

1 AN ACT relating to law enforcement background investigations.

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

3 ➔SECTION 1. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
4 READ AS FOLLOWS:

5 *As used in Sections 1 to 10 of this Act, unless the context otherwise requires:*

6 *(1) "Council" means the Kentucky Law Enforcement Council established by KRS*
7 *15.310 to 15.510, 15.990, and 15.992;*

8 *(2) "Employment information" means written information in connection with job*
9 *applications, performance evaluations, attendance records, disciplinary actions*
10 *and eligibility for rehire.*

11 *(3) "Final and binding disciplinary action" means disciplinary action in which a law*
12 *enforcement officer voluntarily accepts discipline or, in the case of appeal by the*
13 *disciplined officer, disciplinary action in which the appeal has been exhausted or*
14 *resolved by settlement agreement, arbitration, or other dispute resolution*
15 *mechanism.*

16 *(4) "Separation records" means records required to be maintained under section 7*
17 *of this Act.*

18 ➔SECTION 2. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
19 READ AS FOLLOWS:

20 *(1) A prospective employing law enforcement agency shall conduct a thorough*
21 *background investigation on an applicant for employment as a law enforcement*
22 *officer, including a review of the applicant's employment information and*
23 *separation records, if applicable, in accordance with this chapter, before the*
24 *applicant may be employed. The background investigation shall determine at a*
25 *minimum whether the applicant meets the standards established by the council.*

26 *(2) The required background investigation does not prevent a law enforcement*
27 *agency from establishing higher standards for law enforcement employees if*

1 those standards are not contrary to applicable law.

2 ➔SECTION 3. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
3 READ AS FOLLOWS:

4 Upon request of a prospective employing law enforcement agency, a law enforcement
5 agency shall disclose or otherwise make available for inspection employment
6 information of an applicant who is the subject of a background investigation under
7 Sections 1 to 10 of this Act. The request for disclosure of employment information
8 must be:

9 (1) In writing;

10 (2) Accompanied by an original authorization and release signed by the applicant;
11 and

12 (3) Signed by the chief of police or other authorized representative of the prospective
13 employing law enforcement agency conducting the background investigation.

14 ➔SECTION 4. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
15 READ AS FOLLOWS:

16 If a law enforcement agency refuses to disclose employment information to a
17 prospective employing law enforcement agency pursuant to Section 3 of this Act, the
18 prospective employing law enforcement agency may petition the Circuit Court to issue
19 an order directing the disclosure of the employment information. The petition shall
20 include a copy of the original request for disclosure and the authorization and release
21 signed by the applicant.

22 ➔SECTION 5. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
23 READ AS FOLLOWS:

24 (1) In the absence of fraud or malice, a law enforcement agency is immune from
25 civil liability for employment information released to a prospective employing law
26 enforcement agency in accordance with this chapter or for any subsequent
27 publication made by the prospective employing law enforcement agency or the

1 applicant of employment information released to a law enforcement agency
2 under this chapter.

3 (2) (a) A law enforcement agency is not immune from civil liability for employment
4 information released in violation of this chapter.

5 (b) An applicant adversely affected by the release of employment information in
6 violation of this chapter may seek declarative and injunctive relief and
7 actual and punitive damages attributable to the violation.

8 (c) The court shall award reasonable expenses, including attorney fees, court
9 costs, and compensation for loss of income, to the applicant adversely
10 affected if an action under paragraph (b) of this subsection results in:

11 1. A final determination by a court in favor of the law enforcement
12 officer adversely affected; or

13 2. Rescission of the challenged release of information after suit has been
14 filed under paragraph (2) of this section but prior to a final
15 determination by a court.

16 ➔SECTION 6. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
17 READ AS FOLLOWS:

18 (1) If employment information is subject to a confidentiality agreement between the
19 applicant and a former law enforcement agency, the applicant shall disclose to
20 the prospective employing law enforcement agency the fact that a confidentiality
21 agreement exists.

22 (2) If the applicant has authorized the release of employment information without
23 regard to a previous agreement to the contrary, the former law enforcement
24 agency may disclose the employment information in accordance with this
25 chapter.

26 (3) If employment information is sealed or otherwise subject to a nondisclosure order
27 by a court of competent jurisdiction, the former law enforcement agency shall

1 disclose to the prospective employing law enforcement agency the fact that a
2 nondisclosure order exists, along with information identifying the court and case
3 number.

4 ➔SECTION 7. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
5 READ AS FOLLOWS:

6 (1) In addition to any other employment information required to be maintained, a
7 law enforcement agency shall maintain the following separation records:

8 (a) Records of the reason or reasons for, and circumstances surrounding, a
9 separation of service for a law enforcement officer on a form developed by
10 the council and made available on its publicly accessible Web site;

11 (b) Records of all criminal charges filed against a law enforcement officer;

12 (c) Records of all civil or ethical complaints made against a law enforcement
13 officer; and

14 (d) Records of the disposition of all charges and complaints, including final
15 and binding disciplinary actions, taken by the law enforcement agency
16 against a law enforcement officer, including imposition of probation or
17 other conditions related to employment.

18 (2) A law enforcement officer may review a separation record upon the request of the
19 law enforcement officer on a form developed by the council and made available
20 on the law enforcement agency's publicly accessible Web site.

21 (3) (a) If a law enforcement officer disagrees with the accuracy of the contents of a
22 separation record, the law enforcement officer may request the correction
23 or removal of the portion of the record believed to be incorrect. The request
24 must be made in writing using a form developed by the council and
25 available on the council's publicly accessible Web site. The law enforcement
26 agency shall provide written reasons for correction or removal of a portion
27 of the record, or of the refusal to do so.

1 **(b) If the law enforcement agency and the law enforcement officer cannot**
2 **reach an agreement on the contents of the record, the law enforcement**
3 **officer may submit a written statement explaining the law enforcement**
4 **officer's position and the basis for the disagreement. The statement shall be**
5 **kept with and part of the separation records required under this section and**
6 **provided with the separation records as required under Section 9 of this Act.**

7 ➔SECTION 8. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
8 READ AS FOLLOWS:

9 **(1) The council shall establish and maintain an electronic database containing the**
10 **separation records, which shall be accessible to all law enforcement agencies in**
11 **the Commonwealth. Except as provided under Section 10 of this Act, separation**
12 **records maintained in the database shall be exempt from public disclosure**
13 **pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884.**

14 **(2) The council shall establish a procedure by which a law enforcement agency may**
15 **request and review separation records in the database for the purpose of**
16 **employing an applicant.**

17 **(3) The council shall log all requests from law enforcement agencies for separation**
18 **records and may not disclose the name of any law enforcement officer subject to**
19 **a request for separation records to the public. The information provided to a law**
20 **enforcement agency, including a law enforcement agency outside of this**
21 **Commonwealth, shall be exempt from public disclosure pursuant to the Kentucky**
22 **Open Records Act, KRS 61.870 to 61.884.**

23 **(4) Upon the separation of an officer from a law enforcement agency, the law**
24 **enforcement agency shall submit the separation records to the council within**
25 **fifteen (15) days of separation.**

26 **(5) (a) A former employing law enforcement agency that submits a separation**
27 **record to the database in good faith is immune from civil liability for the**

1 subsequent disclosure of that record from the database.

2 **(b) A law enforcement agency is presumed to be acting in good faith at the time**
3 **of a disclosure under Sections 1 to 10 of this Act unless a preponderance of**
4 **the evidence establishes that:**

5 **1. The law enforcement agency knew that the separation record was**
6 **false or misleading;**

7 **2. The law enforcement agency submitted the separation record with a**
8 **reckless disregard for the truth; or**

9 **3. Submission of the separation record was specifically prohibited by**
10 **federal or state law.**

11 ➔SECTION 9. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
12 READ AS FOLLOWS:

13 **(1) An applicant shall provide to the prospective employing law enforcement agency,**
14 **upon an offer of employment, a signed waiver under this section allowing the**
15 **prospective employing law enforcement agency to contact the council to seek a**
16 **copy of any separation record.**

17 **(2) The waiver shall consist of a form developed by the council and made available**
18 **on the council's publicly accessible Web site.**

19 **(3) The prospective employing law enforcement agency shall provide the signed**
20 **waiver to the council.**

21 **(4) Upon receipt of the signed waiver, the council shall, within seven (7) days,**
22 **provide a copy of any separation record relating to the applicant to the**
23 **prospective employing law enforcement agency or certify that no separation**
24 **record is in the database.**

25 **(5) A prospective employing law enforcement agency shall not hire an applicant until**
26 **the prospective employing law enforcement agency receives a copy of the**
27 **separation record or certification of no separation record from the council.**

1 ➔ SECTION 10. A NEW SECTION OF KRS CHAPTER 15 IS CREATED TO
2 READ AS FOLLOWS:

3 (1) If a prospective employing law enforcement agency hires an applicant whose
4 separation records includes final and binding disciplinary action, or a criminal
5 conviction, relating to any of the following, the law enforcement agency shall file
6 a report with the council that indicates the prospective employing law
7 enforcement agency's reasoning and rationale for hiring the applicant:

8 (a) Excessive force;

9 (b) Harassment;

10 (c) Theft;

11 (d) Discrimination;

12 (e) Sexual abuse;

13 (f) Sexual misconduct;

14 (g) Domestic violence;

15 (h) Coercion of a false confession;

16 (i) Filing a false report; or

17 (j) A judicial finding of dishonesty.

18 (2) A hiring report required under subsection (1) of this section shall be included in
19 the council's electronic database, and shall be subject to public disclosure
20 pursuant to the Kentucky Open Records Act, KRS 61.870 to 61.884. The hiring
21 report shall be on a form developed by the council and made available on the
22 council's publicly accessible Web site.