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Indicates New Matter

AMENDED

May 12, 2021

**H. 3050**

Introduced by Reps. D.C. Moss, McGarry, Wooten, Hixon, Erickson and Bradley

S. Printed 5/12/21--H.

Read the first time January 12, 2021.

**A** **BILL**

TO AMEND SECTION 23‑23‑40, CODE OF LAWS OF SOUTH CAROLINA, 1976, RELATING TO THE CERTIFICATION OF A LAW ENFORCEMENT OFFICER EMPLOYED OR APPOINTED BY A PUBLIC LAW ENFORCEMENT AGENCY, SO AS TO PROVIDE A NONCERTIFIED LAW ENFORCEMENT OFFICER ONLY SHALL PERFORM HIS DUTIES AS A LAW ENFORCEMENT OFFICER WHILE ACCOMPANIED BY A CERTIFIED LAW ENFORCEMENT OFFICER, AND TO MAKE A TECHNICAL CHANGE.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. The first paragraph of Section 23‑23‑40 of the 1976 Code is amended to read:

“No law enforcement officer employed or appointed on or after July 1, ~~1989~~ 2021, by any public law enforcement agency in this State is authorized to enforce the laws or ordinances of this State or any political subdivision thereof unless he has been certified as qualified by the council, except that any public law enforcement agency in this State may appoint or employ as a law enforcement officer, a person who is not certified if, within one year after the date of employment or appointment, the person secures certification from the council; provided, that if any public law enforcement agency employs or appoints as a law enforcement officer a person who is not certified, the person shall not perform any of the duties of a law enforcement officer involving the control or direction of members of the public or exercising the power of arrest until he has successfully completed a firearms qualification program approved by the council; and provided, further, that within three working days of employment, the academy must be notified by a public law enforcement agency that a person has been employed by that agency as a law enforcement officer, and within three working days of the notice the firearms qualification program as approved by the director must be provided to the newly hired personnel; and shall only perform his duties as a law enforcement officer while accompanied by a certified law enforcement officer. If the firearms qualification program approved by the director is not available within three working days after receipt of the notice, then the public law enforcement agency making the request for the firearms qualification program may employ the person to perform any of the duties of a law enforcement officer, including those involving the control and direction of members of the public and exercising the powers of arrest. Should any such person fail to secure certification within one year from his date of employment, he may not perform any of the duties of a law enforcement officer involving control or direction of members of the public or exercising the power of arrest until he has been certified. He is not eligible for employment or appointment by any other agency in South Carolina as a law enforcement officer, nor is he eligible for any compensation by any law enforcement agency for services performed as an officer. Exceptions to the one‑year rule may be granted by the director in these cases:

(1) military leave or injury occurring during that first year which would preclude the receiving of training within the usual period of time; or

(2) in the event of the timely filing of application for training, which application, under circumstances of time and physical limitations, cannot be honored by the training academy within the prescribed period; or

(3) upon presentation of documentary evidence that the officer‑candidate has successfully completed equivalent training in one of the other states which by law regulate and supervise the quality of police training and which require a minimum basic or recruit course of duration and content at least equivalent to that provided in this chapter or by standards set by the council; or

(4) f it is determined by documentary evidence that the training will result in undue hardship to the requesting agency, the requesting agency must propose an alternate training schedule for approval.”

SECTION 2. Section 23‑23‑150(A) and (B) of the 1976 Code, as added by Act 215 of 2018, is amended to read:

“(A) For purposes of this section:

(1) ‘Academy’ means the South Carolina Criminal Justice Academy.

(2) ‘Council’ means the Law Enforcement Training Council.

(3) ‘Misconduct’ means:

(a) a conviction, plea of guilty, plea of no contest or admission of guilt to a felony, a crime punishable by a sentence of more than one year, regardless of the sentence actually imposed, or a crime of moral turpitude, any of which were committed in this State or any other jurisdiction;

(b) the unlawful use of a controlled substance;

(c) the repeated use of excessive force in dealing with the public or prisoners;

(d) dangerous or unsafe practices involving firearms, weapons, or vehicles which indicate either a wilful or wanton disregard for the safety of persons or property;

(e) the physical or psychological abuse of members of the public or prisoners;

(f) the failure to intervene when observing another officer physically or psychologically abusing members of the public or prisoners;

(g) the misrepresentation of employment‑related information;

~~(g)~~(h) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to a law enforcement officer, a law enforcement agency, or a representative of the agency, except when required by departmental policy or by the laws of this State;

~~(h)~~(i) wilfully making false, misleading, incomplete, deceitful, or incorrect statements to any court of competent jurisdiction, or their staff members, whether under oath or not;

~~(i)~~(j) wilfully providing false, misleading, incomplete, deceitful, or incorrect information on a document, record, report, or form, except when required by departmental policy or by the laws of this State;

~~(j)~~ (k) the falsification of any application for certification and training based upon which the officer was admitted for training; or

~~(k)~~(l) wilfully providing false information to the Criminal Justice Academy.

(B) The sheriff or the chief executive officer of a law enforcement agency or department within the State must report to the academy the occurrence of any act or multiple acts of misconduct by a law enforcement officer which could result in the withdrawal of the certification of the law enforcement officer who is currently or was last employed by his agency. The report shall be made within fifteen days of the final agency or department action resulting from the internal investigation conducted by the agency or department, and shall be on a form prescribed by the council. A law enforcement agency that has made a report under this section shall cooperate fully with any action by the council, to include mandatory attendance by a representative of the agency knowledgeable of the circumstances surrounding the allegation at any scheduled hearing. A wilful failure to report information related to acts of misconduct shall subject the violator to a civil penalty as provided by the council. The council may impose civil fines in its discretion not to exceed one thousand dollars per day for each day an agency is out of compliance with this section.”

SECTION 3. Chapter 1, Title 23 of the 1976 Code is amended by adding:

“Section 23‑1‑250. (A) For the purposes of this section, the term ‘chokehold or carotid hold’ means the application of deadly force in a manner that applies extended or continued pressure to the throat or windpipe, a maneuver that restricts blood or oxygen flow to the brain, or a carotid artery restraint that prevents or hinders breathing or reduces the intake of air by an individual.

(B) The use of a chokehold or carotid hold is justifiable only if a law enforcement officer reasonably believes that the use of deadly force is necessary to protect the life of a civilian or a law enforcement officer. The substantiated use of an unjustified chokehold or carotid hold shall be deemed excessive force and may result in criminal prosecution.

(C) In addition to any other penalty provided by law, the use of excessive force may serve as grounds for disciplinary action against the law enforcement officer, including dismissal, demotion, suspension, or transfer.

(D) The Law Enforcement Training Council shall develop and implement curriculum to address the lawful justifiable use of chokeholds and carotid holds in accordance with this section.”

SECTION 4. Chapter 23, Title 23 of the 1976 Code is amended by adding:

“Section 23‑23‑85. (A) The council shall establish required minimum standards for all law enforcement agencies. The standards must include, but are not limited to, policies regarding:

(1) the use‑of‑force continuum and the elimination or restricted use of lethal and less than lethal options with regard to when and how to respond to active resistance. The use‑of‑force continuum must eliminate the use of chokeholds and carotid holds as less lethal options;

(2) uniform vehicle pursuit standards and the use of lethal options during pursuit;

(3) an officer’s duty to intervene in the actions of other observed officers;

(4) hiring and terminating practices;

(5) mandatory and uniform post‑basic academy field training;

(6) uniform implementation and the use of body‑worn cameras;

(7) the use of ‘no knock’ warrants;

(8) the establishment, implementation, or continuation of systems and processes for filing and investigating complaints, including anonymous complaints, against the law enforcement agency or an employee of the law enforcement agency. The council shall require law enforcement agencies to have a written directive, which must be made available to the public, that delineates how complaints can be made, the investigative process of such complaints, and a maximum timeframe for the resolution of the complaint. All substantiated complaints must be reported to the council through standardized forms as promulgated by the council; and

(9) the establishment, implementation, or continuation of an early warning system that identifies, assesses, reviews, and tracks at risk behavior of employees and requires intervention where appropriate.

(B) For the purposes of this section, “at risk behavior” is defined as behavior or action that increases the risk of injury to an employee or to others, that could constitute a civil rights violation, or that could result in the law enforcement agency losing public support and confidence.

(C) The council shall have the authority to take punitive action against any law enforcement agency that refuses to comply with standards issued pursuant to this section, including civil fines, as described in Section 23‑23‑100.

(D) Nothing in this section shall be construed to prevent or prohibit law enforcement agencies from adopting policies that exceed the minimum standards adopted by the council.”

SECTION 5. Chapter 23, Title 23 of the 1976 Code is amended by adding:

“Section 23‑23‑160. (A) There is hereby established a Compliance Division under the jurisdiction of the council. The inspectors and such other personnel as may be provided for the division shall be selected by the director.

(B) The division shall be responsible for inspecting, at least once every three years, the relevant policies and procedures for every law enforcement agency in this State to ensure compliance with minimum standards established in Section 23‑23‑85. For the purposes of this section, ‘law enforcement agency’ means any agency or entity of the State or any of its political subdivisions that employs or appoints law enforcement officers.

(C) If an inspection under this chapter discloses that a law enforcement agency does not meet the minimum standards established in Section 23‑23‑85, the council shall notify the law enforcement agency director and hold a meeting of the council to consider the inspection reports. If requested, the inspection personnel shall appear to advise and consult concerning appropriate corrective action. The law enforcement agency shall initiate appropriate corrective action within ninety days or may be subject to additional penalties, as described in Section 23‑23‑100.

(D) If a law enforcement agency produces evidence satisfactory to the director to prove the agency is currently accredited by either the South Carolina Law Enforcement Accreditation Council or the Commission on Accreditation for Law Enforcement Agencies, the agency shall be exempt from inspections pursuant to this section and shall be deemed to be in compliance with the minimum standards established in Section 23‑23‑85.”

SECTION 6. Section 23‑23‑100 of the 1976 Code is amended to read:

“Section 23‑23‑100. (A) Whenever the director finds that any public law enforcement agency is in violation of any provisions of this chapter, the director may issue an order requiring the public law enforcement agency to comply with the provision. The director may bring a civil action for injunctive relief in the appropriate court or may bring a civil enforcement action. Violation of any court order issued pursuant to this section must be considered contempt of the issuing court and punishable as provided by law. The director also may invoke the civil penalties as provided in subsection (B) for violation of the provisions of this chapter, including any order or regulation hereunder. Any public law enforcement agency against which a civil penalty is invoked by the director may appeal the decision to the court of common pleas of the county where the public law enforcement agency is located.

(B) Any public law enforcement agency which fails to comply with this chapter and regulations promulgated pursuant to this chapter or fails to comply with any order issued by the director is liable for a civil penalty not to exceed one thousand ~~five hundred~~ ~~dollars a violation~~ dollars per day the agency is not in compliance or is found to be in violation. ~~When the civil penalty authorized by this subsection is imposed upon a sheriff, the sheriff is responsible for payment of this civil penalty.~~

(C) If the imposition of civil fines fails to bring a law enforcement agency into compliance with the standards established in Section 23‑23‑85, the council is authorized to temporarily suspend the law enforcement certification of every law enforcement officer employed or appointed by the noncompliant law enforcement agency until such time as the council deems the agency to be in compliance with the minimum standards or a motion for injunctive relief is settled. An individual who has had his law enforcement certification suspended as a result of a noncompliant law enforcement agency shall not be prohibited from regaining law enforcement certification if he is subsequently employed or appointed by a compliant law enforcement agency, provided he is otherwise qualified to be certified.”

SECTION 7. Section 23-23-60(B)(5) of the 1976 Code is amended to read:

“(5) evidence satisfactory to the director that the candidate is a person of good character. This evidence must include, but is not limited to:

(a) certification by the candidate's employer that a background investigation has been conducted and the employer is of the opinion that the candidate is of good character;

(b) evidence satisfactory to the director that the candidate holds a valid current state driver's license with no record during the previous five years for suspension of driver's license as a result of driving under the influence of alcoholic beverages or dangerous drugs, driving while impaired (or the equivalent), reckless homicide, involuntary manslaughter, or leaving the scene of an accident. Candidates for certification as state or local correctional officers may hold a valid current driver's license issued by any jurisdiction of the United States;

(c) evidence satisfactory to the director that a local credit check has been made with favorable results;

(d) evidence satisfactory to the director that the candidate's fingerprint record as received from the Federal Bureau of Investigation and South Carolina Law Enforcement Division indicates no record of felony convictions; and

(e) evidence satisfactory to the director that the candidate has signed an attestation form committing to the practice of ethical policing, which means the discharge of responsibilities, stemming from employment as a law enforcement officer, which is devoid of misconduct and which is carried out in conformance with this chapter, including the duty to safeguard life and the duty to intervene.

In the director's determination of good character, the director shall give consideration to all law violations, including traffic and conservation law convictions, as indicating a lack of good character. The director shall also give consideration to the candidate's prior history, if any, of alcohol and drug abuse in arriving at a determination of good character;”

SECTION 8. Section 16‑23‑20(1) of the 1976 Code is amended to read:

“(1) regular, salaried law enforcement officers, and reserve police officers of a state agency, municipality, or county of the State, uncompensated Governor’s constables, law enforcement officers of the federal government or other states when they are carrying out official duties while in this State, deputy enforcement officers of the Natural Resources Enforcement Division of the Department of Natural Resources, and retired commissioned law enforcement officers ~~employed as private detectives or private investigators~~;”

SECTION 9. This act takes effect upon approval by the Governor.

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