

1 A bill to be entitled
2 An act relating to firefighters; amending s. 112.82, F.S.;
3 requiring that all identifiable witnesses to a complaint
4 against a firefighter be interviewed, whenever possible,
5 prior to the interrogation of the accused firefighter;
6 requiring that the accused firefighter be furnished with
7 the complaint and witness statements prior to any
8 interrogation of that firefighter; providing for waiver of
9 the right to review witness statements by a firefighter;
10 prohibiting a firefighter from being threatened with
11 transfer, dismissal, or disciplinary action as an
12 inducement to answer any questions during an
13 interrogation; providing requirements with respect to the
14 provision of copies of recordings made during the formal
15 interrogation of a firefighter; prohibiting a firefighter
16 under interrogation from being subjected to visits by the
17 press or news media without his or her express written
18 consent; providing that certain statements made during an
19 interrogation are not admissible in any subsequent
20 judicial proceeding; prohibiting a firefighter from being
21 loaned or temporarily reassigned under certain
22 circumstances; prohibiting a firefighter from being
23 subjected to punitive action or denied promotion, or
24 threatened with such treatment, for exercising certain
25 rights; providing a statute of limitations for certain
26 acts, omissions, or other allegations of misconduct;
27 providing discipline notice requirements; providing
28 exceptions to the notice requirement; authorizing the

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29 reopening of an investigation under certain circumstances;
30 providing a firefighter with certain rights relating to
31 his or her personnel file; requiring employers to permit
32 firefighters to inspect personnel files at reasonable
33 times and at reasonable intervals at the firefighter's
34 request; providing personnel file requirements;
35 authorizing a firefighter to request corrections to his or
36 her file; providing requirements for employers receiving
37 such requests; prohibiting a firefighter from being
38 compelled to submit to a lie detector test; prohibiting a
39 firefighter from being forced to disclose specified
40 personal information; providing liability; providing an
41 exception; providing a civil penalty; providing for
42 attorney's fees; creating s. 112.825, F.S.; providing
43 firefighters with certain rights relating to dismissal,
44 demotion, transfer, reassignment, or other personnel
45 action which might result in loss of pay or benefits or
46 which might otherwise be considered a punitive measure;
47 providing for the production of an investigative report
48 and supporting documents in a disciplinary case against a
49 firefighter to that firefighter prior to the imposition of
50 certain disciplinary actions; providing an effective date.

51
52 Be It Enacted by the Legislature of the State of Florida:

53
54 Section 1. Section 112.82, Florida Statutes, is amended to
55 read:

56 112.82 Rights of firefighters.--

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57 (1) Whenever a firefighter is subjected to an
58 interrogation, such interrogation shall be conducted pursuant to
59 the terms of this subsection ~~section~~.

60 (a) ~~(1)~~ The interrogation shall take place at the facility
61 where the investigating officer is assigned, or at the facility
62 which has jurisdiction over the place where the incident under
63 investigation allegedly occurred, as designated by the
64 investigating officer.

65 (b) ~~(2)~~ A ~~No~~ firefighter may not ~~shall~~ be subjected to
66 interrogation without first receiving written notice of
67 sufficient detail of the investigation in order to reasonably
68 apprise the firefighter of the nature of the investigation. The
69 firefighter shall be informed beforehand of the names of all
70 complainants. All identifiable witnesses shall be interviewed,
71 whenever possible, prior to the beginning of the interrogation
72 of the firefighter. The complaint and all witness statements
73 shall be provided to the firefighter who is the subject of the
74 complaint prior to the beginning of any interrogation of that
75 firefighter. A firefighter, after being informed of the right to
76 review witness statements, may voluntarily waive the provisions
77 of this paragraph and provide a voluntary statement at any time.

78 (c) ~~(3)~~ All interrogations shall be conducted at a
79 reasonable time of day, preferably when the firefighter is on
80 duty, unless the importance of the interrogation or
81 investigation is of such a nature that immediate action is
82 required.

83 (d) ~~(4)~~ The firefighter under investigation shall be
84 informed of the name, rank, and unit or command of the officer

85 in charge of the investigation, the interrogators, and all
86 persons present during any interrogation.

87 ~~(e)(5)~~ Interrogation sessions shall be of reasonable
88 duration and the firefighter shall be permitted reasonable
89 periods for rest and personal necessities.

90 ~~(f)(6)~~ The firefighter being interrogated may ~~shall~~ not be
91 subjected to offensive language; threatened with transfer,
92 dismissal, or disciplinary action; or offered any incentive as
93 an inducement to answer any questions.

94 ~~(g)(7)~~ A complete record of any interrogation shall be
95 made, and if a transcript of such interrogation is made, the
96 firefighter under investigation shall be entitled to a copy
97 without charge. Such record may be electronically recorded. Upon
98 the request of the interrogated firefighter, a copy of any such
99 recording of the interrogation session must be made available to
100 the interrogated firefighter no later than 72 hours, excluding
101 holidays and weekends, following the interrogation.

102 ~~(h)(8)~~ An employee or officer of an employing agency may
103 represent the agency, and an employee organization may represent
104 any member of a bargaining unit desiring such representation in
105 any proceeding to which this part applies. If a collective
106 bargaining agreement provides for the presence of a
107 representative of the collective bargaining unit during
108 investigations or interrogations, such representative shall be
109 allowed to be present.

110 (i) The employer may not cause the firefighter under
111 interrogation to be subjected to visits by the press or news
112 media without his or her express written consent free of duress.

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113 (j) A statement made during interrogation by a firefighter
114 under duress, coercion, or threat of punitive action is not
115 admissible in any subsequent judicial proceeding. This paragraph
116 does not limit the use of statements otherwise made by a
117 firefighter when the employing fire department is seeking civil
118 service sanctions against any firefighter, including
119 disciplinary action.

120 (2)-(9) A ~~No~~ firefighter may not ~~shall~~ be discharged,
121 disciplined, demoted, denied promotion or seniority,
122 transferred, reassigned, or otherwise disciplined or
123 discriminated against in regard to his or her employment, or be
124 threatened with any such treatment as retaliation for or by
125 reason solely of his or her exercise of any of the rights
126 granted or protected by this part.

127 (3) A firefighter may not be loaned or temporarily
128 reassigned to a location or duty assignment if a firefighter in
129 his or her department would not normally be sent to that
130 location or would not normally be given that duty assignment
131 under similar circumstances.

132 (4) A firefighter may not be subjected to punitive action
133 or denied promotion, or threatened with such treatment, because
134 of the lawful exercise of the rights granted under this section
135 or the exercise of any rights under any existing administrative
136 grievance procedure.

137 (5) Punitive action or denial of promotion on grounds
138 other than merit may not be undertaken for any act, omission, or
139 other allegation of misconduct if the investigation of the
140 allegation is not completed within 1 year after discovery by the

141 employing fire department or licensing or certifying agency.
 142 This 1-year limitation period applies only if the discovery of
 143 the act, omission, or other allegation of misconduct occurred on
 144 or after July 1, 2009.

145 (6) (a) If the employing department or licensing or
 146 certifying agency determines that discipline may be taken, it
 147 shall complete its investigation and notify the firefighter of
 148 its proposed disciplinary action within 1 year, except in any of
 149 the following circumstances:

150 1. If the firefighter voluntarily waives the 1-year time
 151 period in writing, in which case the time period shall be tolled
 152 for the period of time specified in the written waiver.

153 2. If the act, omission, or other allegation of misconduct
 154 is also the subject of a criminal investigation or criminal
 155 prosecution, in which case the time during which the criminal
 156 investigation or criminal prosecution is pending shall toll the
 157 1-year time period.

158 3. If the investigation is a multijurisdictional
 159 investigation that requires a reasonable extension for
 160 coordination of the involved agencies.

161 4. If the investigation involves an employee who is
 162 incapacitated or otherwise unavailable.

163 5. If the investigation involves a matter in civil
 164 litigation in which the firefighter is named as a party
 165 defendant, in which case the 1-year time period shall be tolled
 166 while that civil action is pending.

167 6. If the investigation involves a matter in criminal
 168 litigation in which the complainant is a criminal defendant, in

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169 which case the 1-year time period shall be tolled during the
170 period of that defendant's criminal investigation and
171 prosecution.

172 7. If the investigation involves an allegation of workers'
173 compensation fraud on the part of the firefighter.

174 8. If a predisciplinary response or grievance procedure is
175 required or utilized, in which case the time for that response
176 or procedure shall not be governed or limited by this
177 subsection.

178 (b) If, after investigation and any predisciplinary
179 response or procedure, the employing department or licensing or
180 certifying agency decides to impose discipline, such department
181 or agency shall notify the firefighter in writing of its
182 decision to impose discipline within 30 days after its decision
183 but not less than 48 hours prior to imposing the discipline.

184 (7) Notwithstanding the 1-year time period specified in
185 subsection (5), an investigation may be reopened against a
186 firefighter if both of the following circumstances exist:

187 (a) Significant new evidence has been discovered that is
188 likely to affect the outcome of the investigation.

189 (b) One of the following conditions applies:

190 1. The evidence could not reasonably have been discovered
191 in the normal course of investigation without resorting to
192 extraordinary measures by the agency; or

193 2. The evidence resulted from the firefighter's
194 predisciplinary response or procedure.

195 (8) (a) A firefighter may not have any comment adverse to
196 his or her interest entered in his or her personnel file, or any

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197 other file used for any personnel purposes by his or her
198 employer, without the firefighter having first read and signed
199 the instrument containing the adverse comment indicating he or
200 she is aware of the comment. However, the entry may be made if
201 after reading the instrument the firefighter refuses to sign it.
202 Refusal to sign the instrument shall be noted on the instrument
203 and signed or initialed by the firefighter.

204 (b) A firefighter has 30 days within which to file a
205 written response to any adverse comment entered in his or her
206 personnel file. The written response shall be attached to, and
207 shall accompany, the adverse comment.

208 (9) Every employer shall, at reasonable times and at
209 reasonable intervals, upon the request of a firefighter, during
210 usual business hours, with no loss of compensation to the
211 firefighter, permit that firefighter to inspect personnel files
212 that are used or have been used to determine that firefighter's
213 qualifications for employment, promotion, additional
214 compensation, or termination or other disciplinary action.

215 (10) Each employer shall keep each firefighter's personnel
216 file or a true and correct copy thereof and shall make the file
217 or copy thereof available within a reasonable period of time
218 after a request therefor by the firefighter.

219 (a) If, after examination of the firefighter's personnel
220 file, the firefighter believes that any portion of the material
221 is mistakenly or unlawfully placed in the file, the firefighter
222 may request, in writing, that the mistaken or unlawful portion
223 be corrected or deleted. Any request made pursuant to this
224 paragraph shall include a statement by the firefighter

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225 describing the corrections or deletions from the personnel file
226 requested and the reasons supporting such corrections or
227 deletions. A statement submitted pursuant to this paragraph
228 shall become part of the personnel file of the firefighter.

229 (b) Within 30 calendar days after receipt of a request
230 made pursuant to paragraph (a), the employer shall either grant
231 the firefighter's request or notify the firefighter of the
232 decision to refuse to grant the request. If the employer refuses
233 to grant the request, in whole or in part, the employer shall
234 state in writing the reasons for refusing the request, and the
235 written statement shall become part of the personnel file of the
236 firefighter.

237 (11) A firefighter may not be compelled to submit to a lie
238 detector test against his or her will.

239 (a) Disciplinary action or other recrimination may not be
240 taken against a firefighter refusing to submit to a lie detector
241 test.

242 (b) A comment may not be entered in the investigator's
243 notes or anywhere else that the firefighter refused to take, or
244 did not take, a lie detector test.

245 (c) Testimony or evidence to the effect that the
246 firefighter refused to take, or was subjected to, a lie detector
247 test is not admissible at a subsequent hearing, trial, or
248 proceeding, judicial or administrative.

249 (12) A firefighter may not be required or requested for
250 purposes of job assignment or other personnel action to disclose
251 any item of his or her property, income, assets, source of
252 income, debts, or personal or domestic expenditures, including

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253 those of any member of his or her family or household, unless
254 such information is otherwise required to be furnished under
255 state law or obtained pursuant to court order.

256 (13) In addition to the relief afforded by this section,
257 upon a finding by a court that a fire department or its
258 employees, agents, or assigns, with respect to acts taken within
259 the scope of employment, maliciously violated any provision of
260 this section with the intent to harm the firefighter, the fire
261 department is, for each and every violation, liable for a civil
262 penalty not to exceed \$25,000 to be awarded to the firefighter
263 whose right or protection was denied and for reasonable
264 attorney's fees as may be determined by the court. If the court
265 so finds, and there is sufficient evidence to establish actual
266 damages suffered by the firefighter whose right or protection
267 was denied, the fire department is also liable for the amount of
268 the actual damages. Notwithstanding these provisions, a fire
269 department may not be required to indemnify a contractor for the
270 contractor's liability pursuant to this subsection if there is,
271 within the contract between the fire department and the
272 contractor, an agreement to hold the fire department harmless
273 for the actions of the contractor. An individual is not liable
274 for any act for which a fire department is liable under this
275 section.

276 Section 2. Section 112.825, Florida Statutes, is created
277 to read:

278 112.825 Notice of disciplinary action.--

279 (1) A dismissal, demotion, transfer, reassignment, or
280 other personnel action which might result in loss of pay or

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281 benefits or which might otherwise be considered a punitive
282 measure may not be taken against a firefighter unless the
283 firefighter is notified of the action and the reasons therefor
284 prior to the effective date of the action.

285 (2) Whenever a firefighter is subject to disciplinary
286 action consisting of suspension with loss of pay, demotion, or
287 dismissal, the firefighter shall, upon request, be provided with
288 a complete copy of the investigative report and supporting
289 documents and with the opportunity to address the findings in
290 the report with the employing agency prior to the imposition of
291 the disciplinary action consisting of suspension with loss of
292 pay, demotion, or dismissal.

293 Section 3. This act shall take effect July 1, 2009.