SENATE BILL 19-166

CONCERNING THE P.O.S.T. BOARD REVOKING THE CERTIFICATION OF A PEACE OFFICER WHO IS FOUND TO HAVE MADE AN UNTRUTHFUL STATEMENT.

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

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.
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 KNOWING OMISSION 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 P.O.S.T. BOARD HAS DETERMINED, AFTER CONDUCTING
A HEARING AND APPEALS PROCESS PROVIDED PURSUANT TO 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) A PERSON WHO HAS HAD HIS OR HER P.O.S.T. CERTIFICATION
REVOKED PURSUANT TO THIS SUBSECTION (2.5) MAY SEEK JUDICIAL
REVIEW PURSUANT TO THE PROVISIONS OF SECTION 24-4-106.

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

(g) 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.

(h) 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.

(i) 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.

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

SECTION 2. 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.