

Second Regular Session
Sixty-eighth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 12-0482.01 Richard Sweetman x4333

HOUSE BILL 12-1062

HOUSE SPONSORSHIP

Barker,

SENATE SPONSORSHIP

(None),

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MINIMUM EMPLOYMENT PROTECTIONS FOR COLORADO
102 PEACE OFFICERS.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill declares that rights and protections afforded to peace officers are a matter of statewide concern.

An agency that employs a peace officer (employing agency) shall not enter into a peace officer's personnel file any comment or material that is adverse to the peace officer unless the peace officer is given an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

opportunity to:

- ! Review the comment or material;
- ! Receive a copy of the comment or material; and
- ! Respond to the comment or material in writing.

If a peace officer reviews any such comment or material, he or she may sign it upon completing his or her review. The signature indicates only that the peace officer is aware of the comment or material and does not constitute a confirmation by the peace officer of the accuracy of the comment or material. If the peace officer refuses to sign the comment or material, the employing agency shall include with the comment or material an acknowledgment of the peace officer's refusal. If the peace officer prepares a written response, the employing agency shall place it in the peace officer's personnel file.

A peace officer shall have the same right to engage in political activities as is afforded to each resident of the state so long as he or she is not on duty or in uniform. Neither an employing agency nor any person may coerce or require a peace officer to engage in political activity.

A peace officer may form, join, support, or participate in an employee organization or its lawful activities. An employing agency shall not retaliate or discriminate against a peace officer for joining or advocating for any employee organization or for advocating for the formation thereof.

A peace officer, other than a peace officer who has not yet completed a reasonable initial new-hire probationary period, is subject to disciplinary action only for just cause.

A peace officer who is accused of a violation of law or of a policy of his or her employing agency (violation) is presumed innocent, and an investigation into such an allegation shall be conducted in a fair and impartial manner. Before an employing agency imposes any disciplinary action upon a peace officer, the peace officer has the right to be heard during a meeting with a designated representative of the employing agency. A peace officer who is accused of a violation is entitled to have a peace officer representative present during any meeting with one or more members of the employing agency, or with a representative of the employing agency, if the peace officer reasonably believes the meeting may result in disciplinary action against him or her.

Each employing agency shall establish a fair and just appeal process to allow a peace officer who is subjected to disciplinary action to challenge the disciplinary action or to assert that the employing agency lacked just cause to impose the disciplinary action. The appeal process includes a hearing that provides the disciplined peace officer with due process, including but not limited to the right to have a peace officer representative present, offer live testimony, offer documentary evidence, and cross-examine any witness who offers testimony against him or her. The hearing is confidential unless the disciplined peace officer waives

such confidentiality. Any document generated or presented in connection with the hearing shall be treated as a personnel record and is subject to the legal protections afforded to personnel records.

An employing agency shall not adopt any regulation, ordinance, policy, or procedure preventing a peace officer from filing a civil suit arising from the performance of his or her duties as a peace officer.

An employing agency shall not discharge, demote, or discipline; or deny promotion, transfer, or reassignment to; or otherwise discriminate against; or threaten any such action against a peace officer as retaliation for the peace officer's lawful exercise of his or her rights.

Be it enacted by the General Assembly of the State of Colorado:

SECTION 1. In Colorado Revised Statutes, **add** part 3 to article 2.5 of title 16 as follows:

PART 3

MINIMUM PROTECTIONS FOR THE EMPLOYMENT
OF PEACE OFFICERS

16-2.5-301. Legislative declaration. THE GENERAL ASSEMBLY HEREBY FINDS AND DECLARES THAT THE RIGHTS AND PROTECTIONS AFFORDED TO PEACE OFFICERS WITHIN THIS PART 3 CONSTITUTE A MATTER OF STATEWIDE CONCERN.

16-2.5-302. Colorado peace officers - minimum rights established. (1) NOTWITHSTANDING ANY PROVISION OF STATE OR LOCAL LAW TO THE CONTRARY, AND NOTWITHSTANDING ANY PROVISION OF A CIVIL SERVICE SYSTEM, THE STATE PERSONNEL SYSTEM, OR A COLLECTIVE BARGAINING AGREEMENT, A PEACE OFFICER SHALL HAVE, AT A MINIMUM, THE RIGHTS SET FORTH IN THIS PART 3.

(2) THIS PART 3 DOES NOT DIMINISH OR IMPAIR ANY LEGAL RIGHT POSSESSED BY A PEACE OFFICER BY LAW OR PURSUANT TO A CIVIL SERVICE SYSTEM, THE STATE PERSONNEL SYSTEM, A COLLECTIVE BARGAINING AGREEMENT, OR A POLICY OF THE PEACE OFFICER'S EMPLOYING AGENCY.

1 **16-2.5-303. Definitions.** AS USED IN THIS PART 3, UNLESS THE
2 CONTEXT OTHERWISE REQUIRES:

3 (1) "DISCIPLINARY ACTION" MEANS AN ACTION BY AN EMPLOYING
4 AGENCY THAT RESULTS IN THE SUSPENSION, DEMOTION, OR TERMINATION
5 OF A PEACE OFFICER OR THE REVOCATION OF THE PEACE OFFICER'S
6 CERTIFICATION PURSUANT TO SECTION 24-31-305, C.R.S.

7 (2) "EMPLOYING AGENCY" MEANS:

8 (a) A GOVERNING BODY OF A MUNICIPALITY, COUNTY, OR STATE
9 AGENCY THAT EMPLOYS A PEACE OFFICER FOR LAW ENFORCEMENT DUTIES;
10 AND

11 (b) AN AUTHORIZED REPRESENTATIVE OF SUCH A GOVERNING
12 BODY.

13 (3) "PEACE OFFICER" MEANS A PEACE OFFICER AS DESCRIBED IN
14 SECTION 16-2.5-101.

15 (4) "PEACE OFFICER REPRESENTATIVE" MEANS AN INDIVIDUAL OF
16 A PEACE OFFICER'S CHOOSING WHO IS EITHER AN ATTORNEY LICENSED IN
17 COLORADO OR A MEMBER OF A POLICE ASSOCIATION, POLICE UNION, OR
18 FRATERNAL ORDER OF POLICE AND WHO ADVISES OR COUNSELS THE PEACE
19 OFFICER.

20 **16-2.5-304. Entry of adverse comment or material into a**
21 **personnel file - conditions - notice - acknowledgment.** (1) AN
22 EMPLOYING AGENCY SHALL NOT ENTER INTO A PEACE OFFICER'S
23 PERSONNEL FILE OR ANY OTHER FILE USED FOR PERSONNEL PURPOSES BY
24 THE EMPLOYING AGENCY ANY COMMENT OR MATERIAL THAT IS ADVERSE
25 TO THE PEACE OFFICER UNLESS THE PEACE OFFICER IS GIVEN AN
26 OPPORTUNITY TO:

27 (a) REVIEW THE COMMENT OR MATERIAL;

1 (b) RECEIVE A COPY OF THE COMMENT OR MATERIAL; AND

2 (c) RESPOND TO THE COMMENT OR MATERIAL IN WRITING.

3 (2) (a) EXCEPT AS DESCRIBED IN PARAGRAPH (b) OF THIS
4 SUBSECTION (2), IF A PEACE OFFICER REVIEWS ANY COMMENT OR
5 MATERIAL THAT IS ADVERSE TO THE PEACE OFFICER PURSUANT TO
6 PARAGRAPH (a) OF SUBSECTION (1) OF THIS SECTION, THE PEACE OFFICER
7 MAY SIGN THE COMMENT OR MATERIAL UPON COMPLETING HIS OR HER
8 REVIEW. THE SIGNATURE INDICATES ONLY THAT THE PEACE OFFICER IS
9 AWARE OF THE COMMENT OR MATERIAL AND DOES NOT CONSTITUTE OR
10 IMPLY A CONFIRMATION BY THE PEACE OFFICER OF THE ACCURACY OF THE
11 COMMENT OR MATERIAL.

12 (b) A PEACE OFFICER WHO REVIEWS ANY COMMENT OR MATERIAL
13 THAT IS ADVERSE TO THE PEACE OFFICER PURSUANT TO PARAGRAPH (a) OF
14 SUBSECTION (1) OF THIS SECTION MAY REFUSE TO SIGN THE COMMENT OR
15 MATERIAL. THE EMPLOYING AGENCY SHALL INCLUDE WITH THE COMMENT
16 OR MATERIAL AN ACKNOWLEDGMENT OF THE PEACE OFFICER'S REFUSAL TO
17 SIGN.

18 (3) IF A PEACE OFFICER PREPARES A WRITTEN RESPONSE TO THE
19 COMMENT OR MATERIAL, THE EMPLOYING AGENCY SHALL PLACE IT IN THE
20 PEACE OFFICER'S PERSONNEL FILE.

21 **16-2.5-305. Right to engage in political activity.** (1) TO THE
22 EXTENT PERMITTED BY STATE OR FEDERAL LAW, EXCEPT AS DESCRIBED IN
23 SUBSECTION (3) OF THIS SECTION, A PEACE OFFICER HAS THE SAME RIGHT
24 TO ENGAGE IN POLITICAL ACTIVITIES AS IS AFFORDED TO EACH RESIDENT
25 OF THE STATE.

26 (2) NEITHER AN EMPLOYING AGENCY NOR ANY PERSON SHALL
27 COERCE OR REQUIRE A PEACE OFFICER TO ENGAGE IN POLITICAL ACTIVITY.

1 (3) THE RIGHT TO ENGAGE IN POLITICAL ACTIVITY PURSUANT TO
2 THIS SECTION DOES NOT APPLY TO A PEACE OFFICER WHILE HE OR SHE IS ON
3 DUTY OR IN UNIFORM.

4 **16-2.5-306. Right to participate in employee organizations.** A
5 PEACE OFFICER MAY FORM, JOIN, SUPPORT, OR PARTICIPATE IN AN
6 EMPLOYEE ORGANIZATION OR ITS LAWFUL ACTIVITIES. AN EMPLOYING
7 AGENCY SHALL NOT RETALIATE OR DISCRIMINATE IN ANY MANNER
8 AGAINST A PEACE OFFICER FOR JOINING OR ADVOCATING FOR ANY
9 EMPLOYEE ORGANIZATION OR FOR ADVOCATING FOR THE FORMATION
10 THEREOF.

11 **16-2.5-307. Discipline.** (1) A PEACE OFFICER, OTHER THAN A
12 PEACE OFFICER WHO HAS NOT YET COMPLETED A REASONABLE INITIAL
13 NEW-HIRE PROBATIONARY PERIOD AS ESTABLISHED BY HIS OR HER
14 EMPLOYING AGENCY, IS SUBJECT TO DISCIPLINARY ACTION ONLY FOR JUST
15 CAUSE.

16 (2) NOTHING IN THIS SECTION PROHIBITS THE INFORMAL
17 COUNSELING OF A PEACE OFFICER IN REFERENCE TO A MINOR INFRACTION
18 OF POLICY OR PROCEDURE THAT DOES NOT RESULT IN DISCIPLINARY
19 ACTION BEING TAKEN AGAINST THE PEACE OFFICER.

20 **16-2.5-308. Rights of an accused peace officer.** (1) A PEACE
21 OFFICER WHO IS ACCUSED OF A VIOLATION OF LAW OR OF A POLICY OR
22 PROCEDURE OF HIS OR HER EMPLOYING AGENCY IS PRESUMED INNOCENT,
23 AND AN INVESTIGATION INTO SUCH AN ALLEGATION SHALL BE CONDUCTED
24 IN A FAIR AND IMPARTIAL MANNER.

25 (2) BEFORE AN EMPLOYING AGENCY IMPOSES ANY DISCIPLINARY
26 ACTION UPON A PEACE OFFICER, THE PEACE OFFICER HAS THE RIGHT TO BE
27 HEARD DURING A MEETING WITH A DESIGNATED REPRESENTATIVE OF THE

1 EMPLOYING AGENCY. THE EMPLOYING AGENCY SHALL PROVIDE THE
2 ACCUSED PEACE OFFICER WRITTEN NOTIFICATION OF THE TIME AND DATE
3 OF THE MEETING NOT LESS THAN FORTY-EIGHT HOURS BEFORE THE
4 MEETING. THE NOTICE SHALL INCLUDE A SUMMARY OF THE PEACE
5 OFFICER'S ALLEGED CONDUCT AND SHALL IDENTIFY ANY LAW OR POLICY
6 OR PROCEDURE THAT THE PEACE OFFICER HAS ALLEGEDLY VIOLATED.

7 (3) A PEACE OFFICER WHO IS ACCUSED OF A VIOLATION OF LAW OR
8 OF A POLICY OR PROCEDURE IS ENTITLED TO HAVE A PEACE OFFICER
9 REPRESENTATIVE PRESENT DURING ANY MEETING WITH ONE OR MORE
10 MEMBERS OF THE EMPLOYING AGENCY, OR WITH A REPRESENTATIVE OF
11 THE EMPLOYING AGENCY, IF THE PEACE OFFICER REASONABLY BELIEVES
12 THE MEETING MAY RESULT IN DISCIPLINARY ACTION AGAINST HIM OR HER.

13 **16-2.5-309. Rights of appeal.** (1) EACH EMPLOYING AGENCY
14 SHALL ESTABLISH A FAIR AND JUST APPEAL PROCESS TO ALLOW A PEACE
15 OFFICER WHO IS SUBJECTED TO DISCIPLINARY ACTION TO CHALLENGE THE
16 DISCIPLINARY ACTION OR TO ASSERT THAT THE EMPLOYING AGENCY
17 LACKED JUST CAUSE TO IMPOSE THE DISCIPLINARY ACTION. THE APPEAL
18 PROCESS INCLUDES A HEARING THAT PROVIDES THE DISCIPLINED PEACE
19 OFFICER WITH DUE PROCESS, INCLUDING BUT NOT LIMITED TO THE RIGHT
20 TO:

21 (a) HAVE A PEACE OFFICER REPRESENTATIVE PRESENT;
22 (b) OFFER LIVE TESTIMONY;
23 (c) OFFER DOCUMENTARY EVIDENCE; AND
24 (d) CROSS-EXAMINE ANY WITNESS WHO OFFERS TESTIMONY
25 AGAINST HIM OR HER.

26 (2) THE HEARING DESCRIBED IN SUBSECTION (1) OF THIS SECTION
27 IS CONFIDENTIAL UNLESS THE DISCIPLINED PEACE OFFICER AGREES IN

1 WRITING TO WAIVE SUCH CONFIDENTIALITY. ANY DOCUMENT GENERATED
2 OR PRESENTED IN CONNECTION WITH THE HEARING SHALL BE TREATED AS
3 A PERSONNEL RECORD AND IS SUBJECT TO THE PROTECTIONS AFFORDED TO
4 PERSONNEL RECORDS BY SECTION 24-72-204 (3) (a) (II), C.R.S.

5 (3) THE EMPLOYING AGENCY BEARS THE BURDEN OF PROVING ANY
6 ALLEGATIONS AGAINST THE PEACE OFFICER THAT ARE THE SUBJECT OF THE
7 HEARING DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

8 **16-2.5-310. Right to file suit.** AN EMPLOYING AGENCY SHALL NOT
9 ADOPT ANY REGULATION, ORDINANCE, POLICY, OR PROCEDURE THAT
10 PREVENTS A PEACE OFFICER FROM FILING A CIVIL SUIT ARISING FROM THE
11 PERFORMANCE OF HIS OR HER DUTIES AS A PEACE OFFICER.

12 **16-2.5-311. No retaliation for exercise of peace officer's rights.**
13 AN EMPLOYING AGENCY SHALL NOT DISCHARGE, DEMOTE, OR DISCIPLINE;
14 OR DENY PROMOTION, TRANSFER, OR REASSIGNMENT TO; OR OTHERWISE
15 DISCRIMINATE AGAINST; OR THREATEN ANY SUCH ACTION AGAINST A
16 PEACE OFFICER AS RETALIATION FOR THE PEACE OFFICER'S LAWFUL
17 EXERCISE OF, OR DEMAND FOR, THE RIGHTS GRANTED TO HIM OR HER BY
18 THIS PART 3 OR ANY OTHER STATE OR FEDERAL LAW.

19 **SECTION 2. Act subject to petition - effective date.** This act
20 takes effect at 12:01 a.m. on the day following the expiration of the
21 ninety-day period after final adjournment of the general assembly (August
22 7, 2012, if adjournment sine die is on May 9, 2012); except that, if a
23 referendum petition is filed pursuant to section 1 (3) of article V of the
24 state constitution against this act or an item, section, or part of this act
25 within such period, then the act, item, section, or part will not take effect
26 unless approved by the people at the general election to be held in

1 November 2012 and, in such case, will take effect on the date of the
2 official declaration of the vote thereon by the governor.