SPONSOR: Rep. D. Short & Rep. Carson & Sen. Pettyjohn & Sen. Townsend
Reps. Hensley, Ramone, Hilovsky; Sens. Gay, Hocker, Hoffner, Wilson, Brown, Buckson, Hansen, Huxtable, Lawson, Lockman, Mantzavinos, S. McBride, Paradee, Pinkney, Poore, Richardson, Sokola, Sturgeon, Walsh

HOUSE OF REPRESENTATIVES
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 411
AS AMENDED BY
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO THE MEMBERSHIP REQUIREMENTS FOR VOLUNTEER FIREFIGHTERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE:

Section 1. Amend § 6647, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6647. Membership requirements for volunteer firefighters.

(a) ~~An~~ A member or an applicant for membership in a Delaware volunteer fire department who has been convicted of or, had that member or applicant been charged as a juvenile, adjudicated delinquent of any of the ~~following~~ crimes listed under paragraphs (b)(1) and (b)(2) of this section, is prohibited from serving as a firefighter in this ~~State:~~ State.

~~(1) A felony involving sexual misconduct where the victim's failure to affirmatively consent is an element of the crime, such as forcible rape;~~

~~(2) A felony involving the sexual or physical abuse of a child or of a person who is elderly or impaired, such as sexual misconduct with a child, sexual exploitation of a child, making or distributing child pornography, incest involving a child, or assault on a person who is elderly or impaired;~~

~~(3) A crime in which the victim is an out-of-hospital patient or a patient or resident of a healthcare facility, including abuse, neglect, or theft from or financial exploitation of a person entrusted to the care or protection of the applicant;~~

~~(4) Arson in the third, second, or first degree; reckless burning or exploding; cross or religious symbol burning; or any crime in which the applicant intentionally or recklessly started a fire or caused an explosion, or attempted or conspired to do so;~~

~~(5) A law of another state, territory, or jurisdiction which is the same or equivalent to the offenses described in paragraphs (a)(1) through (4) of this section.~~

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LC : HVW : CBM : 5081520244

(b) Membership in a Delaware volunteer fire department, after a state and federal background check, must be denied or revoked if the applicant or member has been convicted or, if that applicant or member was charged as a juvenile, has been adjudicated delinquent of any of the following crimes, except in extraordinary circumstances:

(1) Any crime for which the applicant is currently incarcerated, on work release, on probation, or on parole;

(2) Any crime in the following categories, unless at least 5 years have passed since the applicant's or member's conviction or at least 5 years have passed since the applicant or member was released from custodial confinement, whichever occurs later:

a. A serious crime of violence against a person, such as assault with a dangerous weapon, aggravated assault, murder or attempted murder, manslaughter (other than involuntary manslaughter), kidnapping, or robbery of any degree;

b. A crime involving a controlled substance or designer drug, including unlawful possession or distribution of, or intent to unlawfully possess or distribute, a controlled substance in Schedules I through V of the Uniform Controlled Substances Act of Chapter 47 of this title;

c. A serious crime involving property, such as burglary, embezzlement, or insurance fraud;

d. Any crime involving sexual misconduct;

e. A crime of another state, territory, or jurisdiction which is the same or equivalent to the offenses described in paragraphs (b)(2)a. through d. of this section.

(3) In extraordinary circumstances, membership may be granted under subsection (b) of this section only if the applicant or member establishes by clear and convincing evidence that the applicant's membership or member's continued membership will not jeopardize public health or safety.

(c) No applicant for membership in a Delaware volunteer fire department shall be charged any fee or cost for obtaining criminal history information from the State Bureau of Identification for the application.

(d) An applicant for membership in a Delaware volunteer fire department who knowingly provides false, incomplete, or inaccurate criminal history information, or who otherwise knowingly violates a provision of this subchapter, is guilty of a class G felony. In addition to a term of imprisonment of up to 2 years, the court shall impose a fine of no less than $1,000 which may not be suspended.

(e) The State Fire Prevention Commission shall adopt regulations to implement the provisions of this subchapter. The regulations must include, as part of the application form for membership in a Delaware volunteer fire department, a dated and signed statement by the applicant swearing to or affirming the following, if the following is true. If it is not true, the applicant must explain in writing what is not true and why it is not true.

"I have never been convicted of an offense that constitutes any of the crimes set forth in 16 Del. C. § 6647 or any similar offense under any federal, state, or local law. I hereby certify that the statements contained in this application are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false statement in this application, I am subject to penalties prescribed by law, including denial or revocation of membership in the volunteer fire department and a mandatory fine of at least $1,000 or a term of imprisonment of up to 2 years, or both."

(f) An applicant for membership in a Delaware volunteer fire department who is denied membership or whose membership is revoked because of the requirements of this subchapter may appeal the denial or revocation to the State Fire Prevention Commission within 15 days of written notification of the denial or revocation by the volunteer fire department. An appeal under this subsection must be held in accordance with the appropriate provisions of the Administrative Procedures Act, Chapter 101 of Title 29, and is subject to judicial review under subchapter V of Chapter 101 of Title 29.

Section 2. Amend § 6604, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6604. State Fire Prevention Commission — Powers and duties.

The State Fire Prevention Commission shall have authority to:

(17) Investigate injuries to firefighters incurred in the line of duty, to issue subpoenas in furtherance of such investigations, and to issue reports of its findings and conclusions with respect to such investigations.

(18) If an individual obtains a background check under § 6647(b) of this title, the State Bureau of Identification shall provide all of the following to the Commission:

a. Any subsequent state criminal history record information of the individual.

b. Any subsequent criminal history record information of the individual available through the Rap Back System as defined under § 8502 of Title 11, if the Rap Back System is available.

~~(18)~~ (19) Perform all acts and do all things necessary or convenient to carry out the power granted herein.