

LEGISLATURE OF NEBRASKA

ONE HUNDRED FIRST LEGISLATURE

FIRST SESSION

**LEGISLATIVE BILL 158**

Introduced by White, 8.

Read first time January 12, 2009

Committee: Business and Labor

A BILL

- 1 FOR AN ACT relating to law enforcement; to adopt the Peace Officer
- 2                   Discipline Procedures Act.
- 3 Be it enacted by the people of the State of Nebraska,

1           Section 1. Sections 1 to 17 of this act shall be known  
2 and may be cited as the Peace Officer Discipline Procedures Act.

3           Sec. 2. For purposes of the Peace Officer Discipline  
4 Procedures Act:

5           (1) Administrative hearing means a nonjudicial hearing or  
6 arbitration authorized to recommend, approve, or order discipline;

7           (2) Formal statement means the questioning of an officer  
8 in the course of obtaining a recorded, stenographic, or signed  
9 statement to be used as evidence in an administrative hearing  
10 against the officer; and

11           (3) Officer means a peace officer as defined in section  
12 49-801, who is employed, either full-time or part-time, by the  
13 state or any political subdivision, except the Nebraska State  
14 Patrol.

15           Sec. 3. The Peace Officer Discipline Procedures Act  
16 applies to law enforcement agencies of the state or any political  
17 subdivision, except the Nebraska State Patrol. The act does not  
18 apply to an investigation of a criminal charge against an officer.

19           Sec. 4. A formal statement shall be taken in accordance  
20 with sections 5 to 11 of this act.

21           Sec. 5. A formal statement shall be taken at a facility  
22 of an employing or investigating agency or at a place agreed to by  
23 the investigating individual and an investigated officer.

24           Sec. 6. A formal statement may not be taken unless a  
25 written complaint is filed with the employing or investigating

1 agency which is signed by the complainant stating the complainant's  
2 knowledge and the officer whose statement is taken has been given  
3 a summary of the allegations. A complaint stating the complainant's  
4 knowledge also may be filed by a member of the agency. Before an  
5 administrative hearing begins, the officer shall be given a copy of  
6 any such complaint.

7           Sec. 7. Upon request, an employing or investigating  
8 agency or an investigated officer shall provide the other party to  
9 an administrative hearing with a list of witnesses that the agency  
10 or officer expects to testify at the administrative hearing and  
11 the substance of the testimony. A party is entitled to copies of  
12 any witness statements in the possession of the other party and an  
13 officer is entitled to a copy of the employing or investigating  
14 agency's investigative report, except that any references in a  
15 witness statement or investigative report that would reveal the  
16 identity of confidential informants need not be disclosed except  
17 upon order of the chief of police, sheriff, or his or her designee  
18 presiding over the administrative hearing for good cause shown.

19           Sec. 8. A session at which a formal statement is  
20 taken should be of reasonable duration and should give the  
21 officer reasonable periods for rest and personal necessities.  
22 When practicable, a session shall be held during the officer's  
23 regularly scheduled work shift. If a session is not held during an  
24 officer's regularly scheduled work shift, the officer shall be paid  
25 by the employing agency at the officer's current compensation rate

1 for time spent attending the session.

2           Sec. 9. A complete record of a session at which a  
3 formal statement is taken shall be made by electronic recording or  
4 otherwise. Upon written request of the officer whose statement is  
5 taken, a complete copy or transcript shall be made available to  
6 the officer without undue delay. The session may be electronically  
7 recorded by the investigating individual and the investigated  
8 officer.

9           Sec. 10. An officer whose formal statement is taken has  
10 the right to have a representative retained by the officer present  
11 during the session. The officer may request the presence of the  
12 representative at any time before or during a session. When a  
13 request under this section is made, no formal statement may be  
14 taken until a reasonable opportunity is provided for the officer to  
15 obtain the presence of the representative.

16           Sec. 11. Before a formal statement is taken, the officer  
17 shall be advised in writing or on the record that admissions made  
18 in the course of the formal statement may be used as evidence of  
19 misconduct or as a basis for discipline. No admissions made in  
20 the course of the formal statement may be used as evidence in a  
21 criminal prosecution against the officer.

22           Sec. 12. No employer may require an officer to produce or  
23 disclose the officer's personal financial records except pursuant  
24 to a valid search warrant or subpoena.

25           Sec. 13. No employing or investigating agency or any

1 governmental unit shall publicly release a photograph of an officer  
2 without the written permission of the officer, except that the  
3 agency or unit may display a photograph of an officer to a  
4 prospective witness as part of an investigation, and the agency or  
5 unit may provide a photograph of an officer to the investigating  
6 individual to display to a prospective witness as part of the  
7 investigation.

8           Sec. 14. No disciplinary letter or reprimand may be  
9 included in an officer's personnel record unless the officer has  
10 been given a copy of the letter or reprimand. No correspondence may  
11 be included in an officer's personnel record unless the officer has  
12 been given a copy of the correspondence. The officer shall sign a  
13 written acknowledgement of receipt for any copy of a disciplinary  
14 letter, reprimand, or correspondence in his or her personnel record  
15 that he or she receives.

16           Sec. 15. No officer may be discharged, disciplined, or  
17 threatened with discharge or discipline as retaliation for or  
18 solely by reason of the officer's exercise of the rights provided  
19 by the Peace Officer Discipline Procedures Act.

20           Sec. 16. The rights of an officer provided by the Police  
21 Officer Discipline Procedures Act are in addition to and do not  
22 diminish the rights and privileges of an officer that are provided  
23 under an applicable collective bargaining agreement or any other  
24 applicable law.

25           Sec. 17. A political subdivision or state agency that

1 violates the Peace Officer Discipline Procedures Act is liable to  
2 the officer for actual damages resulting from the violation, plus  
3 costs and reasonable attorney's fees. The political subdivision  
4 or the state is deemed to have waived any immunity under the  
5 Political Subdivisions Tort Claims Act or the State Tort Claims Act  
6 for a cause of action brought under the Peace Officer Discipline  
7 Procedures Act.