

SECOND REGULAR SESSION

# HOUSE BILL NO. 1735

102ND GENERAL ASSEMBLY

---

INTRODUCED BY REPRESENTATIVE CROSSLEY.

4057H.011

DANA RADEMAN MILLER, Chief Clerk

---

## AN ACT

To amend chapter 320, RSMo, by adding thereto one new section relating to investigations of first responders.

---

*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 320, RSMo, is amended by adding thereto one new section, to be known as section 320.450, to read as follows:

**320.450. 1. This section shall be known and may be cited as the "First Responders' Bill of Rights".**

**2. For purposes of this section, the following terms mean:**

**(1) "Agency", a fire department or fire protection district;**

**(2) "Economic loss", any economic loss including, but not limited to, loss of overtime accrual, overtime income, sick time accrual, sick time, secondary employment income, holiday pay, and vacation pay;**

**(3) "First responder", any paid or volunteer firefighter, officer, or other employee, including all emergency medical service workers, dispatchers, paramedics, emergency maintenance technicians, or emergency medical technicians (EMT), employed in the service of any fire department or fire protection district including, but not limited to, any municipal, volunteer, rural, or subscription-based fire department or organization. The term "first responder" shall not include probationary employees;**

**(4) "Good cause", sufficient evidence or facts that would support a party's request for extension of time or any other requests seeking accommodations outside the scope of the rules set out herein;**

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           (5) "Public concern", anything reasonably considered as relating to any matter  
19 of political, social, or other concern to a community;

20           (6) "Punitive action", any action that may lead to discipline, dismissal,  
21 demotion, suspension, reduction in salary, written reprimand, or transfer for purposes  
22 of punishment or to placement on a status that could lead to economic loss;

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

26           3. Whenever a first responder is under administrative investigation or is  
27 subjected to administrative questioning that he or she reasonably believes could lead to  
28 punitive action, the investigation or questioning shall be conducted according to the  
29 following minimum standards:

30           (1) Prior to the commencement of the investigation, the first responder under  
31 investigation shall be notified in writing of formal commencement of the investigation,  
32 the nature of the investigation, the existence and nature of the alleged violation or  
33 specific charges being investigated, and the individuals who will be conducting the  
34 investigation. Notice shall be provided to the first responder along with a copy of the  
35 complaint at least twenty-four hours prior to the commencement of the investigation  
36 and any interrogation or interview of the first responder;

37           (2) Any person, including members of the same agency as the first responder  
38 under investigation, filing a complaint against a first responder shall have the complaint  
39 supported by a written statement outlining the complaint that includes the personal  
40 identifying information of the person filing the complaint. All personal identifying  
41 information shall be held confidential by the investigating agency;

42           (3) When a first responder is questioned or interviewed regarding matters  
43 pertaining to his or her duties or actions taken within the scope of his or her  
44 employment, such questioning shall be conducted for a reasonable length of time and  
45 only while the first responder is on duty. If reasonable circumstances exist that  
46 necessitate questioning the first responder while he or she is off duty, the first responder  
47 shall be compensated at his or her regular rate of pay, as applicable;

48           (4) Any interviews or questioning shall be conducted at a secure location at the  
49 agency that is conducting the investigation or at the place where the first responder  
50 reports to work unless the first responder consents to another location;

51           (5) First responders shall be questioned by up to two investigators and shall be  
52 informed of the name, rank, and command of the investigator or investigators  
53 conducting the investigation; except that, separate investigators shall be assigned to  
54 investigate alleged department policy violations and alleged criminal violations;

55           **(6) Interview sessions shall be for a reasonable period of time, taking into**  
56 **consideration the gravity and complexity of the issue or issues being investigated. There**  
57 **shall be times provided for the first responder to allow for such personal necessities and**  
58 **rest periods as are reasonably necessary and to confer with the first responder's legal**  
59 **counsel and union representatives;**

60           **(7) First responders shall not be threatened, harassed, or promised rewards to**  
61 **induce them into answering any question;**

62           **(8) Upon the filing of the formal commencement of the investigation, the filing of**  
63 **a formal written statement of charges, or whenever an interrogation focuses on matters**  
64 **that may result in punitive action against any first responder, the first responder under**  
65 **investigation shall, at his or her request, have the right to be represented by a**  
66 **representative or attorney of his or her choice who may be present at all times during**  
67 **any interrogation. The representative or attorney shall not be a person subject to the**  
68 **same investigation;**

69           **(9) The first responder's representative or attorney shall not be required to**  
70 **disclose, and shall not be subject to any punitive action for refusing to disclose, any**  
71 **information received from the first responder under investigation for noncriminal**  
72 **matters, and an employer is prohibited from compelling such representatives to answer**  
73 **any questions relating to the representation of the first responder under investigation;**

74           **(10) Prior to the first responder being interviewed, the first responder and his or**  
75 **her attorney or representative shall have the opportunity to review the complaint. The**  
76 **questioning shall be suspended for a period of up to twenty-four hours if the first**  
77 **responder requests representation;**

78           **(11) The first responder shall be entitled to the presence of his or her counsel or**  
79 **duly authorized representative, or both, at any questioning or interrogation in**  
80 **connection with an investigation. The first responder's representative or counsel**  
81 **shall be allowed to offer advice to the first responder and shall be allowed to ask**  
82 **questions and make statements at any interrogation or questioning in the course of an**  
83 **investigation. The first responder's counsel or representative may call witnesses to**  
84 **testify on the first responder's behalf. The attorney or representative shall be permitted**  
85 **to confer with the first responder but shall not unduly disrupt or interfere with the**  
86 **interview;**

87           **(12) Any recordings made during the investigation shall be transcribed;**

88           **(13) A first responder's photograph, home address, telephone number, or other**  
89 **contact information shall not be given to the press or news media without the first**  
90 **responder's written consent. All personally identifying information of the first**  
91 **responder's spouse, partner, children, or dependents shall be held confidential and**

92 protected from release including, but not limited to, names, addresses, phone numbers,  
93 email addresses, photographs, social media profiles or information, or any other contact  
94 information. Any information regarding the first responder's assets, income, debts, or  
95 other financial information shall be held confidential and protected from release;

96 (14) The agency conducting the investigation shall have ninety days from receipt  
97 of a complaint to complete such investigation. The agency shall determine the  
98 disposition of the complaint and render a disciplinary decision, if any, within ninety  
99 days. The agency may, for good cause, petition the entity overseeing the administration  
100 of discipline for an extension of time to complete the investigation. If the entity finds the  
101 agency has shown good cause for the granting of an extension of time to complete the  
102 investigation, the entity shall grant an extension of up to sixty days. The agency is  
103 limited to two extensions per investigation; except that, if there is an ongoing criminal  
104 investigation there shall be no limitation on the amount of sixty-day extensions. For  
105 good cause shown, the internal investigation may be tolled until the conclusion of a  
106 concurrent criminal investigation arising out of the same alleged conduct. Absent  
107 consent from the first responder being investigated, the entity overseeing the  
108 administration of discipline shall set the matter for hearing and shall provide notice  
109 of the hearing to the first responder under investigation. The first responder shall have  
110 the right to attend the hearing and to present evidence and arguments against extension;

111 (15) Upon the conclusion of the investigation, if the employer decides to impose  
112 discipline on the first responder, the investigator shall inform the first responder, in  
113 writing, of the employer's decision and the investigative findings within five days of such  
114 decision and at least forty-eight hours prior to the actual imposition of discipline. In all  
115 other instances, the first responder shall be notified in writing of the employer's  
116 decision, including investigative findings and any recommendation for further action,  
117 within thirty days of such decision;

118 (16) A complete record of the administrative investigation shall be kept by the  
119 agency conducting such investigation. Upon completion of the investigation, a copy of  
120 the entire record, including, but not limited to, audio, video, and transcribed statements,  
121 shall be provided to the first responder or his or her representative within five business  
122 days of the first responder's written request. The agency may request a protective order  
123 to redact all personal identifying witness information; and

124 (17) All records compiled as a result of any investigation subject to the  
125 provisions of this section shall be held confidential and shall not be subject to disclosure  
126 under chapter 610, except by lawful subpoena or court order, by release approved by  
127 the first responder.

128           **4. First responders who are suspended without pay, demoted, terminated,**  
129 **transferred, or placed on a status resulting in economic loss shall be entitled to a full due**  
130 **process hearing or may choose to submit the matter to binding arbitration pursuant to**  
131 **the provisions of chapter 435. The proceeding shall constitute a contested case under**  
132 **chapter 536 and shall be appealable to the administrative hearing commission.**  
133 **However, nothing in this section shall prohibit an agency and the authorized bargaining**  
134 **representative for a first responder employed by that agency from reaching written**  
135 **agreements providing disciplinary procedures more favorable than those provided for**  
136 **this section. The components of the hearing shall include, at a minimum:**

137           **(1) The right to be represented by an attorney or other individual of the first**  
138 **responder's choice during the hearing;**

139           **(2) Seven days' notice of the hearing date and time;**

140           **(3) An opportunity to access and review documents, at least seven days in**  
141 **advance of the hearing, that are in the employer's possession and that were used as a**  
142 **basis for the disciplinary action, including access by the first responder or his or her**  
143 **counsel or representative to review the entirety of the first responder's complete**  
144 **personnel records;**

145           **(4) The right to refuse to testify at the hearing if the first responder is**  
146 **concurrently facing criminal charges in connection with the same incident. A first**  
147 **responder's decision not to testify shall not result in additional internal charges or**  
148 **discipline;**

149           **(5) A complete record of the hearing shall be kept by the agency for purposes of**  
150 **appeal. The record shall be provided to the first responder or his or her attorney upon**  
151 **written request; and**

152           **(6) The entire record of the hearing shall remain confidential and shall not be**  
153 **subject to disclosure under chapter 610, except by lawful subpoena or court order.**

154           **5. Any decision, order, or action taken following the hearing shall be in writing**  
155 **and shall be accompanied by findings of fact. The findings shall consist of a concise**  
156 **statement upon each issue in the case. A copy of the decision or order accompanying**  
157 **findings and conclusions along with the written action and right of appeal, if any, shall**  
158 **be delivered or mailed promptly to the first responder or to the first responder's**  
159 **attorney or representative of record.**

160           **6. The findings and decision or conclusion of a disciplinary investigation, appeal,**  
161 **hearing, or other determination under this section shall not be used in any outside or**  
162 **new disciplinary proceedings. Where the investigation or subsequent disciplinary**  
163 **proceedings or appeals have reached a final decision and such decision, order, or action**  
164 **is final and binding or final and appealable, no new investigation shall be opened into**

165 the first responder who was the subject of the final decision, order, or action if the  
166 investigation involves the same offense arising out of the same action or incident that  
167 gave rise to the initial investigation and where the possible outcome of such investigation  
168 would result in double jeopardy for the first responder.

169 7. First responders shall have the opportunity to provide a written response to  
170 any adverse materials placed in their personnel file, and such written response shall be  
171 permanently attached to the adverse material.

172 8. First responders shall have the right to compensation for any economic loss  
173 incurred during an investigation if the first responder is found to have committed no  
174 misconduct.

175 9. Employers shall defend and indemnify first responders from and against civil  
176 claims made against them in their official and individual capacities if the alleged  
177 conduct arose in the course and scope of their obligations and duties as first responders.  
178 In the event the first responder is convicted of, or pleads guilty to, criminal charges  
179 arising out of the same conduct, the employer shall no longer be obligated to defend and  
180 indemnify the first responder in connection with related civil claims.

181 10. First responders shall not be disciplined, demoted, dismissed, transferred, or  
182 placed on a status resulting in economic loss as a result of the assertion of their  
183 constitutional rights in any judicial proceeding, unless the first responder admits to  
184 wrongdoing, in which case the provisions of this section shall not apply.

185 11. A first responder shall not be prohibited from seeking public office and may:

- 186 (1) Be a candidate for elected public office;  
187 (2) Solicit votes and campaign funds if he or she is off duty or not in uniform;  
188 (3) Engage in political activity if he or she is off duty or not in uniform; and  
189 (4) Retain his or her position as a first responder if elected to public office, where  
190 allowed by law and to the extent that such election does not substantially interfere with  
191 the person's job duties and responsibilities as a first responder.

192 12. No public funds or public employees shall be used to investigate a first  
193 responder's lawful off-duty behavior.

194 13. Disciplinary investigations, interrogations, hearings, or other proceedings  
195 under this section shall not be conducted frivolously or with the intention to harass a  
196 first responder.

197 14. Any aggrieved first responder or authorized representative may seek judicial  
198 enforcement of the requirements of this section. Suits to enforce this section shall be  
199 brought in the circuit court for the county in which the agency or governmental body  
200 has its principal place of business.

201           **15. Upon a finding by a preponderance of the evidence that an agency,**  
202 **governmental body, or member of same has violated any provision of this section, a**  
203 **court shall void any action taken in violation of this section. The court may also award**  
204 **the first responder the costs of bringing the suit including, but not limited to, attorney's**  
205 **fees. A lawsuit for enforcement shall be brought within one year from the date the**  
206 **violation is ascertainable.**

207           **16. Nothing in this section shall apply to any investigation or other action by the**  
208 **director regarding a license issued by the director under this chapter.**

209           **17. An agency that has substantially similar or greater procedures shall be**  
210 **deemed in compliance with this section.**

✓