

**CHAPTER 232****( HB 206 )**

AN ACT relating to peace officer certification.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

→Section 1. KRS 15.382 is amended to read as follows:

A person certified after December 1, 1998, under KRS 15.380 to 15.404 or qualified under the requirements set forth in KRS 15.440(1)(d)6. shall, at the time of becoming certified, meet the following minimum qualifications:

- (1) Be a citizen of the United States;
- (2) Be at least twenty-one (21) years of age;
- (3)
  - (a) Be a high school graduate, regardless of whether the school is accredited or certified by a governing body, provided that the education received met the attendance and curriculum standards of Kentucky law at the time of graduation, as determined by the Kentucky Department of Education; or
  - (b) Possess a High School Equivalency Diploma;
- (4) Possess a valid license to operate a motor vehicle;
- (5) Be fingerprinted for a criminal background check;
- (6) Not have been convicted of any felony; ***a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct;***
- (7) Not be prohibited by federal or state law from possessing a firearm;
- (8) Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
- (9) Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;
- (10) Have passed a medical examination as defined by the council by administrative regulation and provided by a licensed physician, physician assistant, or advanced practice registered nurse to determine if he can perform peace officer duties as determined by a validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall pass the medical examination, appropriate to the agency's job task analysis, of the employing agency. All agencies shall certify passing medical examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (11) Have passed a drug screening test administered or approved by the council by administrative regulation. A person shall be deemed to have passed a drug screening test if the results of the test are negative for the use of an illegal controlled substance or prescription drug abuse. Any agency that administers its own test that meets or exceeds this standard shall certify passing test results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (12) Have undergone a background investigation established or approved by the council by administrative regulation to determine suitability for the position of a peace officer. If the employing agency has established its own background investigation that meets or exceeds the standards of the council, as set forth by administrative regulation, the agency shall conduct the background investigation and shall certify background investigation results to the council, which shall accept them as complying with KRS 15.310 to 15.510;
- (13) Have been interviewed by the employing agency;
- (14) Not have had certification as a peace officer permanently revoked in another state;
- (15) Have taken a psychological suitability screening administered or approved by the council by administrative regulation to determine the person's suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take that agency's psychological examination, appropriate to the agency's job task analysis. All agencies shall certify psychological examination results to the council, which shall accept them as complying with KRS 15.310 to 15.510;

- (16) Have passed a physical agility test administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties as determined by a council validated job task analysis. However, if the employing agency has its own validated job task analysis, the person shall take the physical agility examination of the employing agency. All agencies shall certify physical agility examination results to the council, which shall accept them as demonstrating compliance with KRS 15.310 to 15.510; and
- (17) Have taken a polygraph examination administered or approved by the council by administrative regulation to determine his suitability to perform peace officer duties. Any agency that administers its own polygraph examination as approved by the council shall certify the results that indicate whether a person is suitable for employment as a peace officer to the council, which shall accept them as complying with KRS 15.310 to 15.510.

➔Section 2. KRS 15.386 is amended to read as follows:

The following certification categories shall exist:

- (1) "Precertification status" means that the officer is currently employed or appointed by an agency and meets or exceeds all those minimum qualifications set forth in KRS 15.382, but has not successfully completed a basic training course, except those peace officers covered by KRS 15.400. Upon the council's verification that the minimum qualifications have been met, the officer shall have full peace officer powers as authorized under the statute under which he or she was appointed or employed. If an officer fails to successfully complete a basic training course within one (1) year of employment, his or her enforcement powers shall automatically terminate, unless that officer is actively enrolled and participating in a basic training course or, after having begun a basic training course, is on an approved extension of time due to injury or extenuating circumstances;
- (2) "Certification status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has met all training requirements. The officer shall have full peace officer powers as authorized under the statute under which he or she was appointed or employed;
- (3) (a) "Inactive status" means that unless the certification is in revoked status:
  - 1. The person has been separated on or after December 1, 1998, from the agency by which he or she was employed or appointed and has no peace officer powers; or
  - 2. The person is on military active duty for a period exceeding three hundred sixty-five (365) days.
- (b) The person may remain on inactive status. A person who is on inactive status and who returns to a peace officer position shall have certification status restored if he or she meets the requirements of KRS 15.400(1) or (2) or has successfully completed a basic training course approved and recognized by the council, has not committed an act for which his or her certified status may be revoked pursuant to KRS 15.391 and successfully completes in-service training as prescribed by the council, as follows:
  - 1. If the person has been on inactive status for a period of less than three (3) years, and the person was not in training deficiency status at the time of separation, he or she shall complete:
    - a. The twenty-four (24) hour legal update Penal Code course;
    - b. The sixteen (16) hour legal update constitutional procedure course; and
    - c. The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status; or
  - 2. If the person has been on inactive status for a period of three (3) years or more, or the person was in training deficiency status at the time of separation, he or she shall complete:
    - a. The twenty-four (24) hour legal update Penal Code course;
    - b. The sixteen (16) hour legal update constitutional procedure course;
    - c. The mandatory training course approved by the Kentucky Law Enforcement Council, pursuant to KRS 15.334, for the year in which he or she returns to certification status; and
    - d. One (1) of the following forty (40) hour courses which is most appropriate for the officer's duty assignment:
      - i. Basic officer skills;
      - ii. Orientation for new police chiefs; or

## iii. Mandatory duties of the sheriff.

- (c) A person returning from inactive to active certification after June 26, 2007, under KRS 15.380 to 15.404, shall meet the following minimum qualifications:
1. Be a citizen of the United States;
  2. Possess a valid license to operate a motor vehicle;
  3. Be fingerprinted for a criminal background check;
  4. Not have been convicted of any felony; *a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct;*
  5. Not be prohibited by federal or state law from possessing a firearm;
  6. Have received and read the Kentucky Law Enforcement Officers Code of Ethics as established by the council;
  7. Have not received a dishonorable discharge, bad conduct discharge, or general discharge under other than honorable conditions, if having served in any branch of the Armed Forces of the United States;
  8. Have been interviewed by the employing agency; and
  9. Not have had certification as a peace officer permanently revoked in another state;
- (4) "Training deficiency status" means that unless the certification is in revoked status or inactive status, the officer is currently employed or appointed by an agency and has failed to meet all in-service training requirements. The officer's enforcement powers shall automatically terminate, and he or she shall not exercise peace officer powers in the Commonwealth until he or she has corrected the in-service training deficiency;
- (5) "Revoked status" means that the officer has no enforcement powers and his or her certification has been revoked by the Kentucky Law Enforcement Council under KRS 15.391; and
- (6) "Denied status" means that a person does not meet the requirements to achieve precertification status or certification status.

The design of a certificate may be changed periodically. When a new certificate is produced, it shall be distributed free of charge to each currently certified peace officer.

➔Section 3. KRS 15.391 is amended to read as follows:

- (1) As used in this section:
- (a) "Agency" means any law enforcement agency, or other unit of government listed in KRS 15.380, that employs a certified peace officer;
  - (b) "Final order" has the same meaning as in KRS 13B.010;
  - (c) "General employment policy" means a rule, regulation, policy, or procedure commonly applicable to the general workforce or civilian employees that is not unique to law enforcement activities or the exercise of peace officer authority, regardless of whether the rule, regulation, policy, or procedure exists or appears in a manual or handbook that is solely applicable to a law enforcement department or agency within the unit of government employing the officer;
  - (d) "Investigating agency" means an agency that investigates the use of force by peace officers, including but not limited to the employing agency;
  - (e) "Professional malfeasance" means engaging in an act in one's professional capacity as a peace officer that violates a federal, state, or local law or regulation, or any act that involves the following:
    1. The unjustified use of excessive or deadly force, as determined by an investigating agency;
    2. Any intentional action by a peace officer that interferes with or alters the fair administration of justice, including but not limited to tampering with evidence, giving of false testimony, or the

intentional disclosure of confidential information in a manner that compromises the integrity of an official investigation; or

3. Engaging in a sexual relationship with an individual the peace officer knows or should have known is a victim, witness, defendant, or informant in an ongoing criminal investigation in which the peace officer is directly involved;
- (f) "Professional nonfeasance" means a failure to perform one's professional duty as a peace officer through omission or inaction that violates a federal, state, or local law or regulation, or any failure to act that involves the following:
1. The failure to intervene when it is safe and practical to do so in any circumstance where it is clear and apparent to the peace officer that another peace officer is engaging in the use of unlawful and unjustified excessive or deadly force; or
  2. The intentional failure to disclose exculpatory or impeachment evidence that the peace officer knew or should have known to be materially favorable to an accused for the purpose of altering the fair administration of justice; and
- (g) "Regulation" means:
1. A federal or state administrative regulation adopted by a federal or state executive branch; and
  2. A local rule, regulation, policy, or procedure adopted by ordinance, order, or resolution, or other official action by an agency. However, "regulation" does not mean a general employment policy.
- (2) (a) The certification of a peace officer shall be deemed automatically revoked by the council by operation of the law for one (1) or more of the following:
1. Certification that was the result of an administrative error;
  2. Plea of guilty to, conviction of, or entering of an Alford plea to:
    - a. Any state or federal felony;~~;~~
    - b. ***A misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct;***
    - c. ~~or~~ Any criminal offense committed in another state that would constitute a felony if committed in this state; ***or***
    - d. ***Any criminal offense committed in another state that would, if committed in this state, constitute a misdemeanor under KRS 510.120, 510.130, or 510.140; a second or subsequent offense under KRS 510.148; or a criminal attempt, conspiracy, facilitation, or solicitation to commit any degree of rape, sodomy, sexual abuse, or sexual misconduct;***
  3. Prohibition by federal or state law from possessing a firearm;
  4. Receipt of a dishonorable discharge or bad conduct discharge from any branch of the Armed Forces of the United States; or
  5. Willful falsification of information to obtain or maintain certification.
- (b) 1. A peace officer whose certification is revoked pursuant to paragraph (a) of this subsection may file an appeal at any time with the council. If an appeal is filed, the council shall conduct an administrative hearing pursuant to KRS Chapter 13B to consider the reinstatement of the peace officer's certification if the revocation was made in error or the condition requiring revocation was removed or remedied.
2. The council may impose any reasonable condition upon the reinstatement of the certification it may deem warranted under the facts of the appeal.
  3. Notwithstanding any other provision of law, the council may subpoena or request a court to subpoena records that are necessary to provide evidence that will permit the council to evaluate whether the cause for revocation has been remedied or removed. Any confidential or medical information received by the council under this subparagraph shall retain its confidential character.

4. The reversal or any other type of invalidation of a conviction by an appellate court shall constitute the removal or remedy of a condition requiring revocation. However, an expungement of a felony offense shall not be considered a removal or remedy that constitutes grounds for the reinstatement of the peace officer's certification under this paragraph.
  5. A final order issued by the council denying reinstatement of certification may be appealed pursuant to the provisions of KRS 13B.140.
- (3) (a) The certification of a peace officer may be revoked by the council for one (1) or more of the following:
1. Termination of the peace officer for failure to meet or maintain training requirements, unless the certification is in inactive status. As used in this subparagraph, "inactive status" has the same meaning as in KRS 15.386;
  2. Termination of the peace officer for professional malfeasance or professional nonfeasance by his or her agency;
  3. Termination of the peace officer following the plea of guilty to, conviction of, or entering of an Alford plea to any misdemeanor offense, in this state or out of it, that involves:
    - a. Dishonesty;
    - b. Fraud;
    - c. Deceit;
    - d. Misrepresentation;
    - e. Physical violence;
    - f. Sexual abuse; or
    - g. Crimes against a minor or a family or household member;
  4. Receipt of general discharge under other than honorable conditions from any branch of the Armed Forces of the United States that results in the termination of the peace officer from his or her agency; or
  5. Resignation or retirement of the peace officer while he or she is under criminal investigation or administrative investigation for professional malfeasance or professional nonfeasance that, in the judgment of the agency that employed the peace officer, would have likely resulted in the termination of that peace officer had the facts leading to the investigation been substantiated prior to his or her resignation or retirement.
- (b) The council shall review reports of events described in paragraph (a) of this subsection to determine whether the event warrants the initiation of proceedings by the council to revoke a peace officer's certification. If the council determines to initiate proceedings to revoke a peace officer's certification under this subsection, the administrative hearing shall be conducted pursuant to KRS Chapter 13B. A final order by the council revoking certification may be appealed pursuant to the provisions of KRS 13B.140.
- (4) (a) An agency:
1. That has knowledge of a peace officer in its employment who meets any of the revocation conditions outlined in subsection (2) of this section shall report that condition to the council within fifteen (15) days of gaining knowledge;
  2. That terminated a peace officer for any of the revocation conditions outlined in subsection (3)(a)1., 2., 3., or 4. of this section shall report that condition to the council within fifteen (15) days of the termination; and
  3. That would have likely terminated a peace officer for the revocation condition outlined in subsection (3)(a)5. of this section shall report that condition to the council within fifteen (15) days of the peace officer's resignation or retirement. If an agency reports pursuant to this subparagraph, the agency shall notify the peace officer that a report has been made.

- (b) If an agency fails to make a report required by this subsection, the council may suspend the agency from participation in the Kentucky Law Enforcement Foundation Program fund. However, the time that an agency may be suspended by the council under this paragraph shall not exceed five (5) years.
- (5) The council may promulgate administrative regulations in accordance with KRS Chapter 13A to implement this section.

**Signed by Governor April 20, 2022.**