

SECOND REGULAR SESSION

HOUSE BILL NO. 1861

102ND GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SAULS.

3818H.011

DANA RADEMAN MILLER, Chief Clerk

AN ACT

To amend chapter 285, RSMo, by adding thereto one new section relating to investigations of firefighters.

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

Section A. Chapter 285, RSMo, is amended by adding thereto one new section, to be known as section 285.600, to read as follows:

285.600. 1. For purposes of this section, the following terms mean:

(1) "Firefighter", a paid or volunteer firefighter employed by a public agency and all first responders and ancillary service personnel, including emergency medical service workers, dispatchers, paramedics, emergency maintenance technicians, or emergency medical technicians (EMT) who are employed by a fire district, fire protection district, fire department, or fire authority. The term "firefighter" shall not include probationary employees;

(2) "Interrogation", any formal interview, inquiry, or questioning of any firefighter by the appointing authority's designee regarding misconduct or violation of policy;

(3) "Public concern", anything reasonably considered as relating to any matter of political, social, or other concern to a community;

(4) "Punitive action", any action that may lead to dismissal, demotion, suspension, reduction in salary, written reprimand, or transfer for purposes of punishment;

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.

16 (5) "Social media account", any electronic service or account or any electronic
17 content including, but not limited to, videos, photographs, blogs, video blogs, podcasts,
18 instant or text messages, email programs or services, online services, or website profiles.

19 2. When any firefighter is under investigation and is subject to interrogation, the
20 interrogation shall be conducted according to the following minimum standards:

21 (1) Prior to the commencement of the interrogation, the firefighter under
22 investigation shall be notified in writing of the nature of the investigation; the rank,
23 name, and command of the officer or other persons conducting the interrogation; the
24 identity of all persons present during such interrogation; the names of the
25 complainants; and the specific charges or violations being investigated;

26 (2) The interrogation shall be conducted at a reasonable hour and at a time when
27 the firefighter is on duty, unless an imminent threat to the safety of the public requires
28 otherwise. If the interrogation occurs during an off-duty time, the firefighter shall be
29 compensated at his or her regular rate of pay, as applicable;

30 (3) The session of interrogation shall be for a reasonable period of time, taking
31 into consideration the gravity and complexity of the issue or issues being investigated.
32 The firefighter under interrogation shall be allowed reasonable breaks to attend to his
33 or her own personal or physical necessities and to confer with union representatives and
34 legal counsel;

35 (4) The session of interrogation shall take place at the facility where the
36 investigating officer is assigned or at the facility that has jurisdiction over the place
37 where the incident under investigation allegedly occurred, as designated by the
38 investigating officer;

39 (5) All questions directed to a firefighter under interrogation shall be asked by
40 and through no more than two interrogators during the session of interrogation;

41 (6) The firefighter under interrogation, and any of the firefighter's
42 representatives, shall be allowed to take notes during the session of interrogation;

43 (7) A firefighter shall not be subjected to offensive language during an
44 interrogation and shall not be offered any incentive as an inducement to answering any
45 question during or before an interrogation;

46 (8) If, prior to or during the interrogation of a firefighter, it is determined that
47 the firefighter being interrogated could be charged with a criminal offense, such
48 firefighter shall be immediately informed of his or her relevant constitutional rights;

49 (9) Prior to the commencement of an interrogation that could result in criminal
50 charges, and during any interrogation in which it is discovered that criminal charges
51 could result, the firefighter under interrogation shall have the following rights and shall
52 be informed of such rights:

- 53 **(a) To be informed of the allegations involved;**
- 54 **(b) To be asked only questions that are specifically directed at and narrowly**
55 **tailored to the performance of the firefighter's official duties;**
- 56 **(c) To have statements made during the course of any interviews or**
57 **interrogations be used only as possible evidence of misconduct or as a possible basis**
58 **for seeking disciplinary action against the firefighter;**
- 59 **(d) To have statements made during the course of any interviews or**
60 **interrogations not be used against the firefighter in any subsequent criminal**
61 **proceeding, and to have the outcome of any of such statements not be used against**
62 **the firefighter in any subsequent criminal proceeding;**
- 63 **(e) To request that a person of the firefighter's choice be present to serve as a**
64 **witness, union representative if applicable, or legal counsel during any interviews or**
65 **interrogations; and**
- 66 **(f) To be informed that the firefighter may be subject to dismissal if he or she**
67 **refuses to answer questions relating to his or her performance of official duties;**
- 68 **(10) Prior to the commencement of a meeting between a firefighter and his or**
69 **her supervisor that may result in discipline, the firefighter's employer shall:**
- 70 **(a) Inform the firefighter that he or she has a right to have a union**
71 **representative present;**
- 72 **(b) Inform the firefighter that the meeting could result in discipline;**
- 73 **(c) Inform the firefighter that he or she has the right to take notes during the**
74 **meeting;**
- 75 **(d) Afford the firefighter an opportunity to meet privately with his or her union**
76 **representative before and during the meeting; and**
- 77 **(e) Inform the firefighter that if the employer denies the request for union**
78 **representation and continues to ask questions, the firefighter has a right to refuse to**
79 **answer any such questions and shall not be disciplined as a result of his or her refusal to**
80 **answer;**
- 81 **(11) Upon the filing of a formal written statement of charges, or whenever an**
82 **interrogation focuses on matters that may result in punitive action against any**
83 **firefighter, the firefighter under investigation shall, at his or her request, have the right**
84 **to be represented by a representative of his or her choice who may be present at all**
85 **times during any interrogation. The representative shall not be a person subject to the**
86 **same investigation. The representative shall not be required to disclose, and shall not be**
87 **subject to any punitive action for refusing to disclose, any information received from the**
88 **firefighter under investigation for noncriminal matters;**

89 **(12) A firefighter shall be entitled to the presence of his or her counsel or**
90 **representative, or both, at any interrogation in connection with an investigation. A**
91 **firefighter's representative or counsel shall be allowed to offer advice to the firefighter**
92 **and shall be allowed to ask questions and make statements at any interrogation in the**
93 **course of an investigation;**

94 **(13) The counsel or representative for a firefighter under investigation may call**
95 **witnesses to testify on the firefighter's behalf;**

96 **(14) Any recordings made during the investigation shall be transcribed;**

97 **(15) A firefighter's photograph, home address, telephone number, or other**
98 **contact information shall not be given to the press or news media without the**
99 **firefighter's written consent. All personally identifying information of the firefighter's**
100 **spouse, partner, children, or dependents shall be held confidential and protected from**
101 **release, including but not limited to, names, addresses, phone numbers, email addresses,**
102 **photographs, social media profiles or information, or any other contact information.**
103 **Any information regarding the firefighter's assets, income, debts or other financial**
104 **information shall be held confidential and protected from release; and**

105 **(16) A firefighter under investigation shall not be lent or temporarily reassigned**
106 **to any location where a firefighter in his or her department would not normally be sent**
107 **under similar circumstances. A firefighter under investigation shall not be given a duty**
108 **assignment that a firefighter in his or her department would not normally be given**
109 **under similar circumstances.**

110 **3. No firefighter shall be disciplined, demoted, dismissed, or subject to any**
111 **punitive action unless an investigation of such firefighter is first conducted in**
112 **accordance with this section. Any discipline, demotion, dismissal, or adverse action**
113 **taken against a firefighter without full compliance with the provisions of this section**
114 **shall be null and void.**

115 **4. No firefighter under investigation shall be subjected to any punitive action,**
116 **denied promotion, discharged, disciplined, or threatened with such because of the lawful**
117 **exercise of rights under this section or the lawful exercise of any rights under any**
118 **existing administrative grievance procedures, statutes, or constitutional provisions.**

119 **5. All firefighter investigations shall be completed within ninety days of their**
120 **commencement unless a firefighter under investigation is incapacitated or otherwise**
121 **unavailable. An investigation may be reopened if significant new evidence is discovered**
122 **that is likely to affect the outcome of an investigation. To reopen an investigation, the**
123 **newly discovered significant evidence shall be evidence that could not reasonably have**
124 **been discovered in the normal course of the initial investigation.**

125 **6. Upon the conclusion of an investigation, if the employer decides to impose**
126 **discipline on the firefighter, the firefighter shall be notified in writing of the employer's**
127 **decision within five days of such decision and at least forty-eight hours prior to the**
128 **actual imposition of discipline. In all other instances, the firefighter shall be notified in**
129 **writing of the employer's decision within thirty days of such decision.**

130 **7. Firefighters who are suspended without pay, demoted, terminated,**
131 **transferred, or placed on a status resulting in economic loss shall be entitled to a full**
132 **due process hearing or may choose to submit the matter to binding arbitration pursuant**
133 **to the provisions of chapter 435. The proceeding shall constitute a contested case under**
134 **chapter 536. The components of the hearing shall include, at a minimum:**

135 **(1) The right to be represented by an attorney or other individual of the**
136 **firefighter's choice during the hearing;**

137 **(2) The right of the firefighter or his or her attorney to conduct discovery prior**
138 **to the hearing. Depositions may be taken in the same manner and under the same**
139 **conditions as provided for in the Missouri civil rules of civil procedure for civil cases in**
140 **the circuit court. Subpoenas may be issued by the board conducting the hearing or by**
141 **the circuit court or the office of the clerk for the county where the employer has its**
142 **principal place of business;**

143 **(3) Seven days' notice of the hearing date and time;**

144 **(4) An opportunity to access and review documents, at least seven days in**
145 **advance of the hearing, that are in the employer's possession and that were used as a**
146 **basis for the disciplinary action, including access by the firefighter or his or her**
147 **representative to review the entirety of the firefighter's complete personnel records;**

148 **(5) The right of the firefighter or his or her attorney to present witnesses and**
149 **evidence in the firefighter's defense and a right to cross-examine any adverse witnesses**
150 **against the firefighter;**

151 **(6) The right to refuse to testify at the hearing if the firefighter is concurrently**
152 **facing criminal charges in connection with the same incident. A firefighter's decision**
153 **not to testify shall not result in additional internal charges or discipline;**

154 **(7) A complete record of the hearing shall be kept by the employer for purposes**
155 **of appeal. The record shall be provided to the firefighter or his or her attorney or**
156 **representative upon written request; and**

157 **(8) The entire record of the hearing shall remain confidential and shall not be**
158 **subject to disclosure under chapter 610 except by lawful subpoena or court order.**

159 **8. Any decision, order, or action taken following the hearing shall be in writing**
160 **and shall be accompanied by findings of fact. The findings shall consist of a concise**
161 **statement upon each issue in the case. A copy of the decision or order accompanying**

162 findings and conclusions along with the written action and right of appeal, if any, shall
163 be delivered or mailed promptly to the firefighter or to the firefighter's attorney or
164 representative of record.

165 **9.** The findings and decision or conclusion of a disciplinary investigation, appeal,
166 hearing, or other determination under this section shall not be used in any outside or
167 new disciplinary proceedings. Where the investigation or subsequent disciplinary
168 proceedings or appeals have reached a final decision and such decision, order, or action
169 is final and binding or final and appealable, no new investigation shall be opened into
170 the firefighter who was the subject of the final decision, order, or action if the
171 investigation involves the same offense arising out of the same action or incident that
172 gave rise to the initial investigation and where the possible outcome of such investigation
173 would result in double jeopardy for the firefighter.

174 **10.** An employer shall not, either directly or indirectly, require, request, suggest,
175 or cause any firefighter to disclose the username, password, or any other information
176 that would provide access to any of his or her personal social media accounts.

177 **11.** An employer shall not discharge, discipline, discriminate against in any
178 manner, deny employment or promotion to, or threaten to take any such action against
179 any firefighter who refuses, declines, or fails to disclose the username, password, or any
180 other information that would provide access to any of his or her personal social media
181 accounts.

182 **12.** An employer shall not discharge, discipline, discriminate against in any
183 manner, deny employment or promotion to, or threaten to take any such action against
184 any firefighter who does not report violations of social media policy to his or her
185 supervisor.

186 **13.** Employers shall defend and indemnify firefighters against civil claims made
187 against them in their official and individual capacities if the alleged conduct arose in the
188 course and scope of their obligations and duties as firefighters. This includes any
189 actions taken while off duty if such actions were taken under color of law. In the event a
190 firefighter is convicted of or pleads guilty to criminal charges arising out of the same
191 conduct, the employer shall no longer be obligated to defend and indemnify the
192 firefighter in connection with related civil claims.

193 **14.** When a firefighter is off duty and not speaking as part of his or her job
194 duties but is speaking as a citizen on a matter of public concern, he or she shall be
195 subject only to such restrictions on speech that are necessary for his or her employer to
196 operate efficiently and effectively.

197 **15.** A member of any fire department or fire protection district shall not be
198 prohibited from seeking public office and may:

- 199 **(1) Be a candidate for elected public office;**
200 **(2) Solicit votes and campaign funds if he or she is off duty or not in uniform;**
201 **and**
202 **(3) Engage in political activity if he or she is off duty or not in uniform.**
- 203 **16. No public funds or public employees shall be used to investigate a**
204 **firefighter's lawful off-duty behavior.**
- 205 **17. Disciplinary investigations, hearings, or other proceedings under this section**
206 **shall not be conducted frivolously or with the intention to harass a firefighter.**
- 207 **18. A firefighter shall not have his or her locker or other assigned space for**
208 **storage searched except in his or her presence or with his or her consent, unless a valid**
209 **search warrant has been obtained. This subsection shall apply only to searches of**
210 **lockers and other spaces for storage that are owned by the firefighter's employer.**
211 **Firefighters shall be notified in writing of the employer's ownership of such assigned**
212 **spaces and of the employer's rights to search those spaces subject to the provisions of**
213 **this subsection.**
- 214 **19. The provisions of this section shall not be construed to diminish any rights or**
215 **privileges of firefighters that are guaranteed to all citizens by the Constitution of the**
216 **United States or by the laws of the United States or the laws of this state, or to limit the**
217 **granting of any other broader rights by law, ordinance, or other rule. Such other rights**
218 **shall include, but are not limited to, the right to bring suit against any person, group of**
219 **persons, association, organization, or corporation for damages suffered during the**
220 **performance of a firefighter's official duties and the right to bring suit for any violation**
221 **or modification of the firefighter's existing rights, civil or otherwise, relating to the**
222 **performance of the firefighter's official duties.**

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