

As Introduced

136th General Assembly

Regular Session

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H. B. No. 548

Representative Brewer

Cosponsors: Representatives Brent, Rogers, Lett, Rader

To amend sections 3701.143 and 4117.10 and to enact
section 2935.34 of the Revised Code to require
testing for alcohol or drugs of abuse after
incidents involving an officer's use of force.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 3701.143 and 4117.10 be amended
and section 2935.34 of the Revised Code be enacted to read as
follows:

Sec. 2935.34. (A) As used in this section:

(1) "Controlled substance" has the same meaning as in
section 3719.01 of the Revised Code.

(2) "Corrections officer" means a person employed by a
detention facility as a corrections officer.

(3) "Detention facility" means any public or private place
used for the confinement of a person charged with or convicted
of any crime in this state or another state or under the laws of
the United States or alleged or found to be a delinquent child
or unruly child in this state or another state or under the laws
of the United States.

(4) "Drug of abuse" has the same meaning as in section 19
4506.01 of the Revised Code. 20

(5) "Prescription" has the same meaning as in section 21
4729.01 of the Revised Code. 22

(6) "Prohibited concentration of alcohol, a controlled 23
substance, or a metabolite of a controlled substance" means 24
either of the following: 25

(a) A concentration in the person's whole blood, blood 26
serum or plasma, breath, or urine that equals or exceeds an 27
amount specified in division (A)(1) of section 4511.19 of the 28
Revised Code; 29

(b) A concentration in the person's whole blood, blood 30
serum or plasma, breath, or urine that equals or exceeds an 31
amount specified in a collective bargaining agreement entered 32
into under Chapter 4117. of the Revised Code, provided the 33
concentration specified in the agreement is lower than the 34
amount specified in division (A)(1) of section 4511.19 of the 35
Revised Code. 36

(7) "Use of force" means force exerted by a peace officer 37
or corrections officer in the officer's official capacity that 38
results in serious physical harm to property, serious physical 39
harm to persons, or death. "Use of force" includes the discharge 40
of a firearm or the use of a gas or explosive device, except 41
when it occurs in a training or routine practice setting or when 42
it does not cause serious physical harm to persons or property. 43

(B) Within three hours after an incident involving use of 44
force, a peace officer or corrections officer who engaged in the 45
use of force shall submit to a chemical test to determine the 46
presence and concentration of alcohol, any controlled substance, 47

or a metabolite of a controlled substance in the officer's whole 48
blood, blood serum or plasma, breath, or urine. An officer who 49
was present at the time of the incident, but not engaged in the 50
use of force, is not required to submit to a chemical test. 51

(C) The bodily substance withdrawn under division (B) of 52
this section shall be analyzed in accordance with methods 53
approved by the director of health by an individual possessing a 54
valid permit issued by the director under section 3701.143 of 55
the Revised Code. 56

(D) If a chemical test administered under this section 57
indicates a prohibited concentration of alcohol, a controlled 58
substance, or a metabolite of a controlled substance, the 59
officer's employer shall report the test results to the 60
prosecutor where the employer is located and to the bureau of 61
criminal identification and investigation if the bureau is 62
investigating the officer's use of force. The prosecutor shall 63
consider whether to prosecute the officer for any offense 64
related to the use of force while under the influence of 65
alcohol, a drug of abuse, or both. 66

(E) (1) In addition to reporting a chemical test indicating 67
a prohibited concentration of alcohol, a controlled substance, 68
or a metabolite of a controlled substance to a prosecutor as 69
required by division (D) of this section, the officer's employer 70
shall take any corrective or disciplinary action required by an 71
applicable law, ordinance, policy, or collective bargaining 72
agreement, including requiring the officer to attend drug and 73
alcohol counseling if appropriate under the circumstances. 74

(2) An officer who refuses to submit to a chemical test as 75
required under division (B) of this section is subject to 76
corrective or disciplinary action in accordance with division 77

(E) (1) of this section as though the officer had submitted to 78
the test and the results indicated a prohibited concentration of 79
alcohol, a controlled substance, or a metabolite of a controlled 80
substance. 81

(F) Divisions (D) and (E) of this section do not apply to 82
a peace officer or corrections officer whose chemical test 83
indicates a prohibited amount of a controlled substance or 84
metabolite of a controlled substance if both of the following 85
apply: 86

(1) The officer obtained the controlled substance pursuant 87
to a prescription issued by a licensed health professional 88
authorized to prescribe drugs. 89

(2) The officer injected, ingested, or inhaled the 90
controlled substance in accordance with the health 91
professional's directions. 92

Sec. 3701.143. (A) As used in this section, "drug of 93
abuse" has the same meaning as in section 4506.01 of the Revised 94
Code. 95

(B) For purposes of sections 1547.11, 2935.34, 4511.19, 96
and 4511.194 of the Revised Code, the director of health shall 97
determine, or cause to be determined, techniques or methods for 98
chemically analyzing a person's whole blood, blood serum or 99
plasma, urine, breath, oral fluid, or other bodily substance in 100
order to ascertain the presence or amount of alcohol, a drug of 101
abuse, controlled substance, metabolite of a controlled 102
substance, or combination of them in the person's whole blood, 103
blood serum or plasma, urine, breath, oral fluid, or other 104
bodily substance. The director shall approve satisfactory 105
techniques or methods, ascertain the qualifications of 106

individuals to conduct such analyses, and issue permits to 107
qualified persons authorizing them to perform such analyses. 108
Such permits shall be subject to termination or revocation at 109
the discretion of the director. 110

Sec. 4117.10. (A) An agreement between a public employer 111
and an exclusive representative entered into pursuant to this 112
chapter governs the wages, hours, and terms and conditions of 113
public employment covered by the agreement. If the agreement 114
provides for a final and binding arbitration of grievances, 115
public employers, employees, and employee organizations are 116
subject solely to that grievance procedure and the state 117
personnel board of review or civil service commissions have no 118
jurisdiction to receive and determine any appeals relating to 119
matters that were the subject of a final and binding grievance 120
procedure. Where no agreement exists or where an agreement makes 121
no specification about a matter, the public employer and public 122
employees are subject to all applicable state or local laws or 123
ordinances pertaining to the wages, hours, and terms and 124
conditions of employment for public employees. All of the 125
following prevail over conflicting provisions of agreements 126
between employee organizations and public employers: 127

- (1) Laws pertaining to any of the following subjects: 128
 - (a) Civil rights; 129
 - (b) Affirmative action; 130
 - (c) Unemployment compensation; 131
 - (d) Workers' compensation; 132
 - (e) The retirement of public employees; 133
 - (f) Residency requirements; 134

(g) The minimum educational requirements contained in the 135
Revised Code pertaining to public education including the 136
requirement of a certificate by the fiscal officer of a school 137
district pursuant to section 5705.41 of the Revised Code; 138

(h) The provisions of division (A) of section 124.34 of 139
the Revised Code governing the disciplining of officers and 140
employees who have been convicted of a felony; 141

(i) The minimum standards promulgated by the director of 142
education and workforce pursuant to division (D) of section 143
3301.07 of the Revised Code. 144

(2) The law pertaining to the leave of absence and 145
compensation provided under section 5923.05 of the Revised Code, 146
if the terms of the agreement contain benefits which are less 147
than those contained in that section or the agreement contains 148
no such terms and the public authority is the state or any 149
agency, authority, commission, or board of the state or if the 150
public authority is another entity listed in division (B) of 151
section 4117.01 of the Revised Code that elects to provide leave 152
of absence and compensation as provided in section 5923.05 of 153
the Revised Code; 154

(3) The law pertaining to the leave established under 155
section 5906.02 of the Revised Code, if the terms of the 156
agreement contain benefits that are less than those contained in 157
section 5906.02 of the Revised Code; 158

(4) The law pertaining to excess benefits prohibited under 159
section 3345.311 of the Revised Code with respect to an 160
agreement between an employee organization and a public employer 161
entered into on or after September 29, 2015. 162

(5) The requirements of section 2935.34 of the Revised 163

Code that a peace officer or corrections officer submit to a 164
chemical test after an incident involving the use of force, as 165
defined in that section, and that the officer's employer report 166
the results and take appropriate corrective or disciplinary 167
actions. 168

Except for sections 306.08, 306.12, 306.35, and 4981.22 of 169
the Revised Code and arrangements entered into thereunder, and 170
section 4981.21 of the Revised Code as necessary to comply with 171
section 13(c) of the "Urban Mass Transportation Act of 1964," 87 172
Stat. 295, 49 U.S.C.A. 1609(c), as amended, and arrangements 173
entered into thereunder, this chapter prevails over any and all 174
other conflicting laws, resolutions, provisions, present or 175
future, except as otherwise specified in this chapter or as 176
otherwise specified by the general assembly. Nothing in this 177
section prohibits or shall be construed to invalidate the 178
provisions of an agreement establishing supplemental workers' 179
compensation or unemployment compensation benefits or exceeding 180
minimum requirements contained in the Revised Code pertaining to 181
public education or the minimum standards promulgated by the 182
director of education and workforce pursuant to division (D) of 183
section 3301.07 of the Revised Code. 184

(B) The public employer shall submit a request for funds 185
necessary to implement an agreement and for approval of any 186
other matter requiring the approval of the appropriate 187
legislative body to the legislative body within fourteen days of 188
the date on which the parties finalize the agreement, unless 189
otherwise specified, but if the appropriate legislative body is 190
not in session at the time, then within fourteen days after it 191
convenes. The legislative body must approve or reject the 192
submission as a whole, and the submission is deemed approved if 193
the legislative body fails to act within thirty days after the 194

public employer submits the agreement. The parties may specify 195
that those provisions of the agreement not requiring action by a 196
legislative body are effective and operative in accordance with 197
the terms of the agreement, provided there has been compliance 198
with division (C) of this section. If the legislative body 199
rejects the submission of the public employer, either party may 200
reopen all or part of the entire agreement. 201

As used in this section, "legislative body" includes the 202
governing board of a municipal corporation, school district, 203
college or university, village, township, or board of county 204
commissioners or any other body that has authority to approve 205
the budget of their public jurisdiction and, with regard to the 206
state, "legislative body" means the controlling board. 207

(C) The chief executive officer, or the chief executive 208
officer's representative, of each municipal corporation, the 209
designated representative of the board of education of each 210
school district, college or university, or any other body that 211
has authority to approve the budget of their public 212
jurisdiction, the designated representative of the board of 213
county commissioners and of each elected officeholder of the 214
county whose employees are covered by the collective 215
negotiations, and the designated representative of the village 216
or the board of township trustees of each township is 217
responsible for negotiations in the collective bargaining 218
process; except that the legislative body may accept or reject a 219
proposed collective bargaining agreement. When the matters about 220
which there is agreement are reduced to writing and approved by 221
the employee organization and the legislative body, the 222
agreement is binding upon the legislative body, the employer, 223
and the employee organization and employees covered by the 224
agreement. 225

(D) There is hereby established an office of collective bargaining in the department of administrative services for the purpose of negotiating with and entering into written agreements between state agencies, departments, boards, and commissions and the exclusive representative on matters of wages, hours, terms and other conditions of employment and the continuation, modification, or deletion of an existing provision of a collective bargaining agreement. Nothing in any provision of law to the contrary shall be interpreted as excluding the bureau of workers' compensation and the industrial commission from the preceding sentence. This office shall not negotiate on behalf of other statewide elected officials or boards of trustees of state institutions of higher education who shall be considered as separate public employers for the purposes of this chapter; however, the office may negotiate on behalf of these officials or trustees where authorized by the officials or trustees. The staff of the office of collective bargaining are in the unclassified service. The director of administrative services shall fix the compensation of the staff.

The office of collective bargaining shall:

(1) Assist the director in formulating management's philosophy for public collective bargaining as well as planning bargaining strategies;

(2) Conduct negotiations with the exclusive representatives of each employee organization;

(3) Coordinate the state's resources in all mediation, fact-finding, and arbitration cases as well as in all labor disputes;

(4) Conduct systematic reviews of collective bargaining

agreements for the purpose of contract negotiations; 255

(5) Coordinate the systematic compilation of data by all 256
agencies that is required for negotiating purposes; 257

(6) Prepare and submit an annual report and other reports 258
as requested to the governor and the general assembly on the 259
implementation of this chapter and its impact upon state 260
government. 261

Section 2. That existing sections 3701.143 and 4117.10 of 262
the Revised Code are hereby repealed. 263

Section 3. Section 1 of this act applies to collective 264
bargaining agreements entered into on or after the effective 265
date of this section. 266

Section 4. Section 3701.143 of the Revised Code is 267
presented in this act as a composite of the section as amended 268
by both H.B. 37 and S.B. 100 of the 135th General Assembly. The 269
General Assembly, applying the principle stated in division (B) 270
of section 1.52 of the Revised Code that amendments are to be 271
harmonized and reconciled if reasonably capable of simultaneous 272
operation, finds that the composite is the resulting version of 273
the section in effect prior to the effective date of the section 274
as presented in this act. 275