
By: **Delegates Hixson, Gordon, Barve, Boston, Exum, Frank, Fulton,
Krysiak, Love, Malone, and Moe**

Introduced and read first time: February 9, 1998

Assigned to: Judiciary

A BILL ENTITLED

1 AN ACT concerning

2 **Firefighters and Emergency Medical Personnel - Procedural Guarantees**

3 FOR the purpose of altering certain provisions of law relating to the judicial review of
4 certain decisions regarding the suspension or termination of firefighters and
5 emergency medical personnel; requiring a circuit court to admit and consider
6 additional evidence under certain circumstances; prohibiting certain boards or
7 commissions from making certain decisions regarding the suspension or
8 termination of firefighters and emergency medical personnel under certain
9 circumstances and providing a certain exception to the prohibition; specifying
10 the conditions under which certain investigations and interrogations of
11 firefighters and emergency medical personnel must be conducted; prohibiting
12 certain employers from placing adverse material in the files of firefighters and
13 emergency medical personnel under certain circumstances; providing for the
14 effect of this Act; allowing an employee to waive the rights provided under this
15 Act; defining certain terms; making stylistic changes; and generally relating to
16 judicial review of disciplinary actions against certain firefighters and emergency
17 medical personnel and to the procedural rights of certain firefighters and
18 emergency medical personnel.

19 BY repealing and reenacting, with amendments,
20 Article - Labor and Employment
21 Section 4-601 and 4-602
22 Annotated Code of Maryland
23 (1991 Volume and 1997 Supplement)

24 BY repealing and reenacting, without amendments,
25 Article - Labor and Employment
26 Section 4-603
27 Annotated Code of Maryland
28 (1991 Volume and 1997 Supplement)

29 BY adding to
30 Article - Labor and Employment

1 Section 4-604 through 4-608
2 Annotated Code of Maryland
3 (1991 Volume and 1997 Supplement)

4 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
5 MARYLAND, That the Laws of Maryland read as follows:

6 **Article - Labor and Employment**

7 4-601.

8 (a) In this subtitle the following words have the meanings indicated.

9 (B) "CHIEF" MEANS THE SUPERINTENDENT, COMMISSIONER, OR FIRE CHIEF
10 OF A COUNTY OR MUNICIPAL CORPORATION OR A UNIT OF A COUNTY OR MUNICIPAL
11 CORPORATION.

12 [(b)] (C) (1) "Employee" means a fire, emergency medical services,
13 paramedic, rescue, or support employee hired and compensated by a county or
14 municipal corporation or a unit of a county or municipal corporation.

15 (2) "Employee" does not include an employee who is on probationary
16 status upon entry into a fire fighting, rescue, paramedic, or emergency medical
17 services agency.

18 (D) "EMPLOYER" MEANS A COUNTY OR MUNICIPAL CORPORATION OR A UNIT
19 OF A COUNTY OR MUNICIPAL CORPORATION THAT HIRES AND COMPENSATES FIRE,
20 EMERGENCY MEDICAL SERVICES, PARAMEDIC, RESCUE, OR SUPPORT EMPLOYEES.

21 [(c)] (E) (1) "Final decision" means a final disciplinary decision of a
22 personnel board, trial board, civil service commission, or statutorily established
23 review board by which an employee is suspended for not less than 30 consecutive days
24 or is terminated.

25 (2) "Final decision" does not include a decision reached through
26 arbitration under a collective bargaining agreement.

27 4-602.

28 (a) An employee, county, or municipal corporation aggrieved by a final
29 decision may obtain judicial review of that decision through an appeal filed in a
30 circuit court of appropriate venue.

31 (b) An appeal under subsection (a) of this section shall be taken in accordance
32 with [§§ 7-201 through 7-210 of the] Maryland Rules 7-201 THROUGH 7-210.

33 (c) Any party that is aggrieved by a final judgment of a circuit court under
34 this subtitle may appeal to the Court of Special Appeals in the manner provided by
35 law.

1 (d) In an appeal under subsection (a) of this section, the circuit court may:

2 (1) remand the case for further proceedings;

3 (2) affirm the final decision; or

4 (3) reverse or modify the decision if any substantial right of the
5 petitioner may have been prejudiced because a finding, conclusion, or decision:

6 (i) is unconstitutional;

7 (ii) exceeds the statutory authority or jurisdiction of the final
8 decision maker;

9 (iii) results from an unlawful practice;

10 (iv) is affected by any other error of law;

11 (v) is unsupported by competent, material, and substantial
12 evidence in light of the entire record as submitted; [or]

13 (vi) is arbitrary and capricious; OR

14 (VII) IS INCONSISTENT WITH THE OUTCOME OF AN ADJUDICATION
15 OF ANY CRIMINAL PROCEEDINGS THAT EITHER WERE PENDING OR ADJUDICATED AT
16 THE TIME OF THE FINAL DECISION.

17 (E) IN AN APPEAL UNDER SUBSECTION (A) OF THIS SECTION, THE CIRCUIT
18 COURT SHALL ADMIT AND CONSIDER ADDITIONAL EVIDENCE BEYOND THE RECORD
19 OF THE ADMINISTRATIVE PROCEEDINGS IF THE COURT DETERMINES:

20 (1) THAT THE EMPLOYEE WAS NOT PROVIDED FULL AND ADEQUATE
21 OPPORTUNITY TO PRESENT EVIDENCE IN THE ADMINISTRATIVE PROCEEDINGS; OR

22 (2) THAT CONSIDERATIONS OF EQUITY REQUIRE ADMISSION OF
23 ADDITIONAL EVIDENCE.

24 4-603.

25 An employee may elect to exercise the rights available under the collective
26 bargaining agreement as an alternative to the right to a judicial review provided
27 under this subtitle.

28 4-604.

29 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A FINAL
30 DECISION MAY NOT BE RENDERED BASED ON ALLEGED MISDEMEANOR CRIMINAL
31 CONDUCT OF AN EMPLOYEE IN WHICH FINAL ADJUDICATION OF THE CRIMINAL
32 PROCEEDINGS IS PENDING.

1 (B) A FINAL DECISION MAY BE RENDERED BASED ON ALLEGED
2 MISDEMEANOR CRIMINAL CONDUCT OF AN EMPLOYEE IN WHICH FINAL
3 ADJUDICATION OF THE CRIMINAL PROCEEDINGS IS PENDING IF THE APPLICABLE
4 PERSONNEL BOARD, TRIAL BOARD, CIVIL SERVICE COMMISSION, OR STATUTORILY
5 ESTABLISHED REVIEW BOARD IN GOOD FAITH FINDS THAT THE CONDUCT:

6 (1) CAUSES SUBSTANTIAL IMPAIRMENT TO THE OPERATION OF THE
7 EMPLOYING AGENCY; AND

8 (2) POSES A SUBSTANTIAL RISK TO THE PUBLIC.

9 4-605.

10 (A) (1) WHENEVER AN EMPLOYEE IS UNDER INVESTIGATION OR IS
11 SUBJECTED TO INTERROGATION BY THE EMPLOYER FOR ANY REASON WHICH
12 COULD LEAD TO DISCIPLINARY ACTION, DEMOTION, OR DISMISSAL, THE
13 INVESTIGATION OR INTERROGATION SHALL BE CONDUCTED UNDER THE
14 CONDITIONS DESCRIBED IN THIS SUBSECTION.

15 (2) THE EMPLOYEE UNDER INVESTIGATION SHALL BE INFORMED OF
16 THE NAME, RANK, AND COMMAND OF THE OFFICER IN CHARGE OF THE
17 INVESTIGATION.

18 (3) THE EMPLOYEE UNDER INVESTIGATION SHALL BE FURNISHED WITH
19 A COPY OF THE INVESTIGATORY FILE AND ANY EXCULPATORY INFORMATION, BUT
20 EXCLUDING:

21 (I) THE IDENTITY OF CONFIDENTIAL SOURCES; AND

22 (II) ANY RECOMMENDATIONS AS TO CHARGES, DISPOSITION, OR
23 PUNISHMENT.

24 (4) THE EMPLOYEE UNDER INVESTIGATION SHALL BE FURNISHED WITH
25 A COPY OF THE INVESTIGATORY FILE AND THE EXCULPATORY INFORMATION
26 DESCRIBED IN PARAGRAPH (3) OF THIS SUBSECTION NOT LESS THAN 10 DAYS PRIOR
27 TO ANY HEARING IF THE EMPLOYEE AND THE EMPLOYEE'S REPRESENTATIVE
28 AGREE:

29 (I) TO EXECUTE A CONFIDENTIALITY AGREEMENT WITH THE
30 EMPLOYER NOT TO DISCLOSE ANY OF THE MATERIAL CONTAINED IN THE RECORD
31 FOR ANY PURPOSE OTHER THAN TO DEFEND THE EMPLOYEE; AND

32 (II) TO PAY ANY REASONABLE CHARGE FOR THE COST OF
33 REPRODUCING THE MATERIAL INVOLVED.

34 (5) ON COMPLETION OF THE INVESTIGATION, THE EMPLOYEE SHALL BE
35 NOTIFIED OF THE NAME OF ANY WITNESSES AND ALL CHARGES AND
36 SPECIFICATIONS AGAINST THE EMPLOYEE NOT LESS THAN 10 DAYS PRIOR TO ANY
37 HEARING THAT IS SCHEDULED AS A RESULT OF THE INVESTIGATION.

1 (6) AN EMPLOYEE MAY NOT BE SUBJECTED TO INTERROGATION
2 WITHOUT FIRST RECEIVING WRITTEN NOTICE OF THE INVESTIGATION IN
3 SUFFICIENT DETAIL TO REASONABLY APPRISE THE EMPLOYEE OF THE NATURE OF
4 THE INVESTIGATION.

5 (7) THE INTERROGATION SHALL BE CONDUCTED AT A REASONABLE
6 TIME, PREFERABLY WHEN THE EMPLOYEE IS ON DUTY, UNLESS THE SERIOUSNESS
7 OF THE INVESTIGATION IS OF SUCH A DEGREE THAT AN IMMEDIATE
8 INTERROGATION IS REQUIRED.

9 (8) THE INTERROGATION SHALL TAKE PLACE AT THE FACILITY WHERE
10 THE INVESTIGATING OFFICER IS ASSIGNED OR AT THE FACILITY THAT HAS
11 JURISDICTION OVER THE PLACE WHERE THE INCIDENT UNDER INVESTIGATION
12 ALLEGEDLY OCCURRED, AS DESIGNATED BY THE INVESTIGATING OFFICER.

13 (9) IF THE EMPLOYEE UNDER INTERROGATION IS UNDER ARREST, OR IS
14 LIKELY TO BE PLACED UNDER ARREST AS A RESULT OF THE INTERROGATION, THE
15 EMPLOYEE SHALL BE COMPLETELY INFORMED OF THE EMPLOYEE'S RIGHTS PRIOR
16 TO THE COMMENCEMENT OF THE INTERROGATION.

17 (10) (I) AT THE REQUEST OF THE EMPLOYEE UNDER INTERROGATION,
18 THE EMPLOYEE SHALL HAVE THE RIGHT TO:

19 1. BE REPRESENTED BY COUNSEL OR ANY OTHER
20 REPRESENTATIVE OF THE EMPLOYEE'S CHOICE; AND

21 2. HAVE THE EMPLOYEE'S COUNSEL OR OTHER
22 REPRESENTATIVE PRESENT AND AVAILABLE FOR CONSULTATION AT ALL TIMES
23 DURING THE INTERROGATION.

24 (II) THE INTERROGATION SHALL BE SUSPENDED FOR A PERIOD OF
25 TIME, NOT TO EXCEED 10 DAYS, UNTIL REPRESENTATION IS OBTAINED BY THE
26 EMPLOYEE.

27 (11) (I) THE EMPLOYEE UNDER INVESTIGATION SHALL BE INFORMED
28 OF THE NAME, RANK, AND UNIT OR COMMAND OF THE OFFICER IN CHARGE OF THE
29 INVESTIGATION, THE INTERROGATING OFFICER, AND EACH PERSON PRESENT
30 DURING THE INTERROGATION.

31 (II) ALL QUESTIONS DIRECTED TO THE EMPLOYEE UNDER
32 INTERROGATION SHALL BE ASKED BY ONE INTERROGATOR DURING ANY ONE
33 INTERROGATION SESSION.

34 (III) INTERROGATION SESSIONS SHALL BE FOR REASONABLE
35 PERIODS AND SHALL ALLOW FOR ANY RECESS PERIODS AS ARE REASONABLY
36 NECESSARY.

37 (12) THE EMPLOYEE UNDER INTERROGATION MAY NOT BE THREATENED
38 WITH TRANSFER, DISMISSAL, OR DISCIPLINARY ACTION.

1 (13) (I) A COMPLETE RECORD, WRITTEN, TAPED, OR TRANSCRIBED,
2 SHALL BE KEPT OF THE ENTIRE INTERROGATION OF THE EMPLOYEE, INCLUDING
3 ALL RECESS PERIODS.

4 (II) ON COMPLETION OF THE INTERROGATION, AT THE REQUEST
5 OF THE EMPLOYEE UNDER INVESTIGATION OR THE EMPLOYEE'S COUNSEL, A COPY
6 OF THE RECORD OF THE INTERROGATION SHALL BE MADE AVAILABLE NOT LESS
7 THAN 10 DAYS PRIOR TO ANY HEARING.

8 (B) (1) AN EMPLOYER MAY NOT PLACE ANY ADVERSE MATERIAL INTO A
9 FILE OF THE EMPLOYEE UNLESS THE EMPLOYEE HAS HAD THE OPPORTUNITY TO
10 REVIEW, SIGN, AND RECEIVE A COPY OF, AND COMMENT IN WRITING ON, THE
11 ADVERSE MATERIAL, UNLESS THE EMPLOYEE WAIVES THIS RIGHT.

12 (2) AN EMPLOYEE, ON WRITTEN REQUEST, MAY HAVE ANY RECORD OF A
13 FORMAL COMPLAINT MADE AGAINST THE EMPLOYEE EXPUNGED IF:

14 (I) 1. THE EMPLOYER HAS EXONERATED THE EMPLOYEE OF ALL
15 CHARGES CONTAINED IN THE COMPLAINT OR HAS DETERMINED THAT THE CHARGES
16 WERE UNSUSTAINED OR UNFOUNDED; OR

17 2. AN ADMINISTRATIVE HEARING BOARD ACQUITS,
18 DISMISSES, OR MAKES A FINDING OF NOT GUILTY; AND

19 (II) AT LEAST 3 YEARS HAVE PASSED SINCE THE FINDINGS BY THE
20 EMPLOYER OR THE ADMINISTRATIVE HEARING BOARD.

21 (C) THIS SUBTITLE DOES NOT LIMIT THE AUTHORITY OF THE CHIEF TO TAKE
22 ANY ACTION NECESSARY TO ENSURE THE EFFICIENT OPERATION AND
23 MANAGEMENT OF THE UNIT OR AGENCY, INCLUDING THE TRANSFER OR
24 REASSIGNMENT OF AN EMPLOYEE, PROVIDED THE ACTION IS NOT PUNITIVE IN
25 NATURE AND THE CHIEF DETERMINES THAT THE ACTION IS IN THE BEST INTERESTS
26 OF THE INTERNAL MANAGEMENT OF THE UNIT OR AGENCY.

27 4-606.

28 AN EMPLOYEE MAY NOT BE DISCHARGED, DISCIPLINED, OR DEMOTED, OR
29 DENIED PROMOTION, TRANSFER, OR REASSIGNMENT, OR OTHERWISE
30 DISCRIMINATED AGAINST IN REGARD TO THE EMPLOYEE'S EMPLOYMENT, OR BE
31 THREATENED WITH DISCHARGE, DISCIPLINE, OR DEMOTION, OR WITH DENIAL OF
32 PROMOTION, TRANSFER, OR REASSIGNMENT, OR WITH OTHER DISCRIMINATORY
33 ACTION IN REGARD TO THE EMPLOYEE'S EMPLOYMENT, BECAUSE OF THE
34 EMPLOYEE'S EXERCISE OF OR DEMAND FOR THE RIGHTS PROVIDED UNDER THIS
35 SUBTITLE OR THE LAWFUL EXERCISE OF THE EMPLOYEE'S CONSTITUTIONAL
36 RIGHTS.

37 4-607.

38 THE PROVISIONS OF THIS SUBTITLE SHALL PREEMPT ANY LAW ENACTED BY A
39 COUNTY OR MUNICIPAL CORPORATION THAT GOVERNS THE RIGHTS OF EMPLOYEES

1 TO JUDICIAL REVIEW AND THE PROCEDURAL GUARANTEES PROVIDED UNDER THIS
2 SUBTITLE.

3 4-608.

4 AN EMPLOYEE MAY WAIVE IN WRITING ANY OR ALL RIGHTS PROVIDED UNDER
5 THIS SUBTITLE.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 October 1, 1998.