

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REVISED

*This Version Includes All Amendments Adopted
on Second Reading in the Second House*

LLS NO. 19-0869.01 Conrad Imel x2313

SENATE BILL 19-166

SENATE SPONSORSHIP

Fields and Gardner, Fenberg, Moreno

HOUSE SPONSORSHIP

Roberts,

Senate Committees

Judiciary
Appropriations

House Committees

State, Veterans, & Military Affairs
Appropriations

A BILL FOR AN ACT

101 **CONCERNING THE P.O.S.T. BOARD REVOKING THE CERTIFICATION OF**
102 **A PEACE OFFICER WHO IS FOUND TO HAVE MADE AN**
103 **UNTRUTHFUL STATEMENT, AND, IN CONNECTION THEREWITH,**
104 **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:

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
April 22, 2019

SENATE
3rd Reading Unamended
April 3, 2019

SENATE
Amended 2nd Reading
April 2, 2019

! 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.

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

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

4 **24-31-305. Certification - issuance - renewal - revocation -**
5 **rules - definition.** (2.5) (a) NOTWITHSTANDING THE PROVISIONS OF
6 SUBSECTION (2) OF THIS SECTION, THE P.O.S.T. BOARD SHALL REVOKE A
7 CERTIFICATION ISSUED TO A PERSON PURSUANT TO SUBSECTION (1) OR
8 (1.3) OF THIS SECTION OR SECTION 24-31-308 IF:

9 (I) THE LAW ENFORCEMENT AGENCY THAT EMPLOYS OR EMPLOYED
10 THE CERTIFICATE HOLDER NOTIFIES THE P.O.S.T. BOARD THAT, ON OR
11 AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE
12 HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT CONCERNING A
13 MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL FACT ON AN
14 OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR

1 DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE
2 INVESTIGATION AND DISCIPLINARY PROCESS; AND

3 (II) THE LAW ENFORCEMENT AGENCY CERTIFIES THAT:

4 (A) IT COMPLETED AN ADMINISTRATIVE PROCESS DEFINED BY A
5 PUBLISHED POLICY OF THE LAW ENFORCEMENT AGENCY, WHICH POLICY
6 WAS IN EFFECT AT THE TIME THAT THE ALLEGED UNTRUTHFUL STATEMENT
7 CONCERNING A MATERIAL FACT OR KNOWING OMISSION OF MATERIAL FACT
8 OCCURRED; ==

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

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

21 (III) THE CERTIFICATE HOLDER, AFTER RECEIVING THE NOTICE
22 FROM THE P.O.S.T. BOARD DESCRIBED IN SUBSECTION (2.5)(e) OF THIS
23 SECTION, EITHER DOES NOT REQUEST A HEARING, OR REQUESTS A HEARING
24 AND THE HEARING OFFICER HAS DETERMINED, AFTER CONDUCTING THE
25 HEARING PURSUANT TO THE RULES OF THE P.O.S.T. BOARD AND IN
26 COMPLIANCE WITH SECTIONS 24-4-104 AND 24-4-105, THAT THE
27 CERTIFICATE HOLDER KNOWINGLY MADE AN UNTRUTHFUL STATEMENT

1 CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL
2 FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING
3 UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR
4 ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS.

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

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

1 OF THE CERTIFICATE HOLDER'S CERTIFICATION ON A FORM PRESCRIBED BY
2 THE P.O.S.T. BOARD.

3
4 (d) THE RECORDS OF ANY LAW ENFORCEMENT AGENCY THAT ARE
5 SUBMITTED FOR REVIEW BY THE P.O.S.T. BOARD FOR THE PURPOSES OF
6 THIS SUBSECTION (2.5) REMAIN THE PROPERTY OF THE REPORTING LAW
7 ENFORCEMENT AGENCY AND ARE NOT SUBJECT TO PUBLIC RELEASE BY THE
8 P.O.S.T. BOARD.

9 (e) UPON RECEIPT OF THE FORM FROM A LAW ENFORCEMENT
10 AGENCY PURSUANT TO SUBSECTION (2.5)(b) OF THIS SECTION, THE
11 P.O.S.T. BOARD SHALL NOTIFY THE CERTIFICATE HOLDER OF THE
12 CERTIFICATE HOLDER'S RIGHT TO REQUEST A SHOW CAUSE HEARING
13 PURSUANT TO THE RULES OF THE P.O.S.T. BOARD AND IN COMPLIANCE
14 WITH SECTIONS 24-4-104 AND 24-4-105.

15 (f) A PERSON WHO HAS HAD HIS OR HER P.O.S.T. CERTIFICATION
16 REVOKED PURSUANT TO THIS SUBSECTION (2.5) MAY APPEAL THE DECISION
17 TO THE FULL P.O.S.T. BOARD PURSUANT TO THE RULES OF THE P.O.S.T.
18 BOARD AND SECTION 24-4-105, AND MAY SEEK JUDICIAL REVIEW
19 PURSUANT TO THE PROVISIONS OF SECTION 24-4-106.

20 (g) IF A CERTIFICATE HOLDER'S CERTIFICATE IS REVOKED
21 PURSUANT TO THIS SECTION AND A COURT OF RECORD SUBSEQUENTLY
22 REVERSES OR VACATES THE FINDING THAT, ON OR AFTER THE EFFECTIVE
23 DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY
24 MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR
25 KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL
26 JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN
27 INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION

1 AND DISCIPLINARY PROCESS, THE CERTIFICATE HOLDER MAY REQUEST
2 REINSTATEMENT OF HIS OR HER CERTIFICATE BY PROVIDING
3 DOCUMENTATION OF THE COURT'S RULING TO THE P.O.S.T. BOARD WITHIN
4 FORTY-FIVE DAYS AFTER THE COURT'S RULING.

5 (h) IF A LAW ENFORCEMENT AGENCY IS NOTIFIED THAT A PEACE
6 OFFICER WHO IS EMPLOYED OR WHO WAS EMPLOYED BY THE AGENCY IS
7 ALLEGED TO HAVE KNOWINGLY MADE AN UNTRUTHFUL STATEMENT
8 CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL
9 FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING
10 UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR
11 ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, ON OR
12 AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE AGENCY
13 EMPLOYING THE PEACE OFFICER, OR THE LAST LAW ENFORCEMENT AGENCY
14 TO EMPLOY THE PEACE OFFICER, SHALL INVESTIGATE THE ALLEGATION
15 UNLESS THE ACCUSED PEACE OFFICER HAS NOT BEEN EMPLOYED BY THE
16 AGENCY FOR AT LEAST SIX MONTHS PRECEDING THE DATE UPON WHICH
17 THE AGENCY IS NOTIFIED OF THE ALLEGATION, IN WHICH CASE THE
18 AGENCY MAY INVESTIGATE THE ALLEGATION.

19 (i) NOTHING IN THIS SECTION PROHIBITS THE LAWFUL USE OF
20 DECEPTION OR OMISSION OF FACTS BY A PEACE OFFICER WHILE HE OR SHE
21 IS CONDUCTING AN INVESTIGATION OF CRIMINAL ACTIVITY.

22 (j) FOR THE PURPOSES OF THIS SUBSECTION (2.5),
23 "ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS" MEANS AN
24 EMPLOYER'S FORMAL PROCESS OF INTERNAL CONTROL THAT ASSURES
25 THAT AN ALLEGATION OF VIOLATION OF EMPLOYER RULES, POLICY,
26 PROCEDURE, OR OTHER MISCONDUCT OR IMPROPER ACTIONS BY AN
27 EMPLOYEE ARE SUBJECT TO A COMPLETE AND OBJECTIVE INVESTIGATION

1 RESULTING IN FINDINGS OF FACT AND DISCIPLINARY ACTION FOR ANY
2 SUBSTANTIATED VIOLATION.

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

5 **SECTION 2. Appropriation.** For the 2019-20 state fiscal year,
6 \$40,056 is appropriated to the department of law. This appropriation is
7 from the P.O.S.T. board cash fund created in section 24-31-303 (2)(b),
8 C.R.S., and is based on an assumption that the department will require an
9 additional 0.6 FTE. To implement this act, the department may use this
10 appropriation for peace officers standards and training board support.

11 **SECTION 3. Act subject to petition - effective date.** This act
12 takes effect at 12:01 a.m. on the day following the expiration of the
13 ninety-day period after final adjournment of the general assembly (August
14 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
15 referendum petition is filed pursuant to section 1 (3) of article V of the
16 state constitution against this act or an item, section, or part of this act
17 within such period, then the act, item, section, or part will not take effect
18 unless approved by the people at the general election to be held in
19 November 2020 and, in such case, will take effect on the date of the
20 official declaration of the vote thereon by the governor.