

By: Williams

S.B. No. 2196

A BILL TO BE ENTITLED

AN ACT

relating to the employment of peace officers by certain law enforcement agencies.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 614, Government Code, is amended by adding Subchapter L to read as follows:

SUBCHAPTER L. PEACE OFFICER EMPLOYMENT MATTERS

Sec. 614.201. DEFINITIONS. In this subchapter:

(1) "Chief administrator" means the highest position in a law enforcement agency that has jurisdiction and control over the performance of a peace officer's official duties.

(2) "Command staff" means a position in the first two ranks immediately below the chief administrator or chief law enforcement officer of a law enforcement agency, but only if those ranks are responsible for supervising first-line supervisors within the agency.

(3) "Law enforcement agency" means a state agency or political subdivision of this state that appoints or employs a peace officer as defined by Article 2.12, Code of Criminal Procedure, or other law.

(4) "Peace officer" means a person elected, employed, or appointed as a peace officer under Article 2.12, Code of Criminal Procedure, or other law.

Sec. 614.202. APPLICABILITY. This subchapter applies to

1 any law enforcement agency that appoints or employs peace officers
2 who are not currently covered by:

3 (1) a meet and confer agreement under Chapter 142,
4 143, or 147, Local Government Code, or other law; or

5 (2) a collective bargaining agreement under Chapter
6 174, Local Government Code.

7 Sec. 614.203. CERTAIN REQUIREMENTS ON COMMISSIONING OF
8 PEACE OFFICERS. (a) A law enforcement agency that commissions a
9 peace officer shall include in the peace officer's personnel file a
10 copy of the oath taken by the peace officer on receiving the
11 commission, including an acknowledgment of the duties of a peace
12 officer.

13 (b) The oath must be signed by the peace officer and the law
14 enforcement agency's chief administrator.

15 Sec. 614.204. SUPERVISION OF PEACE OFFICERS. A peace
16 officer of a law enforcement agency who is not an elected
17 officeholder or the chief administrator of the agency must be
18 supervised by a person who is:

19 (1) licensed under Chapter 1701, Occupations Code; and

20 (2) commissioned as a full-time peace officer.

21 Sec. 614.205. APPOINTMENT OF COMMAND STAFF. (a) A chief
22 administrator or the elected head of a law enforcement agency may
23 appoint only the number of command staff personnel necessary to
24 successfully administer the agency. New command staff positions
25 must be approved by the law enforcement agency's governing body.

26 (b) Command staff personnel serve at the pleasure of the
27 chief administrator of the law enforcement agency and may be

1 removed without cause. A command staff officer who previously
2 served at a lower rank in the law enforcement agency may be demoted
3 without cause only to the lower rank held previously by that
4 officer.

5 Sec. 614.206. REQUIRED POLICIES. A law enforcement agency
6 must establish and publish written policies in the following areas:

- 7 (1) use of force;
- 8 (2) procedures for arrest, search, and seizure;
- 9 (3) racial profiling;
- 10 (4) training;
- 11 (5) detention;
- 12 (6) evidence collection;
- 13 (7) investigation of alleged crimes;
- 14 (8) hiring;
- 15 (9) promotion; and
- 16 (10) disciplinary procedure.

17 Sec. 614.207. POLICY REGARDING HIRING OF PEACE OFFICERS. A
18 hiring policy established by a law enforcement agency under Section
19 614.206(8) must:

- 20 (1) establish an objective hiring procedure that:
 - 21 (A) rewards experience, education, and public
22 service;
 - 23 (B) ensures that an applicant can read and write;
 - 24 (C) requires a background check on each applicant
25 to determine the applicant's qualification for licensure,
26 including requiring that an applicant be of high moral character;
27 and

1 (D) includes an objective ranking system
2 designed to identify the most qualified candidate for each
3 position;

4 (2) identify objective criteria for testing and
5 hiring, including an explanation of any scoring mechanism used to
6 rank applicants on any required examinations; and

7 (3) require any applicant for a position higher than
8 an entry-level position to meet the minimum standards for promotion
9 to that position as if the applicant were a member of the law
10 enforcement agency when the position became open.

11 Sec. 614.208. POLICY REGARDING PROMOTION OF PEACE OFFICERS.

12 (a) A promotion policy established by a law enforcement agency
13 under Section 614.206(9) must:

14 (1) outline an objective promotion procedure that
15 rewards experience, education, and public service;

16 (2) outline the rank structure of the agency,
17 including the minimum standards required for each rank;

18 (3) detail the methods for filling vacancies in the
19 agency in any rank above entry level;

20 (4) establish a ranking system designed to identify
21 the most qualified candidates for promotion; and

22 (5) establish a limited appeal process under which a
23 candidate who has been denied a promotion may appeal procedural
24 violations.

25 (b) The selection of a candidate for promotion must be based
26 on the ranking system established under Subsection (a)(4) unless
27 the law enforcement agency has a justifiable reason to deviate from

1 the ranking system.

2 Sec. 614.209. POLICY REGARDING SUSPENSION OR DEMOTION OF
3 PEACE OFFICERS. A disciplinary procedure policy established by a
4 law enforcement agency under Section 614.206(10) must:

5 (1) establish the procedure used to:

6 (A) initiate a complaint;

7 (B) investigate a complaint; and

8 (C) implement a disciplinary action for a valid
9 complaint;

10 (2) authorize the suspension or demotion of a peace
11 officer for:

12 (A) conviction of a felony or other crime
13 involving moral turpitude;

14 (B) acts of incompetency;

15 (C) neglect of duty;

16 (D) discourtesy to the public or to a fellow
17 peace officer while the peace officer is in the line of duty;

18 (E) conduct prejudicial to good order;

19 (F) drinking intoxicants while on duty or
20 intoxication while off duty;

21 (G) refusal or neglect to pay just debts;

22 (H) absence without leave;

23 (I) shirking duty or cowardice; and

24 (J) a violation of an applicable law enforcement
25 agency rule or special order; and

26 (3) provide that a peace officer who is suspended or
27 demoted has the right to appeal the suspension or demotion to an

1 independent third-party hearing examiner as described in Section
2 143.057, Local Government Code, except that:

3 (A) the hearing examiner may not recommend a
4 lesser penalty; and

5 (B) the unsuccessful party bears the cost of the
6 hearing, including the examiner's fees and expenses and the costs
7 of witnesses.

8 Sec. 614.210. PERSONNEL FILE. Adverse material may not be
9 placed in a peace officer's personnel file unless the officer has
10 been given an opportunity to view and respond to that material.

11 Sec. 614.211. LIMITATION OF POLITICAL ACTIVITY. A peace
12 officer may not engage in political activity while on duty, while in
13 uniform, or while acting in the peace officer's official capacity,
14 except that the peace officer may vote while in uniform.

15 Sec. 614.212. CIVIL REMEDIES FOR VIOLATION OF SUBCHAPTER.

16 (a) In this section, "complainant" means a person who claims to be
17 the victim of a violation of this subchapter.

18 (b) An action for a declaratory judgment or injunctive
19 relief may be brought in accordance with this section against a law
20 enforcement agency that violates this subchapter.

21 (c) The district or county attorney for the county in which
22 a law enforcement agency other than a state agency is located or the
23 attorney general may bring the action in the name of the state only
24 in a district court for that county. If the law enforcement
25 agency's jurisdiction extends into more than one county, the action
26 may be brought only in the county in which the administrative
27 offices of the law enforcement agency are located.

1 (d) If the law enforcement agency is a state agency, the
2 Travis County district attorney or the attorney general may bring
3 the action in the name of the state only in a district court of
4 Travis County.

5 (e) A complainant may file a complaint alleging a violation
6 of this subchapter. The complaint must be filed with the district
7 or county attorney of the county in which the law enforcement agency
8 is located. If the law enforcement agency's jurisdiction extends
9 into more than one county, the complaint must be filed with the
10 district or county attorney of the county in which the
11 administrative offices of the law enforcement agency are located.
12 If the law enforcement agency is a state agency, the complaint may
13 be filed with the Travis County district attorney. To be valid, a
14 complaint must:

15 (1) be in writing and signed by the complainant;

16 (2) state the name of the law enforcement agency that
17 allegedly committed the violation;

18 (3) state the time and place of the alleged commission
19 of the violation, as definitely as can be done by the complainant;
20 and

21 (4) describe the violation in general terms.

22 (f) A district or county attorney with whom the complaint is
23 filed shall indicate on the face of the written complaint the date
24 the complaint is filed.

25 (g) Not later than the 30th day after the date a complaint is
26 filed under Subsection (e), the district or county attorney shall:

27 (1) determine whether:

1 (A) the violation alleged in the complaint was
2 committed; and

3 (B) an action will be brought against the law
4 enforcement agency under this section; and

5 (2) notify the complainant in writing of the district
6 or county attorney's determinations under Subdivision (1).

7 (h) Notwithstanding Subsection (g)(1), if the district or
8 county attorney believes that that official has a conflict of
9 interest that would preclude that official from bringing an action
10 under this section against the law enforcement agency complained
11 of, before the 31st day after the date the complaint was filed the
12 district or county attorney shall inform the complainant of that
13 official's belief and of the complainant's right to file the
14 complaint with the attorney general. If the district or county
15 attorney determines not to bring an action under this section, the
16 district or county attorney shall:

17 (1) include a statement of the basis for that
18 determination; and

19 (2) return the complaint to the complainant.

20 (i) If the district or county attorney determines not to
21 bring an action under this section, the complainant is entitled to
22 file the complaint with the attorney general not later than the 30th
23 day after the date the complaint is returned to the complainant. On
24 receipt of the written complaint, the attorney general shall comply
25 with each requirement in Subsections (g) and (h) in the time
26 required by those subsections. If the attorney general decides to
27 bring an action under this section against a law enforcement agency

1 located only in one county in response to the complaint, the
2 attorney general must comply with Subsection (c).

3 (j) An action may be brought under this section only if the
4 official proposing to bring the action notifies the law enforcement
5 agency in writing of the official's determination that the alleged
6 violation was committed and the law enforcement agency does not
7 cure the violation before the fourth day after the date the law
8 enforcement agency receives the notice.

9 (k) An action authorized by this section is in addition to
10 any other civil, administrative, or criminal action provided by
11 this subchapter or another law.

12 Sec. 614.213. ASSESSMENT OF COSTS OF LITIGATION AND
13 REASONABLE ATTORNEY'S FEES. In an action brought under Section
14 614.212, the court shall assess costs of litigation and reasonable
15 attorney's fees incurred by a plaintiff who substantially prevails,
16 except that the court may not assess those costs and fees against a
17 law enforcement agency if the court finds that the law enforcement
18 agency acted in reasonable reliance on:

19 (1) a judgment or an order of a court applicable to the
20 law enforcement agency;

21 (2) the published opinion of an appellate court; or

22 (3) an opinion of the attorney general issued under
23 Section 402.042.

24 SECTION 2. A law enforcement agency affected by the changes
25 in law made to this Act shall adopt rules as required by this Act not
26 later than September 1, 2010.

27 SECTION 3. This Act takes effect September 1, 2009.