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Wayne
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CS FOR HOUSE BILL NO. 351()

IN THE LEGISLATURE OF THE STATE OF ALASKA

TWENTY-SEVENTH LEGISLATURE - SECOND SESSION

BY

Offered:

Referred:

Sponsor(s): REPRESENTATIVES HAWKER, Kerttula, Foster

A BILL

FOR AN ACT ENTITLED

1 **"An Act establishing procedures relating to issuance, suspension, or revocation of**
2 **certification of police officers by the Alaska Police Standards Council; making certain**
3 **court service officers subject to certification by the Alaska Police Standards Council;**
4 **making confidential certain information that personally identifies a police officer;**
5 **relating to requesting or requiring police officers to submit to lie detector tests; and**
6 **providing for an effective date."**

7 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

8 *** Section 1.** AS 18.65.240(c) is repealed and reenacted to read:

9 (c) If a police officer does not meet the standards adopted under (a)(2) of this
10 section, the council may,

11 (1) before filing an accusation or a statement of issues under
12 AS 44.62.330 - 44.62.630, suspend a certificate that has been issued to the police
13 officer;

(2) after filing an accusation and delivering notice of it to the police officer, concluding a hearing, and issuing a decision under AS 44.62.330 - 44.62.630, revoke the certificate of the police officer;

(3) after filing a statement of issues, concluding a hearing, and issuing a decision under AS 44.62.330 - 44.62.630, refuse to issue a certificate to an applicant.

* **Sec. 2.** AS 18.65.240 is amended by adding a new subsection to read:

(d) In a proceeding to determine the outcome of the accusation or statement of issues, the council shall prove the conduct alleged in the accusation or statement of issues by clear and convincing evidence.

* **Sec. 3.** AS 18.65 is amended by adding a new section to read:

Sec. 18.65.244. Evidence related to disciplinary actions. (a) In a proceeding to revoke, suspend, or refuse to issue a certificate to a police officer, the council may not consider evidence closely related to a disciplinary action against the police officer that has been reversed or removed because of, or is in dispute under,

(1) an arbitration or grievance proceeding under a collective bargaining agreement;

(2) a grievance, hearing, or other proceeding under applicable personnel rules;

(3) a separate proceeding under AS 44.62 (Administrative Procedure Act); or

(4) an appeal to a court.

(b) Notwithstanding the prohibition under (a) of this section, when considering whether to revoke, suspend, or refuse to issue a certificate to a police officer, the council may consider evidence that the police officer

(1) has wilfully falsified information to obtain certification as a police officer;

(2) has wilfully falsified information to obtain warrants, make arrests, or violate the rights of a person under the United States Constitution or the Constitution of the State of Alaska;

(3) is addicted to alcohol or a controlled substance and has not reported the addiction to the police officer's employer and sought appropriate therapy for the

1 purpose of rehabilitation;

2 (4) has engaged in conduct that is a state or federal criminal offense
3 other than a traffic offense, a class B misdemeanor, or an infraction;

4 (5) while on duty, has engaged in sexual conduct that is prohibited by
5 law or by the police officer's employer;

6 (6) was discharged from service in a branch of the armed forces of the
7 United States for serving dishonorably; or

8 (7) has refused to answer a question the police officer was asked as
9 part of a prior formal investigation by the council or the police officer's employer,
10 after being advised

11 (A) that any answer or statement made by the police officer
12 may be used against the police officer in a criminal proceeding;

13 (B) that the police officer may refuse to answer if the answer
14 would tend to incriminate the police officer; and

15 (C) if the question is part of an investigation by the council,
16 that a refusal to answer is grounds for the council to revoke, suspend, or refuse
17 to issue a certificate to the police officer; and

18 (D) if the question is part of an investigation by the employer,
19 that a refusal to answer is grounds for the employer to take disciplinary action
20 against the police officer, including dismissing the police officer from
21 employment.

22 * **Sec. 4.** AS 18.65.290(7) is amended to read:

23 (7) "police officer" means

24 (A) a full-time employee of the state or a municipal police
25 department with the authority to arrest and issue citations; detain a person
26 taken into custody until that person can be arraigned before a judge or
27 magistrate; conduct investigations of violations of and enforce criminal laws,
28 regulations, and traffic laws; search with or without a warrant persons,
29 dwellings, and other forms of property for evidence of a crime; and take other
30 action consistent with exercise of these enumerated powers when necessary to
31 maintain the public peace;

(B) an officer or employee of the Department of Transportation and Public Facilities who is stationed at an international airport and has been designated to have the general police powers authorized under AS 02.15.230(a);

(C) a University of Alaska public safety officer with general police powers authorized under AS 14.40.043;

(D) a person who is designated under AS 22.20.130 to assist the commissioner of public safety in the execution of the authority and duty vested by AS 22.20.100 - 22.20.140;

* **Sec. 5.** AS 23.10.037(b) is amended to read:

(b) The provisions of (a) of this section do not apply to the state or a political subdivision of the state when dealing with [POLICE OFFICERS IN ITS EMPLOY OR WITH] persons applying to be employed as police officers. In this subsection, "police officers" **has the meaning given in AS 18.65.290** [INCLUDES OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION AND PUBLIC FACILITIES WHO ARE STATIONED AT AN INTERNATIONAL AIRPORT AND HAVE BEEN DESIGNATED TO HAVE THE GENERAL POLICE POWERS AUTHORIZED UNDER AS 02.15.230(a)].

* **Sec. 6.** AS 39.90.100(a) is amended to read:

(a) A public employer may not discharge, threaten, or otherwise discriminate against an employee regarding the employee's compensation, terms, conditions, location, or privileges of employment [BECAUSE]

(1) **because** the employee, or a person acting on behalf of the employee, reports to a public body or is about to report to a public body a matter of public concern; [OR]

(2) **because** the employee participates in a court action, an investigation, a hearing, or an inquiry held by a public body on a matter of public concern; **or**

(3) **in the case of an employee who is a police officer, because the employee refuses under (e) of this section to submit to a test conducted with a lie detector device.**

1 * **Sec. 7.** AS 39.90.100 is amended by adding new subsections to read:

2 (e) A police officer who works for a public employer may refuse a request by
3 the employer to submit to a test conducted with a lie detector device. The refusal and
4 the underlying request

5 (1) are confidential;

6 (2) may not be made part of the police officer's personnel file or
7 employment record.

8 (f) In this section, "lie detector device" means a polygraph, deceptograph,
9 voice stress analyzer, psychological stress evaluator, or other similar device,
10 mechanical or electrical, that is used to obtain data to support a diagnostic opinion
11 regarding the honesty or dishonesty of a natural person.

12 * **Sec. 8.** AS 40.25 is amended by adding a new section to read:

13 **Sec. 40.25.145. Confidentiality of police officer information.** (a) Except as
14 provided in (b) of this section, information in the possession of a law enforcement
15 agency that personally identifies a police officer who is employed by the agency,
16 including the police officer's photographic image or home address, is confidential and
17 is not subject to inspection under AS 40.25.110 or 40.25.120 unless the police officer
18 voluntarily authorizes its release in writing.

19 (b) Notwithstanding (a) of this section, information that personally identifies a
20 police officer may be released for inspection under AS 40.25.110 or 40.25.120 if

21 (1) the police officer is lawfully arrested and the information is a
22 photograph of the police officer; or

23 (2) the police officer is lawfully arrested and the information is
24 included in one or more of the following:

25 (A) a report or recording that documents a 911 telephone call;

26 (B) a police or investigative report;

27 (C) a complaint made to a law enforcement agency;

28 (D) the statement of a witness in either a criminal matter or a
29 proceeding related to the adjudication of a minor under AS 47.12.110.

30 * **Sec. 9.** This Act takes effect immediately under AS 01.10.070(c).