

FIRST REGULAR SESSION

# HOUSE BILL NO. 888

## 93RD GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BYRD.

Read 1<sup>st</sup> time March 31, 2005 and copies ordered printed.

STEPHEN S. DAVIS, Chief Clerk

2197L.011

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### AN ACT

To repeal sections 590.080 and 590.180, RSMo, and to enact in lieu thereof two new sections relating to peace officers.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Sections 590.080 and 590.180, RSMo, are repealed and two new sections  
2 enacted in lieu thereof, to be known as sections 590.080 and 590.180, to read as follows:

590.080. 1. The director shall have cause to discipline any peace officer licensee who:

2 (1) Is unable to perform the functions of a peace officer with reasonable competency or  
3 reasonable safety as a result of a mental condition, including alcohol or substance abuse;

4 (2) Has committed any criminal offense, whether or not a criminal charge has been filed;

5 (3) Has committed any act while on active duty or under color of law that involves moral  
6 turpitude or a reckless disregard for the safety of the public or any person;

7 (4) Has caused a material fact to be misrepresented for the purpose of obtaining or  
8 retaining a peace officer commission or any license issued pursuant to this chapter;

9 (5) Has violated a condition of any order of probation lawfully issued by the director;  
10 [or]

11 (6) Has violated a provision of this chapter or a rule promulgated pursuant to this  
12 chapter; **or**

13 (7) **Engages in gross misconduct indicating inability to function as a peace officer.**  
14

15 2. When the director has knowledge of cause to discipline a peace officer license  
16 pursuant to this section, the director may cause a complaint to be filed with the administrative

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 hearing commission, which shall conduct a hearing to determine whether the director has cause  
18 for discipline, and which shall issue findings of fact and conclusions of law on the matter. The  
19 administrative hearing commission shall not consider the relative severity of the cause for  
20 discipline or any rehabilitation of the licensee or otherwise impinge upon the discretion of the  
21 director to determine appropriate discipline when cause exists pursuant to this section.

22         3. Upon a finding by the administrative hearing commission that cause to discipline  
23 exists, the director shall, within thirty days, hold a hearing to determine the form of discipline  
24 to be imposed and thereafter shall probate, suspend, or permanently revoke the license at issue.  
25 If the licensee fails to appear at the director's hearing, this shall constitute a waiver of the right  
26 to such hearing.

27         4. Notice of any hearing pursuant to this chapter or section may be made by certified  
28 mail to the licensee's address of record pursuant to subdivision (2) of subsection 3 of section  
29 590.130. Proof of refusal of the licensee to accept delivery or the inability of postal authorities  
30 to deliver such certified mail shall be evidence that required notice has been given. Notice may  
31 be given by publication.

32         5. Nothing contained in this section shall prevent a licensee from informally disposing  
33 of a cause for discipline with the consent of the director by voluntarily surrendering a license or  
34 by voluntarily submitting to discipline.

35         6. The provisions of chapter 621, RSMo, and any amendments thereto, except those  
36 provisions or amendments that are in conflict with this chapter, shall apply to and govern the  
37 proceedings of the administrative hearing commission and pursuant to this section the rights and  
38 duties of the parties involved.

590.180. 1. No arrest shall be deemed unlawful solely because of the licensure status  
2 of a peace officer, and evidence on the question cannot be received in any civil or criminal case.

3         2. The name, licensure status, and commissioning or employing law enforcement agency,  
4 if any, of applicants and licensees pursuant to this chapter shall be an open record. All other  
5 records retained by the director pertaining to any applicant or licensee shall be confidential and  
6 shall not be disclosed to the public or any member of the public, except with written consent of  
7 the person or entity whose records are involved, provided, however, that the director may  
8 disclose such information in the course of voluntary interstate exchange of information, during  
9 the course of litigation involving the director, to other state agencies, or, upon a final  
10 determination of cause to discipline, to law enforcement agencies. No closed record conveyed  
11 to the director pursuant to this chapter shall lose its status as a closed record solely because it is  
12 retained by the director. Nothing in this section shall be used to compel the director to disclose  
13 any record subject to attorney-client privilege or work-product privilege.

14         3. In any investigation, hearing, or other proceeding pursuant to this chapter, any record

15 relating to any applicant or licensee shall be discoverable by the director and shall be admissible  
16 into evidence, regardless of any statutory or common law privilege or the status of any record  
17 as open or closed, including records in criminal cases whether or not a sentence has been  
18 imposed. No person or entity shall withhold records or testimony bearing upon the fitness to be  
19 commissioned as a peace officer of any applicant or licensee on the ground of any privilege  
20 involving the applicant or licensee, with the exception of attorney-client privilege.

21         4. Any person or entity submitting information to the director pursuant to this chapter  
22 and doing so in good faith and without negligence shall be immune from all criminal and civil  
23 liability arising from the submission of such information and no cause of action of any nature  
24 shall arise against such person.

25         5. No person shall make any unauthorized use of any testing materials or certification  
26 examination administered pursuant to subsection 2 of section 590.030.

27         **6. Notwithstanding any other provision of law to the contrary, the peace officer**  
28 **standards and training commission may inform prospective employers of an applicant's**  
29 **prior employment with law enforcement agencies.**