SPONSOR: Sen. Hoffner & Rep. Romer & Rep. Harris & Rep. Carson & Rep. D. Short
Reps. Cooke, K. Williams

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL NO. 325
AS AMENDED BY
SENATE AMENDMENT NO. 1
AND
SENATE AMENDMENT NO. 2
AND
HOUSE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 16 OF THE DELAWARE CODE RELATING TO FIRE PREVENTION.

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

Section 1. Amend Chapter 66, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and by redesignating accordingly:

§ 6601A. Definitions.

As used in this chapter:

(1) "Applicant" means an individual who seeks to serve as a member under this chapter.

(2) "Approved subsidiary" includes an auxiliary operating under the same tax identification number as a volunteer fire or ambulance company.

(3) "Commission", capitalized, means the State Fire Prevention Commission.

(4) "EMS company" means an emergency medical services company in this State.

(5) "Entity", capitalized, means a fire company, ambulance company, approved subsidiary of a volunteer fire company or ambulance company, the Smyrna American Legion Ambulance, the Georgetown American Legion Ambulance, or the Mid-Sussex Rescue Squad.

(6) "FBI" means the Federal Bureau of Investigation.

(7) "Fire company" means a fire company, fire department, or substation in this State that the Commission authorizes under § 6607 of this title or Title 1 DE Admin. Code 709.

(8) "Member" means an individual who is a member of a fire company or EMS company as a firefighter, regardless of whether the individual's service is voluntary or the individual receives compensation.

(9) "SBI" means the State Bureau of Identification.

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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 and by redesignating accordingly:

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

~~The State Fire Prevention Commission shall have authority to:~~ The Commission shall do all of the following:

(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.~~

Receive and review each criminal history record under § 6647A of this title to assure compliance with this chapter and notify the appropriate Entity if either of the following occur:

a. An applicant or member violates this chapter.

b. An applicant's or member's criminal history records under § 6647A of this title disqualifies the applicant or member from membership with an Entity.

(23) Receive and review notification of an arrest of an applicant or member.

(24) Notify the appropriate Entity that an applicant or member is arrested, if the arrest is related to an offense listed under § 6647(a) of this title.

(27) Promulgate regulations to implement §§ 6647 and 6647A of this title under Regulation 709 of Title 1 of the Delaware Administrative Code.

Section 3. Amend § 6646, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6646. Definitions. [Repealed.]

~~"Member" means a volunteer firefighter of a Delaware volunteer fire department, as certified by the Delaware State Fire Prevention Commission.~~

Section 4. 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.~~ Review of criminal history records.

(a) ~~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 crimes listed under paragraphs (b)(1) and (b)(2) of this section, is prohibited from serving as a firefighter in this State.~~

~~(1) (5) [Repealed.]~~

(1) An applicant or member is prohibited from serving as member in this State if the applicant or member has been convicted of, charged as a juvenile with, or adjudicated delinquent as a juvenile relating to any of the following:

a. A violent felony as designated in § 4201 of Title 11.

b. A local, state, or federal criminal offense involving any of the following:

1. Theft.

2. Embezzlement.

3. Fraud.

4. Reckless burning.

5. Endangering**,** resisting arrest, or offensive touching when the victim is acting in the lawful performance of the victim's duty as any of the following:

A. A law-enforcement officer, including a Delaware State Fire Police Officer.

B. An employee of a hospital or nursing home.

C. A physician, medical professional, emergency medical responder (EMR), emergency medical technician (EMT), advanced EMT, or paramedic.

D. A correctional officer.

E. A member.

6. A sex crime, including sexual harassment, unlawful sexual contact of any degree, or lewdness in the first degree.

7. 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.

8. A crime of another state, territory, or jurisdiction which is the same or equivalent to a crime listed in this subsection (a) of this section.

(2) An applicant or member is prohibited from serving as member in this State if the applicant or member is required by law to register as a sex offender.

(b) Membership in a Delaware ~~volunteer fire department,~~ Entity, after a state and federal background check, ~~must be~~ is 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~~ under subsection (a) of this section unless extraordinary ~~circumstances:~~ circumstances exist.

~~(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)~~ (1) In extraordinary circumstances, as defined under Regulation 709 of Title 1 of the Delaware Administrative Code, membership may be granted under this 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.

(2) The Commission may review on its own an applicant's or member's membership to determine if extraordinary circumstances exist, or the applicant or member may apply for a waiver based on extraordinary circumstances. The applicant or member may apply for a waiver if the Entity agrees to participate in the applicant's or member's waiver process. If the Entity agrees to participate in the waiver process, the Entity shall appear before the Commission with the applicant or member.

(3) Membership granted based on the existence of extraordinary circumstances may include specified restrictions when appropriate.

(4) An approved extraordinary circumstances waiver shall remain confidential. The Fire Commission shall review and discuss the waiver, including any supporting documentation or sensitive personal information, in Executive Session and may not disclose such information publicly except as required by law.

(c) ~~No~~ An applicant ~~for membership in a Delaware volunteer fire department shall~~ or member may not be charged ~~any~~ a 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~~ or member 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~~ or member who is denied membership or whose membership is revoked ~~because of the requirements of~~ under 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.~~ revocation. An appeal under this subsection must be ~~held in accordance with~~ conducted under 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.

(g) An applicant or member is not prohibited from serving as a member in this State if the applicant or member is on probation or probation before judgment for an offense that is not listed in subsection (a) of this section.

(h) The Commission shall notify the appropriate Entity if an applicant or member is prohibited from serving as a member of an Entity because of a history related to a crime listed in subsection (a) of this section. The Commission may not share with the Entity the details of the criminal history record that prohibits the applicant or member from serving as a member. The Commission may share with the Entity only that the applicant or member is prohibited from serving as a member. The applicant or member may provide the applicant's or member's criminal history record directly to the appropriate Entity if the applicant or member wishes.

(1) The Commission shall immediately notify in writing the applicant or member that the applicant's or member's criminal history record includes an offense under subsection (a) of this section that prohibits the applicant or

member from serving an Entity. The notification must be personally served on the applicant or member, or sent by certified mail, return receipt requested, to the applicant's or member's last known address.

(2) The Commission shall immediately notify in writing each Entity that the applicant seeks to serve or the member serves that the applicant or member is prohibited from serving as a member of the Entity. The notification must be sent by certified mail, return receipt requested, to the Entity's physical address.

Section 5. Amend Chapter 66, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6647A. Criminal history records.

(a)(1) Each of the following individuals must complete requests for state and federal criminal history record reports:

a. An applicant for membership as a member.

b. An individual who is a member and has interactions with the public, as of [the effective date of this Act].

(2) The following individuals are not required to complete requests for State and federal criminal history record reports under this section unless the Commission, in its discretion, determines that a background check is necessary:

a. Associate members whose duties do not include any of the following:

1. Managing, overseeing, approving, or handling organizational funds.

2. Emergency response.

3. Interactions with the public related to public safety.

b. Lifetime members who are inactive.

c. Honorary members who are inactive.

(3) For purposes of this section, "inactive" means an individual that meets all of the following:

a. Does not hold voting rights.

b. Does not serve on committees.

c. Does not have fiduciary responsibilities.

d. Does not participate in day-to-day operations or management of the organization.

e. Does not interact with the public in duties related to public safety.

(b) Criminal history records. An individual listed under subsection (a) of this section who is required to obtain a criminal history record report under § 6647 of this title must submit fingerprints and other necessary information to the

State Bureau of Identification in order to obtain a Delaware and national criminal history record report through all of the following:

(1) A report of the individual's entire criminal history record from the State Bureau of Identification or a statement from the SBI that the State Bureau of Identification Central Repository contains no such information relating to that individual.

(2) A report of the individual's entire federal criminal history record under the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534) or a statement that the FBI's records contain no such information relating to that individual.

(3) The State Bureau of Identification is the intermediary for the purpose of this section and must forward all information required by subsections (a) through (c) of this section to the Commission and provide a copy of all the information to the individual who is the subject of the information.

(4) The Commission may use an individual's state criminal history record under subsection (b)(1) of this section or national criminal history record under subsection (b)(2) of this section only to consider the individual's background, qualifications, and suitability for registration as a member under this chapter.

(c) If an applicant or member obtains a criminal history record under this section, the State Bureau of Identification shall provide all of the following to the Commission:

(1) The applicant's or member's subsequent state criminal history record, if any.

(2) The applicant's or member's subsequent state criminal history record, if any, that is available through the Rap Back System as defined under § 8502 of Title 11, if the Rap Back System is available.

(d) Confidentiality. Information contained in a criminal history record obtained under this section is confidential and may not be disclosed except as follows:

(1) The State Bureau of Identification may release an individual's subsequent criminal history to the Commission when properly requested.

(2) The Commission shall review all information that is forwarded to the Commission under this section with the applicant or member upon the applicant's or member's request.

Section 6. An individual who, on [the date of enactment of this Act], is serving as a member in this State must obtain criminal history records under Chapter 66 of Title 16 no more than 24 months after [the date of enactment of this Act], and is not exempt from the applicability of §§ 6647 or 6647A of Title 16.

Section 7. This Act takes effect 180 days after its enactment into law.