

HOUSE BILL NO. 951

101ST GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE SAULS.

2079H.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. The term "firefighter" shall include, but not be limited to, any firefighter who is a paramedic or emergency medical technician (EMT), but 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 fairly 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;

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

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

(1) Prior to the commencement of the interrogation, the firefighter under investigation shall be notified in writing of the nature of the investigation; the rank, name,

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.

18 and command of the officer or other persons conducting the interrogation; the identity of
19 all persons present during such interrogation; the names of the complainants; and the
20 specific charges or violations being investigated;

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

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

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

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

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

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

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

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

48 (a) To be informed of the allegations involved;

49 (b) To be asked only questions that are specifically directed at and narrowly
50 tailored to the performance of the firefighter's official duties;

51 (c) To have statements made during the course of any interviews or interrogations
52 be used only as possible evidence of misconduct or as a possible basis for seeking
53 disciplinary action against the firefighter;

54 (d) To have statements made during the course of any interviews or interrogations
55 not be used against the firefighter in any subsequent criminal proceeding, and to have the
56 fruits of any of such statements not be used against the firefighter in any subsequent
57 criminal proceeding;

58 (e) To request that a person of the firefighter's choice be present to serve as a
59 witness, union representative if applicable, or legal counsel during any interviews; and

60 (f) To be informed that the firefighter may be subject to dismissal if he or she
61 refuses to answer questions relating to his or her performance of official duties;

62 (10) Prior to the commencement of a meeting between a firefighter and his or her
63 supervisor that may result in discipline, the firefighter's employer shall:

64 (a) Inform the firefighter that he or she has a right to have a union representative
65 present;

66 (b) Inform the firefighter that the meeting could result in discipline;

67 (c) Inform the firefighter that he or she has the right to take notes during the
68 meeting;

69 (d) Afford the firefighter an opportunity to meet privately with his or her union
70 representative before and during the meeting; and

71 (e) Inform the firefighter that if the employer denies the request for union
72 representation and continues to ask questions, the firefighter has a right to refuse to
73 answer any such questions and shall not be disciplined as a result of his or her refusal to
74 answer;

75 (11) Upon the filing of a formal written statement of charges, or whenever an
76 interrogation focuses on matters that may result in punitive action against any firefighter,
77 the firefighter under investigation shall, at his or her request, have the right to be
78 represented by a representative of his or her choice who may be present at all times during
79 any interrogation. The representative shall not be a person subject to the same
80 investigation. The representative shall not be required to disclose, and shall not be subject
81 to any punitive action for refusing to disclose, any information received from the firefighter
82 under investigation for noncriminal matters;

83 (12) A firefighter shall be entitled to the presence of his or her counsel or
84 representative, or both, at any interrogation in connection with an investigation. A
85 firefighter's representative or counsel shall be allowed to offer advice to the firefighter and
86 shall be allowed to ask questions and make statements at any interrogation in the course
87 of an investigation;

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

90 (14) A firefighter's photograph, home address, telephone number, or other contact
91 information shall not be given to the press or news media without the firefighter's written
92 consent; and

93 (15) A firefighter under investigation shall not be loaned or temporarily reassigned
94 to any location where a firefighter in his or her department would not normally be sent
95 under similar circumstances. A firefighter under investigation shall not be given a duty
96 assignment that a firefighter in his or her department would not normally be given under
97 similar circumstances.

98 3. No firefighter shall be disciplined, demoted, dismissed, or subject to any punitive
99 action unless an investigation is conducted in accordance with this section. Any discipline,
100 demotion, dismissal, or adverse action taken against a firefighter without full compliance
101 with the provisions of this section shall be completely null and void.

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

106 5. All firefighter investigations shall be completed within three months of their
107 commencement unless a firefighter under investigation is incapacitated or otherwise
108 unavailable. An investigation may be reopened if significant new evidence is discovered
109 that is likely to affect the outcome of an investigation. To reopen an investigation, the
110 newly discovered significant evidence shall be evidence that could not reasonably have
111 been discovered in the normal course of the initial investigation.

112 6. Upon the conclusion of an investigation, if the employer decides to impose
113 discipline on the firefighter, the firefighter shall be notified in writing of the employer's
114 decision within five days of such decision and at least forty-eight hours prior to the actual
115 imposition of discipline.

116 7. An employer shall not, either directly or indirectly, require, request, suggest, or
117 cause any firefighter to disclose the username, password, or any other information that
118 would provide access to any of his or her personal social media accounts.

119 8. An employer shall not discharge, discipline, discriminate against in any manner,
120 or deny employment or promotion to, or threaten to take any such action against, any
121 firefighter who refuses, declines, or fails to disclose the username, password, or any other
122 information that would provide access to any of his or her personal social media accounts.

123 9. An employer shall not discharge, discipline, discriminate against in any manner,
124 or deny employment or promotion to, or threaten to take any such action against, any
125 firefighter who does not report violations of social media policy to his or her supervisor.

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

130 **11. A member of any fire department or fire protection district shall not be**
131 **prohibited from seeking public office and may:**

132 **(1) Be a candidate for elected public office;**

133 **(2) Solicit votes and campaign funds if he or she is off duty or not in uniform; and**

134 **(3) Engage in political activity if he or she is off duty or not in uniform.**

135 **12. A firefighter shall not have his or her locker or other assigned space for storage**
136 **searched except in his or her presence or with his or her consent, unless a valid search**
137 **warrant has been obtained. This subsection shall apply only to searches of lockers and**
138 **other spaces for storage that are owned by the firefighter's employer. Firefighters shall be**
139 **notified in writing of the employer's ownership of such assigned spaces and of the**
140 **employer's rights to search those spaces subject to the provisions of this subsection.**

141 **13. The provisions of this section shall not be construed to diminish any rights or**
142 **privileges of firefighters that are guaranteed to all citizens by the Constitution of the**
143 **United States or by the laws of the United States or the laws of this state, or to limit the**
144 **granting of any other broader rights by law, ordinance, or other rule. Such other rights**
145 **shall include, but are not limited to, the right to bring suit against any person, group of**
146 **persons, association, organization, or corporation for damages suffered during the**
147 **performance of a firefighter's official duties and the right to bring suit for any violation**
148 **or modification of the firefighter's existing rights, civil or otherwise, relating to the**
149 **performance of the firefighter's official duties.**

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