

HOUSE BILL NO. 134

INTRODUCED BY S. LAVIN

BY REQUEST OF THE STATE AUDITOR

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE STATE AUDITOR TO DESIGNATE SECURITIES AND INSURANCE INVESTIGATORS AS PEACE OFFICERS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 7-32-303, 30-10-304, AND 33-1-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 7-32-303, MCA, is amended to read:

"7-32-303. Peace officer employment, education, and certification standards -- suspension or revocation -- penalty. (1) For purposes of this section, unless the context clearly indicates otherwise, "peace officer" means a deputy sheriff, undersheriff, police officer, highway patrol officer, fish and game warden, park ranger, campus security officer, ~~or~~ airport police officer, or securities or insurance investigator appointed as a peace officer by the state auditor.

(2) A sheriff of a county, the mayor of a city, a board, a commission, or any other person authorized by law to appoint peace officers in this state may not appoint any person as a peace officer who does not meet the following qualifications plus any additional qualifying standards for employment promulgated by the Montana public safety officer standards and training council established in 2-15-2029:

- (a) be a citizen of the United States;
- (b) be at least 18 years of age;
- (c) be fingerprinted and a search made of the local, state, and national fingerprint files to disclose any criminal record;
- (d) not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;
- (e) be of good moral character, as determined by a thorough background investigation;
- (f) be a high school graduate or have passed the general educational development test and been issued an equivalency certificate by the superintendent of public instruction or by an appropriate issuing agency of

1 another state or of the federal government;

2 (g) be examined by a licensed physician, who is not the applicant's personal physician, appointed by the
3 employing authority to determine if the applicant is free from any mental or physical condition that might adversely
4 affect performance by the applicant of the duties of a peace officer;

5 (h) successfully complete an oral examination conducted by the appointing authority or its designated
6 representative to demonstrate the possession of communication skills, temperament, motivation, and other
7 characteristics necessary to the accomplishment of the duties and functions of a peace officer; and

8 (i) possess or be eligible for a valid Montana driver's license.

9 (3) At the time of appointment, a peace officer shall take a formal oath of office.

10 (4) Within 10 days of the appointment, termination, resignation, or death of any peace officer, written
11 notice of the event must be given to the Montana public safety officer standards and training council by the
12 employing authority.

13 (5) (a) Except as provided in subsections (5)(b) and (5)(c), it is the duty of an appointing authority to
14 cause each peace officer appointed under its authority to attend and successfully complete, within 1 year of the
15 initial appointment, an appropriate peace officer basic course certified by the Montana public safety officer
16 standards and training council. Any peace officer appointed after September 30, 1983, who fails to meet the
17 minimum requirements as set forth in subsection (2) or who fails to complete the basic course as required by this
18 subsection (5)(a) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

19 (b) A peace officer who has been issued a basic certificate by the Montana public safety officer
20 standards and training council and whose last date of employment as a peace officer was less than 36 months
21 prior to the date of the person's present appointment as a peace officer is not required to fulfill the basic
22 educational requirements of subsection (5)(a). If the peace officer's last date of employment as a peace officer
23 was 36 or more but less than 60 months prior to the date of present employment as a peace officer, the peace
24 officer may satisfy the basic educational requirements as set forth in subsection (5)(c).

25 (c) A peace officer referred to in subsection (5)(b) or a peace officer who has completed a basic peace
26 officer's course that is taught by a federal, state, or United States military law enforcement agency and that is
27 reviewed and approved by the Montana public safety officer standards and training council as equivalent with
28 current training in Montana and whose last date of employment as a peace officer or member of the military law
29 enforcement was less than 60 months prior to the date of present appointment as a peace officer may, within 1
30 year of the peace officer's present employment or initial appointment as a peace officer within this state, satisfy

1 the basic educational requirements by successfully completing a basic equivalency course administered by the
2 Montana law enforcement academy. The prior employment of a member of the military law enforcement must
3 be reviewed and approved by the Montana public safety officer standards and training council. If the peace officer
4 fails the basic equivalency course, the peace officer shall complete the appropriate basic equivalency course
5 within 120 days of the date of the failure of the equivalency course.

6 (6) The Montana public safety officer standards and training council may extend the 1-year time
7 requirements of subsections (5)(a) and (5)(c) upon the written application of the peace officer and the appointing
8 authority of the officer. The application must explain the circumstances that make the extension necessary.
9 Factors that the council may consider in granting or denying the extension include but are not limited to illness
10 of the peace officer or a member of the peace officer's immediate family, absence of reasonable access to the
11 basic equivalency course, and an unreasonable shortage of personnel within the department. The council may
12 not grant an extension to exceed 180 days.

13 (7) A peace officer who has successfully met the employment standards and qualifications and the
14 educational requirements of this section and who has completed a 1-year probationary term of employment must,
15 upon application to the Montana public safety officer standards and training council, be issued a basic certificate
16 by the council, certifying that the peace officer has met all the basic qualifying peace officer standards of this
17 state.

18 (8) It is unlawful for a person whose certification as a peace officer, detention officer, or detention center
19 administrator has been revoked or suspended by the Montana public safety officer standards and training council
20 to act as a peace officer, detention officer, or detention center administrator. A person convicted of violating this
21 subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the
22 county jail or by a fine not to exceed \$500, or both."

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24 **Section 2.** Section 30-10-304, MCA, is amended to read:

25 **"30-10-304. Investigations and subpoenas.** (1) The commissioner may:

26 (a) make public or private investigations or examinations within or outside this state as the commissioner
27 considers necessary to determine whether any registration should be granted, denied, or revoked or whether any
28 person has violated or is about to violate any provision of parts 1 through 3 of this chapter or any rule or order
29 under this chapter or to aid in the enforcement of parts 1 through 3 of this chapter or in the prescribing of rules
30 and forms under this chapter;

1 (b) require or permit any person to file a statement in writing, under oath or otherwise as the
2 commissioner may determine, as to all the facts and circumstances concerning the matter to be investigated; and

3 (c) publish information concerning any violation of parts 1 through 3 of this chapter or any rule or order
4 under this chapter.

5 (2) (a) For the purpose of any investigation or proceeding under parts 1 through 3 of this chapter, the
6 commissioner or any officer designated by the commissioner may administer oaths and affirmations, subpoena
7 witnesses, compel their attendance, take evidence, and require the production of any books, papers,
8 correspondence, memoranda, agreements, or other documents or records that the commissioner considers
9 relevant or material to the inquiry.

10 (b) The commissioner may issue and apply to enforce subpoenas in this state at the request of a
11 securities agency or administrator of another state if the activities constituting an alleged violation for which the
12 information is sought would be a violation of the Securities Act of Montana if the activities had occurred in this
13 state.

14 (3) In case of contumacy by or refusal to obey a subpoena issued to any person, any court of competent
15 jurisdiction, upon application by the commissioner, may issue to that person an order requiring the person to
16 appear before the commissioner or the officer designated by the commissioner to produce documentary evidence
17 if ordered or to give evidence concerning the matter under investigation or in question. Any failure to obey the
18 order of the court may be punished by the court as a contempt of court.

19 (4) A person is not excused from attending and testifying or from producing any document or record
20 before the commissioner or in obedience to the subpoena of the commissioner or any officer designated by the
21 commissioner, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence,
22 documentary or otherwise, required of the person may tend to incriminate or subject the person to a penalty or
23 forfeiture. However, testimony or evidence that is compelled following a claim of privilege against
24 self-incrimination or any information directly or indirectly derived from the testimony or evidence may not be used
25 against the witness in any criminal case. This section does not prohibit the commissioner from granting immunity
26 from prosecution for or on account of any transaction, matter, or thing concerning which a witness is compelled
27 to testify if the commissioner determines, in the commissioner's sole discretion, that the ends of justice would be
28 served. Immunity may not extend to prosecution or punishment for false statements given pursuant to the
29 subpoena.

30 (5) The office of the securities commissioner is a criminal justice agency as defined in 44-5-103.

1 (6) The commissioner may appoint securities investigators employed by the state auditor's office as
2 peace officers as defined in 46-1-202, except that securities investigators may not make arrests for any offense.
3 Securities investigators appointed by the commissioner as peace officers may issue summons and apply for and
4 serve search warrants to investigate alleged violations of this chapter. The commissioner may adopt rules
5 establishing the scope of investigative powers or duties of securities investigators who are appointed as peace
6 officers."

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8 **Section 3.** Section 33-1-311, MCA, is amended to read:

9 **"33-1-311. General powers and duties.** (1) The commissioner shall enforce the applicable provisions
10 of the laws of this state and shall execute the duties imposed on the commissioner by the laws of this state.

11 (2) The commissioner has the powers and authority expressly conferred upon the commissioner by or
12 reasonably implied from the provisions of the laws of this state.

13 (3) The commissioner shall administer the department to ensure that the interests of insurance
14 consumers are protected.

15 (4) The commissioner may conduct examinations and investigations of insurance matters, in addition
16 to examinations and investigations expressly authorized, as the commissioner considers proper, to determine
17 whether any person has violated any provision of the laws of this state or to secure information useful in the lawful
18 administration of any provision. The cost of additional examinations and investigations must be borne by the state.

19 (5) The commissioner shall maintain as confidential any information or document received from:

20 (a) the national association of insurance commissioners; or

21 (b) another state agency, an insurance department from another state, a federal agency, or a foreign
22 government that treats the same information or document as confidential. The commissioner may provide
23 information or documents, including information or documents that are confidential, to another state agency, the
24 national association of insurance commissioners, a state or federal law enforcement agency, a federal agency,
25 a foreign government, or an insurance department in another state, if the recipient agrees to maintain the
26 confidentiality of the information or documents.

27 (6) The department is a criminal justice agency as defined in 44-5-103.

28 (7) The commissioner may appoint insurance investigators employed by the state auditor's office as
29 peace officers as defined in 46-1-202, except that insurance investigators may not make arrests for any offense.
30 Insurance investigators appointed by the commissioner as peace officers may issue summons and apply for and

1 serve search warrants to investigate alleged violations of this title. The commissioner may adopt rules
2 establishing the scope of investigative powers or duties of insurance investigators who are appointed as peace
3 officers."

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5 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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