_____ BILL NO. _____

INTRODUCED BY _____

BY REQUEST OF THE LAW AND JUSTICE INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO PUBLIC SAFETY AGENCIES; PROVIDING FOR EMPLOYING AGENCIES TO REQUEST CONDUCT-RELATED INFORMATION FROM FORMER EMPLOYERS WHEN CONDUCTING A BACKGROUND INVESTIGATION ON AN APPLICANT; PROVIDING FOR FORMER EMPLOYERS TO COMPLY WITH AND RELEASE CONDUCT-RELATED INFORMATION ON A FORMER EMPLOYEE WHEN REQUESTED; LIMITING GOVERNMENTAL LIABILITY; AMENDING SECTIONS 7-31-202, 7-32-213, 7-32-303, AND 44-4-404, MCA; AND PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 7-31-202, MCA, is amended to read:

"**7-31-202. Qualifications for public safety communications officers.** To be appointed a public safety communications officer, a person:

(1) must be a citizen of the United States;

(2) must be at least 18 years of age;

(3) must be fingerprinted and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(4) may not have been convicted of a crime for which the person could have been imprisoned in a federal or state penitentiary;

(5) must be of good moral character, as determined by a thorough background investigation pursuant to 44-4-404;

(6) must be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government; and

(7) must meet any additional qualifications established by the council."

Section 2. Section 7-32-213, MCA, is amended to read:

"**7-32-213. Qualifications for appointment as reserve officer.** To be appointed a reserve officer, a person:

(1) must have resided in the state continuously for at least 1 year prior to the appointment and in the county where the appointment is made for a period of at least 6 months prior to the date of the appointment;

(2) must be a citizen of the United States;

(3) must be at least 18 years of age;

(4) must be fingerprinted, and a search must be made of local, state, and national fingerprint files to disclose any criminal record;

(5) may not have been convicted of a crime for which the person could have been imprisoned in a federal penitentiary or state prison;

(6) must be of good moral character as determined by a thorough background investigation pursuant to 44-4-404;

(7) must be a graduate of an accredited high school or the equivalent;

(8) must be examined by a licensed physician within 30 days immediately preceding the date of appointment and pronounced in good physical condition; and

(9) must possess a valid Montana driver's license."

Section 3. 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 the purposes of this section, unless the context clearly indicates otherwise, the following definitions apply:

(a) "Council" means the Montana public safety officer standards and training council established in 2-15-2029.

(b) "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.

(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 a person as a peace officer who does not meet the qualifications provided in this subsection (2) plus any additional qualifying standards for employment promulgated by the council. A peace officer must:

(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 pursuant to 44-4-404;

(f) be a high school graduate or have been issued a high school equivalency diploma by the superintendent of public instruction or by an appropriate issuing agency of another state or of the federal government;

(g) be free of any mental condition that might adversely affect performance of the duties of a peace officer, as determined after:

(i) a mental health evaluation performed by a licensed physician or a mental health professional who is licensed by the state under Title 37, who is acting within the scope of the person's licensure when performing a mental health evaluation, who is not the applicant's personal physician or licensed mental health professional, and who is selected by the employing authority; or

(ii) satisfactory completion of a standardized mental health evaluation instrument determined by the employing authority to be sufficient to examine for any mental conditions within the meaning of this subsection (2)(g), if the instrument is scored by a licensed physician or a mental health professional acting within the scope of the person's licensure by a state;

(h) be free of any physical condition that might adversely affect performance of the duties of a peace officer, as determined after satisfactory completion of a physical examination performed by a health care provider who is licensed by the state under Title 37 and acting within the scope of the person's licensure when

performing the physical examination, who is not the applicant's personal health care provider, and who is selected by the employing authority;

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

(j) possess or be eligible for a valid Montana driver's license; and

(k) be certified or be eligible for certification as a peace officer by the council or become eligible for certification upon completion of the requirements contained in subsections (6) through (10).

(3) At the time of appointment, a peace officer shall take the formal oath of office prescribed in Article III, section 3, of the Montana constitution. No other oath may be required.

(4) Within 10 days of the appointment, termination, resignation, or death of a peace officer, written notice of the event must be given to the council by the employing authority.

(5) It is the duty of an appointing authority in Montana to ensure that each peace officer appointed under its authority has the basic training, including any training required in subsections (6) through (8), in addition to meeting all other requirements of peace officer certification promulgated by the council. Any peace officer appointed after September 30, 1983, who fails to meet the minimum requirements as set forth in subsection (2) or who fails to complete the basic training required by subsections (6) through (8) forfeits the position, authority, and arrest powers accorded a peace officer in this state.

(6) (a) Except as provided in subsections (7) and (8), a peace officer shall successfully complete the peace officer basic course as approved by the council at:

(i) the Montana law enforcement academy; or

(ii) a law enforcement academy administered by an accredited Montana college or university whose curriculum and methods of training for officers and other individuals attending the academy are approved by both a Montana state or local law enforcement agency and the council. The curriculum and the methods of training under this subsection (6)(a)(ii) must be commensurate with the peace officer basic course held at the Montana law enforcement academy.

(b) A peace officer shall complete the peace officer basic course pursuant to subsection (6)(a) within 1 year of:

(i) the peace officer's initial appointment as a peace officer; or

(ii) the peace officer's most recent appointment as a peace officer if the peace officer has had a break in service as a peace officer of more than 5 years.

(7) (a) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has had a break in service as a peace officer of less than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.

(b) If a peace officer previously satisfied the requirement in subsection (6), is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for no more than 3 years, the peace officer is not required to satisfy the requirement in subsection (6) or to attend an equivalency course prior to returning to work in Montana as a peace officer.

(c) If a peace officer previously completed the peace officer basic course as provided in subsection (6) successfully, is certified or is eligible for certification as a peace officer in Montana or may become eligible for certification upon completion of the probationary period in subsection (10), and has been continuously employed as a peace officer outside of Montana for more than 3 years or who has had a break in service as a peace officer for more than 3 years but less than 5 years, the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the peace officer's most recent appointment as a peace officer in Montana. If the peace officer fails the basic equivalency course, the officer shall satisfy the requirement in subsection (6) at the next available opportunity.

(d) If a person satisfied the requirement in subsection (6) prior to the person's appointment or employment and is hired or appointed as a peace officer more than 3 years but less than 5 years after the date that the person satisfied the requirement in subsection (6), the person shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the person's most recent appointment or employment as a peace officer. If the person is not appointed or employed as a peace officer within 5 years after the date of the person's successful completion of the requirement in subsection (6), the person shall satisfy the requirement in subsection (6) within 1 year of the person's most recent appointment or

employment as a peace officer in Montana.

(8) (a) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency, that satisfies the peace officer basic training requirement for that agency, and that the council has reviewed and approved as commensurate with a current peace officer basic course offered pursuant to subsection (6), the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

(b) Except as provided in subsection (8)(c), if a peace officer has successfully completed a peace officer basic course that is taught or approved by a federal, state, local, or United States military law enforcement agency and that satisfies the peace officer basic training requirement for that agency and if that peace officer's combined training and experience have been reviewed and approved by the council as commensurate with a current peace officer basic course offered pursuant to subsection (6), the peace officer shall successfully complete the peace officer basic equivalency course, as approved by the council, within 1 year of the officer's initial appointment in Montana. If the officer fails the basic equivalency course, the officer must satisfy the requirement in subsection (6) at the next available opportunity.

(c) If the peace officer has had a break in service as a peace officer for more than 5 years, the officer shall complete the requirement of subsection (6) within 1 year of the officer's initial appointment as a peace officer in Montana.

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

(10) A peace officer who has successfully met the training, employment, and educational standards of this section, has successfully met the training and employment standards set by the council, and has

completed a 1-year probationary term of employment must be issued a peace officer basic certificate by the council certifying that the peace officer has met all of the basic qualifying peace officer standards of this state.

(11) It is unlawful for a person whose basic certification as a peace officer has been revoked or denied by the Montana public safety officer standards and training council for misconduct to act as a peace officer. It is unlawful for a person whose peace officer basic certification has been suspended by the council to act or be appointed or employed as a peace officer in Montana during the period in which the certification is suspended. A person convicted of violating this subsection is guilty of a misdemeanor, punishable by a term of imprisonment not to exceed 6 months in the county jail or by a fine not to exceed $500, or both.

(12) The council may adopt rules to implement the provisions of this section as provided in 2-15-2029. The rules must be adopted pursuant to the Montana Administrative Procedure Act."

Section 4. Section 44-4-404, MCA, is amended to read:

"**44-4-404. Appointing authority responsible for applying standards -- training requirements -- background investigation information -- release of information requirements -- immunity.** (1) It is the responsibility of a public safety officer's appointing authority to apply the employment standards and training criteria established by the council pursuant to this part, including but not limited to requiring the successful completion of minimum training standards within 1 year of the public safety officer's hire date and terminating the employment of a public safety officer for failure to meet the minimum standards established by the council pursuant to this part.

(2) (a) The provisions of 7-32-303(6), (7)(a), and (7)(d) apply to public safety officers in the public safety officer's specific discipline. Within 1 year of the public safety officer's most recent appointment, the public safety officer shall complete the applicable basic course if:

(i) no basic equivalency course exists in the public safety officer's discipline;

(ii) the public safety officer has attended the basic course required in 7-32-303(6); and

(iii) the public safety officer has a break in service of more than 3 years but less than 5 years.

(b) The requirements of subsection (2)(a) do not apply to reserve officers as defined in 7-32-201.

(3) (a) A public safety officer's appointing authority may apply to the council on behalf of the public safety officer for an extension to complete the minimum training standards. The extension may not exceed 180

days. The application must explain the circumstances that make the extension necessary.

(b) When granting an extension, the council may consider the following factors:

(i) illness of the public safety officer or a member of the public safety officer's immediate family;

(ii) lack of reasonable access to the basic equivalency course;

(iii) an unreasonable shortage of personnel in the public safety officer's department; and

(iv) any other factors the council considers relevant.

(4) (a) If a public safety officer who has not yet completed the minimum training standards is ordered to state or federal military duty within 1 year of the officer's hire date, the officer's employing agency shall notify the council within 10 days of the officer's departure for military duty. The public safety officer's 1-year period to complete minimum training standards must be stayed.

(b) Within 10 days of the public safety officer's return to the employing agency from military duty, the officer's employing agency shall notify the council. The public safety officer's 1-year period to complete minimum training standards must then resume.

(5) (a) As part of a background investigation, an employing agency shall request a signed waiver from an applicant seeking employment as a public safety officer in this state that allows the employing agency to contact the applicant's former employer or employers and request a release of information as described in subsection (5)(b).

(b) The employing agency that requested and received a signed waiver pursuant to subsection (5)(a) shall make a good faith effort to contact every public safety agency that employs or has employed the applicant and request that the public safety agency provide:

(i) a complete and unredacted copy of all findings and orders related to disciplinary action or internal investigations performed by an internal investigator or an outside agency involving the applicant; and

(ii) a copy of the applicant's employment file, including written information on job applications, performance evaluations, attendance records, disciplinary actions, eligibility for rehire, and other information relevant to the performance of public safety officer duties. This does not include nonperformative or non-conduct-related information, such as medical files, schedules, pay and benefit information, or similar administrative information.

(6) (a) As provided in 39-2-802, a public safety agency acting in good faith is not prohibited from

informing by word or in writing to an employing agency a truthful statement of the reason for discharge of a former employee and is immune from civil and criminal liability for complying with the requirements of subsection (5) and for participating in an official oral interview with an investigator regarding a former employee.

(b) A covenant, promise, or agreement to refrain from disclosure of the information described in subsection (5)(b) does not prevent compliance with the requirements imposed by this section.

(7) (a) A public safety agency that receives a release of information request from an employing agency pursuant to subsection (5)(b) shall release the requested information pursuant to subsection (5)(b).

(b) A public safety agency's refusal to release the information requested to the employing agency of the council is grounds for a civil action by the employing agency for injunctive relief requiring disclosure on the part of the employer.

(8) Pursuant to 44-4-403, the council may request from a public safety agency information as described in subsections (5)(b)(i) and (5)(b)(ii) for the purposes of providing for the certification or recertification of a public safety officer and for the suspension of revocation of certification of a public safety officer. A public safety agency that receives a request from the council shall release the information requested."

NEW SECTION. **Section 5. Two-thirds vote required.** Because [section 4] limits governmental liability, Article II, section 18, of the Montana constitution requires a vote of two-thirds of the members of each house of the legislature for passage.

NEW SECTION. **Section 6. Applicability.** [This act] applies to a background investigation conducted pursuant to 7-31-202, 7-32-213, or 7-32-303 or as part of the hiring process of a public safety officer, as defined in 44-4-401, started on or after [the effective date of this act]. [This act] does not apply to a background investigation already in progress pursuant to 7-31-202, 7-32-213, or 7-32-303 or as part of the hiring process of a public safety officer, as defined in 44-4-401, on [the effective date of this act].

- END -