



DRAFT

SPONSOR:

DELAWARE STATE SENATE
153rd GENERAL ASSEMBLY

SENATE BILL

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 registration as a firefighter 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" means the State Fire Prevention Commission.

(4) "Executive Director" means the executive director of the State Fire Prevention Commission.

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

(6) "Entity" 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.

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

(8) "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.

(9) "Registered firefighter" means an individual who serves with a fire company or EMS company as a firefighter, regardless of whether the individual's service is voluntary or the individual receives compensation.

(10) "Registration" means the authorization under this chapter for an individual to serve as a firefighter in this State.

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

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. [Repealed.]~~

(20) Receive and review each state and federal criminal history record under § 6647A of this title to assure compliance with this chapter and notify the appropriate fire company if either of the following occur:

a. An applicant or registered firefighter violates this chapter.

b. An applicant does not meet or registered firefighter no longer meets the qualifications under this chapter or by regulation to be registered as a firefighter.

(21) Receive and review each application for registration as a firefighter.

(22) Issue, deny, revoke, or suspend registration, as appropriate under this chapter.

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

(24) Notify the appropriate fire company that an applicant or registered firefighter is arrested, if the arrest is related to a crime listed under § 6647(e) of this title.

(25) Impose a civil penalty or fine for a violation of this chapter.

(27) Promulgate regulations to implement §§ 6647 and 6647A of this title.

Section 3. Amend Subchapter VI, Chapter 66, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

Subchapter VI. ~~Volunteer~~ Registration of Firefighters.

Section 4. 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 5. 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.~~ Registration required; application; review of criminal history records; denial, revocation, or suspension; appeals; penalties.

(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.]~~

(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.~~

81 ~~(d) An applicant for membership in a Delaware volunteer fire department who knowingly provides false,~~
82 ~~incomplete, or inaccurate criminal history information, or who otherwise knowingly violates a provision of this subchapter,~~
83 ~~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~~
84 ~~than \$1,000 which may not be suspended.~~

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

89 ~~“I have never been convicted of an offense that constitutes any of the crimes set forth in 16 Del. C. § 6647 or~~
90 ~~any similar offense under any federal, state, or local law. I hereby certify that the statements contained in this~~
91 ~~application are true and correct to the best of my knowledge and belief. I understand that if I knowingly make any false~~
92 ~~statement in this application, I am subject to penalties prescribed by law, including denial or revocation of membership~~
93 ~~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~~
94 ~~both.”~~

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

100 (a) Registration required. An individual must be registered under this chapter to serve as a firefighter in this State.
101 An individual may become registered by completing the application and criminal history record process established in this
102 chapter.

103 (b) Application for registration. An individual seeking registration must apply to the Commission for registration,
104 using forms that the Commission prescribes. The applicant shall submit with the application fingerprints and other
105 information necessary to obtain the criminal history records under § 6647A of this title.

106 (c) Upon application and after reviewing an applicant’s criminal history records received under this section, the
107 Commission or Executive Director may interview the applicant. If the Commission determines that the applicant meets the
108 requirements under this section and by regulation, the Commission shall register the applicant as a firefighter.

(d) The Commission or Executive Director shall review each state or federal criminal history record received under this section to ensure compliance with this chapter and assess an applicant's or registered firefighter's qualifications for registration.

(e) The Commission shall deny an application or revoke registration if any of the following apply:

(1) The applicant or registered firefighter has been convicted of, charged as a juvenile with, or adjudicated delinquent as a juvenile relating to any of the following:

a. A felony.

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 firefighter.

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 (e).

9. A crime for which the applicant or registered firefighter is currently incarcerated, on work release, on probation, or on parole.

(2) The applicant or registered firefighter is required by law to register as a sex offender.

(3) The applicant or registered firefighter has been found, after examination by a licensed psychologist or psychiatrist, to be psychologically or emotionally unfit to perform the duties or exercise the requirements of a firefighter.

(f) Extraordinary circumstances. If the Commission determines that extraordinary circumstances exist, the Commission may approve an applicant's application or registered firefighter's continued registration regardless of whether subsection (e) of this section applies. The Commission may determine that extraordinary circumstances exist only if the applicant or registered firefighter establishes by clear and convincing evidence that the applicant's or registered firefighter's registration will not jeopardize public health or safety.

(g) Term of registration. Registration is valid for a period that the Commission determines and may be renewed after reconsideration, which may include an interview, if the registered firefighter meets the requirements under this chapter and by regulation. The Commission may deny, revoke, or suspend registration if the Commission determines that the applicant or registered firefighter does not meet or no longer meets the qualifications for registration.

(h) Disqualification. The Commission shall notify the appropriate fire company if an applicant or registered firefighter is disqualified from registration because of a history related to a crime listed in subsection (e) of this section. The Commission may not share with the fire company the details of the criminal history record that disqualifies the applicant.

(i) Suspension. The Commission shall issue an order suspending a registered firefighter's registration if the Commission receives a court document charging the registered firefighter with a felony. An order of suspension under this subsection remains in effect pending a final court hearing on the charge and until the court case relating to the charge is determined.

(1) The Commission shall immediately notify the registered firefighter in writing that the Commission has suspended the registration. The notification must include a copy of the complaint and the order of suspension pending a Commission hearing. The notification must be personally served on the registered firefighter, or sent by certified mail, return receipt requested, to the registered firefighter's last known address.

(2) As soon as possible, but not later than 180 days after the Commission issues an order of suspension, the Commission shall hold a hearing on the complaint. If a registered firefighter timely requests an expedited hearing, the Commission shall hold a hearing within 15 days of the Commission's receipt of the request. The Commission shall issue a decision on an expedited hearing within 15 days of the hearing.

(2) A registered firefighter whose registration is suspended under this subsection (i) may request an expedited hearing. Upon the registered firefighter request, the Commission shall schedule the hearing on an expedited basis if the

Commission receives the request within 15 calendar days of the date on which the registered firefighter received notification of the suspension.

(4) An order suspending registration remains in effect until the court has determined the case. When the court issues its final decision, the Commission must vacate the order of suspension in favor of disciplinary action that the Commission orders.

(j) Appeal. An applicant who is denied registration, or a registered firefighter whose registration is revoked or suspended, may appeal the denial, revocation, or suspension to the Commission within 15 days of written notification of the denial, revocation, or suspension. The Commission must conduct an appeal under this subsection under the appropriate provisions of the Administrative Procedures Act, Chapter 101 of Title 29. The Commission's decision on the appeal is subject to judicial review under Subchapter V of Chapter 101 of Title 29.

(k) Penalties.

(1) An individual who knowingly performs firefighter services without being registered under this chapter is guilty of a class A misdemeanor.

(2) An applicant or registered firefighter who knowingly provides false, incomplete, or inaccurate criminal history record information, or an applicant or registered firefighter who otherwise knowingly violates this section, is guilty of a class G felony and must be punished according to Chapter 42 of Title 11.

(l) An entity that fails to meet the requirements of §§ 6647 or 6647A of this title may be ineligible to apply for or receive state aid.

Section 6. 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) Each of the following individuals shall complete requests for state and federal criminal history record reports:

(1) An applicant for registration as a firefighter.

(2) An individual who is a registered firefighter as of [the date of this Act's enactment].

(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:

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

199 (2) A report of the individual's entire federal criminal history record under the Federal Bureau of Investigation
200 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
201 information relating to that individual.

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

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

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

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

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

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

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

216 (2) The Commission and Executive Director shall review all information that is forwarded to the Commission
217 under this section with the applicant upon the applicant's request. The Executive Director may review the information
218 at the Commission's request.

219 (e) Costs. An applicant or registered firefighter may not be charged a fee or cost for obtaining a criminal history
220 record from the State Bureau of Identification under this chapter.

221 Section 7. An individual who, on [the date of enactment of this Act], is serving as a firefighter in this State must
222 obtain criminal history records under Chapter 66 of Title 16 and complete registration under Chapter 66 of Title 16 no more
223 than 12 months after [the date of enactment of this Act], and is not exempt from the applicability of §§ 6647 or 6647A of
224 Title 16.

SYNOPSIS

This Act is a result of the Joint Legislative Oversight and Sunset Committee's review of the State Fire Prevention Commission ("Commission"). This Act establishes the following:

- An individual must register with the Commission in order to serve as a firefighter in this State.
- To qualify for registration, an individual must apply with the Commission and complete requests for the individual's state and federal criminal history records.
- An individual is not qualified for registration if the individual's criminal history record includes a crime listed in this Act, including felonies, specified financial or property crimes, sex crimes, specified crimes against a victim who is acting in the lawful performance of the victim's duty, or crimes involving controlled substances or designer drugs.
- The Commission may suspend an individual's registration upon receiving a court document charging the individual with a felony.
- An individual whose application is denied or registration is revoked or suspended may appeal the denial, revocation, or suspension.
- Penalties for performing firefighter duties without being registered or knowingly violating this Act.
- A fire company that fails to meet the requirements of this Act may be ineligible to apply for or receive state aid.

This Act updates the criminal history record language in Chapter 66, Title 16 to ensure Delaware law meets the requirements of the Federal Bureau of Investigation in requesting federal criminal history records.

This Act also makes technical corrections to make existing law conform to the standards of the Delaware Legislative Drafting Manual.