMPLOYER; AND

(III) THE CERTIFICATE HOLDER, AFTER RECEIVING THE NOTICE FROM THE P.O.S.T. BOARD DESCRIBED IN SUBSECTION (2.5)(e) OF THIS SECTION, EITHER DOES NOT REQUEST A HEARING, OR REQUESTS A HEARING AND THE HEARING OFFICER HAS DETERMINED, AFTER CONDUCTING THE HEARING PURSUANT TO THE RULES OF THE P.O.S.T. BOARD AND IN COMPLIANCE WITH SECTIONS 24-4-104 AND 24-4-105, THAT THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT.
CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS.

(b) A LAW ENFORCEMENT AGENCY THAT MAKES A DETERMINATION DESCRIBED IN SUBSECTION (2.5)(a)(II) OF THIS SECTION SHALL REPORT SUCH FACT TO THE P.O.S.T. BOARD ON A FORM THAT IS PRESCRIBED BY THE P.O.S.T. BOARD. THE FORM MUST REQUIRE THE OFFICIAL SUBMITTING THE FORM TO ATTEST, UNDER PENALTY OF PERJURY, THAT, TO THE BEST OF THE OFFICIAL'S KNOWLEDGE AND BELIEF, THE STATEMENTS ON THE FORM ARE TRUE, CORRECT, AND COMPLETE, AND THAT ANY FALSE STATEMENT, MISSTATEMENT, OR INACCURACY MAY RESULT IN REVOCATION OF THE OFFICIAL'S CERTIFICATION AS WELL AS CRIMINAL PROSECUTION.

(c) IF A CERTIFICATE HOLDER WHO IS THE SUBJECT OF AN INVESTIGATION DESCRIBED IN SUBSECTION (2.5)(a)(II) OF THIS SECTION RESIGNS OR REFUSES TO COOPERATE IN THE INVESTIGATION, THE INVESTIGATING LAW ENFORCEMENT AGENCY SHALL COMPLETE THE INVESTIGATION WITH OR WITHOUT THE SUBJECT'S PARTICIPATION. IF THE RESULTS OF THE INVESTIGATION DEMONSTRATE BY A CLEAR AND CONVINCING STANDARD OF THE EVIDENCE THAT, ON OR AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, THE LAW ENFORCEMENT AGENCY SHALL NOTIFY THE P.O.S.T. BOARD AND REQUEST REVOCATION
OF THE CERTIFICATE HOLDER'S CERTIFICATION ON A FORM PRESCRIBED BY
THE P.O.S.T. BOARD.

(d) The records of any law enforcement agency that are
submitted for review by the P.O.S.T. Board for the purposes of
this subsection (2.5) remain the property of the reporting law
enforcement agency and are not subject to public release by the
P.O.S.T. Board.

(e) Upon receipt of the form from a law enforcement
agency pursuant to subsection (2.5)(b) of this section, the
P.O.S.T. Board shall notify the certificate holder of the
certificate holder's right to request a show cause hearing
pursuant to the rules of the P.O.S.T. Board and in compliance
with sections 24-4-104 and 24-4-105.

(f) A person who has had his or her P.O.S.T. certification
revoked pursuant to this subsection(2.5) may appeal the decision
to the full P.O.S.T. Board pursuant to the rules of the P.O.S.T.
board and section 24-4-105, and may seek judicial review
pursuant to the provisions of section 24-4-106.

(g) If a certificate holder's certificate is revoked
pursuant to this section and a court of record subsequently
reverses or vacates the finding that, on or after the effective
date of this subsection (2.5), the certificate holder knowingly
made an untruthful statement concerning a material fact or
knowingly omitted a material fact on an official criminal
justice record, while testifying under oath, or during an
internal affairs investigation or administrative investigation
(h) If a law enforcement agency is notified that a peace officer who is employed or who was employed by the agency is alleged to have knowingly made an untruthful statement concerning a material fact or knowingly omitted a material fact on an official criminal justice record, while testifying under oath, or during an internal affairs investigation or administrative investigation and disciplinary process, on or after the effective date of this subsection (2.5), the agency employing the peace officer, or the last law enforcement agency to employ the peace officer, shall investigate the allegation unless the accused peace officer has not been employed by the agency for at least six months preceding the date upon which the agency is notified of the allegation, in which case the agency may investigate the allegation.

(i) Nothing in this section prohibits the lawful use of deception or omission of facts by a peace officer while he or she is conducting an investigation of criminal activity.

(j) For the purposes of this subsection (2.5), "administrative investigation and disciplinary process" means an employer's formal process of internal control that assures that an allegation of violation of employer rules, policy, procedure, or other misconduct or improper actions by an employee are subject to a complete and objective investigation.
RESULTING IN FINDINGS OF FACT AND DISCIPLINARY ACTION FOR ANY
SUBSTANTIATED VIOLATION.

(k) THE P.O.S.T. BOARD MAY PROMULGATE RULES FOR THE
IMPLEMENTATION OF THIS SUBSECTION (2.5).

SECTION 2. Appropriation. For the 2019-20 state fiscal year,
$40,056 is appropriated to the department of law. This appropriation is
from the P.O.S.T. board cash fund created in section 24-31-303 (2)(b),
C.R.S., and is based on an assumption that the department will require an
additional 0.6 FTE. To implement this act, the department may use this
appropriation for peace officers standards and training board support.

SECTION 3. Act subject to petition - effective date. This act
takes effect at 12:01 a.m. on the day following the expiration of the
ninety-day period after final adjournment of the general assembly (August
2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
referendum petition is filed pursuant to section 1 (3) of article V of the
state constitution against this act or an item, section, or part of this act
within such period, then the act, item, section, or part will not take effect
unless approved by the people at the general election to be held in
November 2020 and, in such case, will take effect on the date of the
official declaration of the vote thereon by the governor.