

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

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 19-0869.01 Conrad Imel x2313

SENATE BILL 19-166

SENATE SPONSORSHIP

Fields and Gardner,

HOUSE SPONSORSHIP

Roberts,

Senate Committees

Judiciary
Appropriations

House Committees

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.**

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.

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
15 DURING AN INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE
16 INVESTIGATION AND DISCIPLINARY PROCESS; AND

1 (II) THE LAW ENFORCEMENT AGENCY CERTIFIES THAT:

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

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

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

19 (III) THE P.O.S.T. BOARD HAS DETERMINED, AFTER CONDUCTING
20 A HEARING AND APPEALS PROCESS PROVIDED PURSUANT TO RULES OF THE
21 P.O.S.T. BOARD AND IN COMPLIANCE WITH SECTIONS 24-4-104 AND
22 24-4-105, THAT THE CERTIFICATE HOLDER KNOWINGLY MADE AN
23 UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR KNOWINGLY
24 OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD,
25 WHILE TESTIFYING UNDER OATH, OR DURING AN INTERNAL AFFAIRS
26 INVESTIGATION OR ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY
27 PROCESS.

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

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

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27 (d) THE RECORDS OF ANY LAW ENFORCEMENT AGENCY THAT ARE

1 SUBMITTED FOR REVIEW BY THE P.O.S.T. BOARD FOR THE PURPOSES OF
2 THIS SUBSECTION (2.5) REMAIN THE PROPERTY OF THE REPORTING LAW
3 ENFORCEMENT AGENCY AND ARE NOT SUBJECT TO PUBLIC RELEASE BY THE
4 P.O.S.T. BOARD.

5 (e) A PERSON WHO HAS HAD HIS OR HER P.O.S.T. CERTIFICATION
6 REVOKED PURSUANT TO THIS SUBSECTION (2.5) MAY SEEK JUDICIAL
7 REVIEW PURSUANT TO THE PROVISIONS OF SECTION 24-4-106.

8 (f) IF A CERTIFICATE HOLDER'S CERTIFICATE IS REVOKED
9 PURSUANT TO THIS SECTION AND A COURT OF RECORD SUBSEQUENTLY
10 REVERSES OR VACATES THE FINDING THAT, ON OR AFTER THE EFFECTIVE
11 DATE OF THIS SUBSECTION (2.5), THE CERTIFICATE HOLDER KNOWINGLY
12 MADE AN UNTRUTHFUL STATEMENT CONCERNING A MATERIAL FACT OR
13 KNOWINGLY OMITTED A MATERIAL FACT ON AN OFFICIAL CRIMINAL
14 JUSTICE RECORD, WHILE TESTIFYING UNDER OATH, OR DURING AN
15 INTERNAL AFFAIRS INVESTIGATION OR ADMINISTRATIVE INVESTIGATION
16 AND DISCIPLINARY PROCESS, THE CERTIFICATE HOLDER MAY REQUEST
17 REINSTATEMENT OF HIS OR HER CERTIFICATE BY PROVIDING
18 DOCUMENTATION OF THE COURT'S RULING TO THE P.O.S.T. BOARD WITHIN
19 FORTY-FIVE DAYS AFTER THE COURT'S RULING.

20 (g) IF A LAW ENFORCEMENT AGENCY IS NOTIFIED THAT A PEACE
21 OFFICER WHO IS EMPLOYED OR WHO WAS EMPLOYED BY THE AGENCY IS
22 ALLEGED TO HAVE KNOWINGLY MADE AN UNTRUTHFUL STATEMENT
23 CONCERNING A MATERIAL FACT OR KNOWINGLY OMITTED A MATERIAL
24 FACT ON AN OFFICIAL CRIMINAL JUSTICE RECORD, WHILE TESTIFYING
25 UNDER OATH, OR DURING AN INTERNAL AFFAIRS INVESTIGATION OR
26 ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS, ON OR
27 AFTER THE EFFECTIVE DATE OF THIS SUBSECTION (2.5), THE AGENCY

1 EMPLOYING THE PEACE OFFICER, OR THE LAST LAW ENFORCEMENT AGENCY
2 TO EMPLOY THE PEACE OFFICER, SHALL INVESTIGATE THE ALLEGATION
3 UNLESS THE ACCUSED PEACE OFFICER HAS NOT BEEN EMPLOYED BY THE
4 AGENCY FOR AT LEAST SIX MONTHS PRECEDING THE DATE UPON WHICH
5 THE AGENCY IS NOTIFIED OF THE ALLEGATION, IN WHICH CASE THE
6 AGENCY MAY INVESTIGATE THE ALLEGATION.

7 (h) NOTHING IN THIS SECTION PROHIBITS THE LAWFUL USE OF
8 DECEPTION OR OMISSION OF FACTS BY A PEACE OFFICER WHILE HE OR SHE
9 IS CONDUCTING AN INVESTIGATION OF CRIMINAL ACTIVITY.

10 (i) FOR THE PURPOSES OF THIS SUBSECTION (2.5),
11 "ADMINISTRATIVE INVESTIGATION AND DISCIPLINARY PROCESS" MEANS AN
12 EMPLOYER'S FORMAL PROCESS OF INTERNAL CONTROL THAT ASSURES
13 THAT AN ALLEGATION OF VIOLATION OF EMPLOYER RULES, POLICY,
14 PROCEDURE, OR OTHER MISCONDUCT OR IMPROPER ACTIONS BY AN
15 EMPLOYEE ARE SUBJECT TO A COMPLETE AND OBJECTIVE INVESTIGATION
16 RESULTING IN FINDINGS OF FACT AND DISCIPLINARY ACTION FOR ANY
17 SUBSTANTIATED VIOLATION.

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

20 **SECTION 2. Act subject to petition - effective date.** This act
21 takes effect at 12:01 a.m. on the day following the expiration of the
22 ninety-day period after final adjournment of the general assembly (August
23 2, 2019, if adjournment sine die is on May 3, 2019); except that, if a
24 referendum petition is filed pursuant to section 1 (3) of article V of the
25 state constitution against this act or an item, section, or part of this act
26 within such period, then the act, item, section, or part will not take effect
27 unless approved by the people at the general election to be held in

- 1 November 2020 and, in such case, will take effect on the date of the
- 2 official declaration of the vote thereon by the governor.