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HOUSE BILL NO. 2263

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee for Courts of Justice
on January 25, 2019)

(Patron Prior to Substitute—Delegate Krizek)

A BILL to amend and reenact §§ 9.1-301, 9.1-302, and 9.1-304 of the Code of Virginia, relating to Firefighters and Emergency Medical Technicians Procedural Guarantee Act; breach of procedures.

Be it enacted by the General Assembly of Virginia:

1. That §§ 9.1-301, 9.1-302, and 9.1-304 of the Code of Virginia are amended and reenacted as follows:

§ 9.1-301. Conduct of interrogation.

The provisions of this section shall apply whenever a firefighter or emergency medical services personnel are subjected to an interrogation that could lead to dismissal, demotion, or suspension for punitive reasons:

1. The interrogation shall take place at the facility where the investigating officer is assigned, or at the facility that has jurisdiction over the place where the incident under investigation allegedly occurred, as designated by the investigating officer.

2. No firefighter or emergency medical services personnel shall be subjected to interrogation without first receiving written notice of sufficient detail of the investigation in order to reasonably apprise the firefighter or emergency medical services personnel of the nature of the investigation.

3. All interrogations shall be conducted at a reasonable time of day, preferably when the firefighter or individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 9.1-300 is on duty, unless the matters being investigated are of such a nature that immediate action is required.

4. The firefighter or emergency medical services personnel under investigation shall be informed of the name, rank, and unit or command of the officer in charge of the investigation, the interrogators, and all persons present during any interrogation.

5. Interrogation sessions shall be of reasonable duration, and the firefighter or emergency medical services personnel shall be permitted reasonable periods for rest and personal necessities. The firefighter or emergency medical services personnel may have an observer of his choice present during the interrogation, as long as the interview is not unduly delayed. This observer may not participate or represent the employee, may not be involved in the investigation, and must be an active or retired member of the department, for purposes of confidentiality.

6. The firefighter or emergency medical services personnel being interrogated shall not be subjected to offensive language or offered any incentive as an inducement to answer any questions.

7. If a recording of any interrogation is made, and if a transcript of the interrogation is made, the firefighter or emergency medical services personnel under investigation shall be entitled to a copy without charge. Such record may be electronically recorded.

8. No firefighter or emergency medical services personnel shall be discharged, disciplined, demoted, denied promotion or seniority, or otherwise disciplined or discriminated against in regard to his employment, or be threatened with any such treatment as retaliation for his exercise of any of the rights granted or protected by this chapter.

Nothing contained in this section shall prohibit a local governing body from granting its employees rights greater than those contained herein.

§ 9.1-302. Breach of procedures.

Any breach of the procedures required by this chapter shall not exclude any evidence that is gathered solely through an interrogation that breached any such procedures from being presented in any case against a firefighter or individual who meets the definition of "emergency medical services personnel" in § 32.1-111.1 and shall not cause any charge to be dismissed unless the firefighter or emergency medical services personnel demonstrates that the breach prejudiced his case 9.1-300.

§ 9.1-304. Rights nonexclusive.

The rights of firefighters and emergency medical technicians as set forth in this chapter shall not be construed to diminish the rights and privileges of firefighters or emergency medical technicians that are guaranteed to all citizens by the Constitution and laws of the United States and the Commonwealth or limit the granting of broader rights by other law, ordinance, or rule.

This section shall not abridge or expand the rights of firefighters or emergency medical technicians to bring civil suits for injuries suffered in the course of their employment as recognized by the courts, nor is it designed to abrogate any common law or statutory limitation on the rights of recovery.