

FIRST REGULAR SESSION

HOUSE BILL NO. 1147

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE EALY.

1484H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 320, RSMo, by adding thereto fifteen new sections relating to firefighters, with a penalty provision.

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

Section A. Chapter 320, RSMo, is amended by adding thereto fifteen new sections, to
2 be known as sections 320.500, 320.502, 320.504, 320.506, 320.508, 320.510, 320.512,
3 320.514, 320.516, 320.518, 320.520, 320.522, 320.524, 320.526, and 320.528, to read as
4 follows:

320.500. The provisions of sections 320.500 to 320.528 shall be known and
2 referred to as the "Firefighters Procedural Bill of Rights Act".

320.502. For purposes of sections 320.500 to 320.528, the following terms mean:
2 (1) "Firefighter", any person, including a volunteer firefighter, employed by the
3 state or local governmental entity as an employer defined under subsection 1 of section
4 287.030 or otherwise serving as a member or officer of a fire department either for the
5 purpose of the prevention or control of fire or the underwater recovery of drowning
6 victims;

7 (2) "Punitive action", any action that may lead to dismissal, demotion,
8 suspension, reduction in salary, written reprimand, or transfer for purposes of
9 punishment.

320.504. 1. Except as otherwise provided in chapter 36, or whenever on duty or
2 in uniform, no firefighter shall be prohibited from engaging, or be coerced or required
3 to engage, in political activity.

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.

4 2. A firefighter shall not be prohibited from seeking election to, or serving as a
5 member of, the governing board of a school district or any local agency where the
6 firefighter is not employed including, but not limited to, any city, county, or political
7 subdivision thereof.

320.506. When any firefighter is under investigation and subjected to
2 interrogation by his or her commanding officer, or any other member designated by
3 the employing department or licensing or certifying agency, that could lead to punitive
4 action, the interrogation shall be conducted under the following conditions:

5 (1) The interrogation shall be conducted at a reasonable hour, at a time when the
6 firefighter is on duty, unless an imminent threat to the safety of the public requires
7 otherwise. If the interrogation does occur during off-duty time of the firefighter being
8 interrogated, the firefighter shall be compensated for any off-duty time in accordance
9 with regular department procedures. The firefighter's compensation shall not be
10 reduced as a result of any work missed while being interrogated;

11 (2) The firefighter under investigation shall be informed, prior to the
12 interrogation, of the rank, name, and command of the officer or other person in
13 charge of the interrogation; the interrogating officer; and all other persons to be present
14 during the interrogation. All questions directed to the firefighter under interrogation
15 shall be asked by and through no more than two interrogators at one time;

16 (3) The firefighter under investigation shall be informed of the nature of the
17 investigation prior to any interrogation;

18 (4) The interrogating session shall be for a reasonable period taking into
19 consideration the gravity and complexity of the issue being investigated. The person
20 under interrogation shall be allowed reasonable breaks to attend to his or her own
21 personal physical necessities;

22 (5) (a) The firefighter under interrogation shall not be subjected to offensive
23 language or threatened with punitive action. A promise of reward shall not be made as
24 an inducement to answer any question. The employer shall provide to, and obtain from,
25 an employee a formal grant of immunity from criminal prosecution, in writing, before
26 the employee may be compelled to respond to incriminating questions in an
27 interrogation. Subject to that grant of immunity, a firefighter refusing to respond to
28 questions or subject to interrogations shall be informed that the failure to answer
29 questions directly related to the investigation or interrogation may result in punitive
30 action;

31 (b) The employer shall not cause the firefighter under interrogation to be
32 subjected to visits by the press or news media without his or her express written consent
33 free of duress, and the firefighter's photograph, home address, telephone number, or

34 other contact information shall not be given to the press or news media without his or
35 her express written consent;

36 (6) A statement made during interrogation by a firefighter under duress,
37 coercion, or threat of punitive action shall not be admissible in any subsequent judicial
38 proceeding, subject to the following qualifications:

39 (a) This subdivision shall not limit the use of statements otherwise made by a
40 firefighter when the employing fire department is seeking civil service sanctions against
41 any firefighter;

42 (b) This subdivision shall not prevent the admissibility of statements otherwise
43 made by the firefighter under interrogation in any civil action, including administrative
44 actions, brought by that firefighter, or that firefighter's exclusive representative, arising
45 out of a disciplinary action;

46 (7) The complete interrogation of a firefighter may be recorded. If a recording is
47 made of the interrogation, the firefighter shall have access to the recording if any
48 further proceedings are contemplated or prior to any further interrogation at a
49 subsequent time. The firefighter shall be entitled to a transcribed copy of any notes
50 made by a stenographer or to any reports or complaints made by investigators or other
51 persons, except those portions that are otherwise required by law to be kept
52 confidential. Notes or reports that are deemed to be confidential shall not be entered
53 in the firefighter's personnel file. The firefighter being interrogated shall have the right
54 to bring his or her own recording device and record any and all aspects of the
55 interrogation;

56 (8) If, prior to or during the interrogation of a firefighter, it is contemplated that
57 he or she may be charged with a criminal offense, he or she shall be immediately
58 informed of his or her constitutional rights;

59 (9) Upon the filing of a formal written statement of charges, or whenever an
60 interrogation focuses on matters that may result in punitive action against any
61 firefighter, that firefighter, at his or her request, shall have the right to be represented
62 by a representative of his or her choice who may be present at all times during the
63 interrogation. The representative shall not be a person subject to the same
64 investigation. The representative shall not be required to disclose, or be subject to
65 any punitive action for refusing to disclose, any information received from the
66 firefighter under investigation for noncriminal matters;

67 (10) The provisions of this section shall not be construed to apply to counseling,
68 instruction, or informal verbal admonishment by, or other routine or unplanned contact
69 with, a supervisor or any other firefighter;

70 **(11) A firefighter shall not be loaned or temporarily reassigned to a location or**
71 **duty assignment if a firefighter in his or her department would not normally be sent to**
72 **that location or would not normally be given that duty assignment under similar**
73 **circumstances.**

320.508. 1. A firefighter shall not be subjected to punitive action, or denied
2 **promotion, or threatened with that treatment, because of the lawful exercise of the**
3 **rights granted under sections 320.500 to 320.528 or the exercise of any rights under any**
4 **existing administrative grievance procedure.**

5 **2. Punitive action or denial of promotion on grounds other than merit shall not**
6 **be undertaken by any employing department or licensing or certifying agency against**
7 **any firefighter who has successfully completed the probationary period without**
8 **providing the firefighter with an opportunity for administrative appeal.**

9 **3. A fire chief shall not be removed by a public agency or appointing authority**
10 **without providing that person with written notice, the reason or reasons for removal,**
11 **and an opportunity for administrative appeal. For purposes of this subsection, the**
12 **removal of a fire chief by a public agency or appointing authority, for the purpose of**
13 **implementing the goals or policies, or both, of the public agency or appointing authority,**
14 **or for reasons including, but not limited to, incompatibility of management styles or as a**
15 **result of change in administration, shall be sufficient to constitute reason. Nothing in**
16 **this subsection shall be construed to create a property interest, if one does not otherwise**
17 **exist by rule or law, in the job of fire chief.**

18 **4. Punitive action or denial of promotion on grounds other than merit shall not**
19 **be undertaken for any act, omission, or other allegation of misconduct if the**
20 **investigation of the allegation is not completed within one year of discovery by the**
21 **employing fire department or licensing or certifying agency. This one-year limitation**
22 **period shall apply only if the discovery of the act, omission, or other misconduct**
23 **occurred on or after August 28, 2023. If the employing department or licensing or**
24 **certifying agency determines that discipline may be taken, it shall complete its**
25 **investigation and notify the firefighter of its proposed disciplinary action within that**
26 **year, except in any of the following circumstances:**

27 **(1) If the firefighter voluntarily waives the one-year time period in writing, the**
28 **time period shall be tolled for the period of time specified in the written waiver;**

29 **(2) If the act, omission, or other allegation of misconduct is also the subject of a**
30 **criminal investigation or criminal prosecution, the time during which the criminal**
31 **investigation or criminal prosecution is pending shall toll the one-year period;**

32 **(3) If the investigation is a multi-jurisdictional investigation that requires a**
33 **reasonable extension for coordination of the involved agencies;**

34 (4) If the investigation involves an employee who is incapacitated or otherwise
35 unavailable;

36 (5) If the investigation involves a matter in civil litigation where the firefighter is
37 named as a party defendant, the one-year time period shall be tolled while that civil
38 action is pending;

39 (6) If the investigation involves a matter in criminal litigation in which the
40 complainant is a criminal defendant, the one-year time period shall be tolled during the
41 period of that defendant's criminal investigation and prosecution; or

42 (7) If the investigation involves an allegation of workers' compensation fraud on
43 the part of the firefighter.

44 5. If a predisciplinary response or grievance procedure is required or utilized,
45 the time for that response or procedure shall not be governed or limited by sections
46 320.500 to 320.528.

47 6. If, after investigation and any predisciplinary response or procedure, the
48 employing department or licensing or certifying agency decides to impose discipline,
49 that agency shall notify the firefighter in writing of its decision to impose discipline
50 within thirty days of its decision but not less than forty-eight hours prior to imposing the
51 discipline.

52 7. Notwithstanding the one-year time period specified in subsection 4 of this
53 section, an investigation may be reopened against a firefighter if both of the following
54 circumstances exist:

55 (1) Significant new evidence has been discovered that is likely to affect the
56 outcome of the investigation; and

57 (2) One of the following conditions exist:

58 (a) The evidence could not reasonably be discovered in the normal course of
59 investigation without resorting to extraordinary measures by the agency; or

60 (b) The evidence resulted from the firefighter's predisciplinary response or
61 procedure.

320.510. 1. An administrative appeal instituted by a firefighter under sections
2 320.500 to 320.528 shall be conducted in accordance with rules and procedures adopted
3 by the employing department or licensing or certifying agency that are in accordance
4 with chapter 536.

5 2. Notwithstanding subsection 1 of this section, if the employing department is
6 subject to a memorandum of understanding that provides for binding arbitration of
7 administrative appeals, the arbitrator or arbitration panel shall serve as the hearing
8 officer in accordance with chapter 536 and, notwithstanding any other provision of law,
9 that hearing officer's decision shall be binding. However, a memorandum of

10 understanding negotiated with an employing agency shall not control the process for
11 administrative appeals instituted with licensing or certifying agencies. Any
12 administrative appeal instituted with licensing or certifying agencies shall adhere to
13 the requirements prescribed in subsection 1 of this section.

2 **320.512.** A firefighter shall not have any comment adverse to his or her interest
3 entered in his or her personnel file, or any other file used for any personnel purposes by
4 his or her employer, without the firefighter having first read and signed the instrument
5 containing the adverse comment indicating he or she is aware of the comment.
6 However, the entry may be made if after reading the instrument, the firefighter refuses
7 to sign it. That fact shall be noted on that document and signed or initialed by the
8 firefighter.

2 **320.514.** A firefighter shall have thirty days to file a written response to any
3 adverse comment entered in his or her personnel file. The written response shall be
4 attached to, and shall accompany, the adverse comment.

2 **320.516. 1.** Every employer shall, at reasonable times and at reasonable
3 intervals, upon the request of a firefighter, during usual business hours, with no loss of
4 compensation to the firefighter, permit that firefighter to inspect personnel files that are
5 used or have been used to determine that firefighter's qualifications for employment,
6 promotion, additional compensation, or termination or other disciplinary action.

7 **2.** Each employer shall keep each firefighter's personnel file or a true and
8 correct copy thereof and shall make the file or copy thereof available within a
9 reasonable period of time after a request therefor by the firefighter.

10 **3.** If, after examination of the firefighter's personnel file, the firefighter believes
11 that any portion of the material is mistakenly or unlawfully placed in the file, the
12 firefighter may request, in writing, that the mistaken or unlawful portion be corrected
13 or deleted. Any request made pursuant to this subsection shall include a statement by
14 the firefighter describing the corrections or deletions from the personnel file requested
15 and the reasons supporting those corrections or deletions. A statement submitted
16 pursuant to this subsection shall become part of the personnel file of the firefighter.

17 **4.** Within thirty calendar days of receipt of a request made under subsection 3 of
18 this section, the employer shall either grant the firefighter's request or notify the officer
19 of the decision to refuse to grant the request. If the employer refuses to grant the
20 request, in whole or in part, the employer shall state in writing the reasons for refusing
21 the request and that written statement shall become part of the personnel file of the
22 firefighter.

2 **320.518. 1.** A firefighter shall not be compelled to submit to a lie detector test
3 against his or her will.

3 2. Disciplinary action or other recrimination shall not be taken against a
4 firefighter refusing to submit to a lie detector test.

5 3. No comment shall be entered anywhere in the investigator's notes or
6 anywhere else that the firefighter refused to take, or did not take, a lie detector test.

7 4. Testimony or evidence to the effect that the firefighter refused to take, or was
8 subjected to, a lie detector test shall not be admissible at a subsequent hearing, trial, or
9 proceeding, judicial or administrative.

10 5. For purposes of this section, "lie detector" means a polygraph, deceptograph,
11 voice stress analyzer, psychological stress evaluator, or any other similar device, whether
12 mechanical or electrical, that is used, or the results of which are used, for the purpose of
13 rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

 320.520. A firefighter shall not be required or requested for purposes of job
2 assignment or other personnel action to disclose any item of his or her property, income,
3 assets, source of income, debts, or personal or domestic expenditures, including those of
4 any member of his or her family or household, unless that information is otherwise
5 required to be furnished under state law or obtained pursuant to court order.

 320.522. A firefighter shall not have his or her locker or other space for storage
2 that may be assigned to him or her searched, except in his or her presence or with his or
3 her consent, or unless a valid search warrant has been obtained or unless he or she has
4 been notified that a search will be conducted. This section shall apply only to lockers or
5 other spaces for storage that are owned or leased by the employing department or
6 licensing or certifying agency.

 320.524. 1. It shall be unlawful for any employing department or licensing or
2 certifying agency to deny or refuse to any firefighter the rights and protections
3 guaranteed by sections 320.500 to 320.528.

4 2. The circuit court of the county of proper venue shall have initial jurisdiction
5 over any proceeding brought by any firefighter against any employing department or
6 licensing or certifying agency for alleged violations of sections 320.500 to 320.528.

7 3. (1) If the court finds that the employing department or licensing or certifying
8 agency has violated any of the provisions of sections 320.500 to 320.528, the court shall
9 render appropriate injunctive or other extraordinary relief to remedy the violation and
10 to prevent future violations of a like or similar nature including, but not limited to, the
11 granting of a temporary restraining order or preliminary or permanent injunction
12 prohibiting the employing department or licensing or certifying agency from taking any
13 punitive action against the firefighter.

14 (2) If the court finds that a bad faith or frivolous action or a filing for an
15 improper purpose has been brought under sections 320.500 to 320.528, the court may

16 order sanctions against the party filing the action, the party's attorney, or both,
17 pursuant to the applicable Missouri rules of civil procedure. Those sanctions may
18 include, but not be limited to, reasonable expenses, including attorney's fees, incurred
19 by a fire department as the court deems appropriate.

20 (3) Nothing in this subsection is intended to subject actions or filings under this
21 section to rules or standards that are different from those applicable to other civil
22 actions or filings subject to the Missouri rules of civil procedure.

23 4. In addition to the extraordinary relief afforded under sections 320.500 to
24 320.528, upon a finding by the court that a fire department, its employees, agents, or
25 assigns, with respect to acts taken within the scope of employment, maliciously violated
26 any provision of sections 320.500 to 320.528 with the intent to injure the firefighter, the
27 fire department shall, for each and every violation, be liable for a civil penalty not to
28 exceed twenty-five thousand dollars to be awarded to the firefighter whose right or
29 protection was denied and for reasonable attorney's fees as may be determined by the
30 court. If the court so finds, and there is sufficient evidence to establish actual damages
31 suffered by the firefighter whose right or protection was denied, the fire department
32 shall also be liable for the amount of the actual damages. Notwithstanding these
33 provisions, a fire department shall not be required to indemnify a contractor for the
34 contractor's liability under this subsection if there is, within the contract between the
35 fire department and the contractor, a hold harmless or similar provision that protects
36 the fire department from liability for the actions of the contractor. An individual shall
37 not be liable for any act for which a fire department is liable under this section.

2 320.526. Nothing in sections 320.500 to 320.528 shall in any way be construed to
3 limit the ability of any employment department, licensing or certifying agency, or any
4 firefighter to fulfill mutual aid agreements with other jurisdictions or agencies, and the
5 provisions of sections 320.500 to 320.528 shall not be construed in any way to limit any
6 jurisdictional or interagency cooperation under any circumstances where that activity is
deemed necessary or desirable by the jurisdictions or agencies involved.

2 320.528. The rights and protections described in sections 320.500 to 320.528 shall
3 only apply to a firefighter during events and circumstances involving the performance
of his or her official duties.

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