
SENATE BILL No. 561

DIGEST OF INTRODUCED BILL

Citations Affected: IC 34-11-2-10.5; IC 36-8-12.

Synopsis: Employment absence for volunteer firefighters. Prohibits a private employer from disciplining an employee who is a volunteer firefighter for being late to work when the employee is responding to a fire or an emergency call, and allows a civil action against an employer who disciplines an employee for this reason. Authorizes a private employer to: (1) request proof that the employee was engaged in fire or emergency activity when absent; and (2) require the employee to notify the employer of the expected absence before the scheduled start time. Provides that a private or public employer other than the state is not required to pay salary or wages for volunteer firefighting time away from employment, although other accrued benefit remuneration may be paid. Specifies that the agent of a public employer other than the state who has authorized an absence for volunteer firefighting purposes has not committed ghost employment.

Effective: July 1, 2005.

Antich-Carr

January 20, 2005, read first time and referred to Committee on Pensions and Labor.

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Introduced

First Regular Session 114th General Assembly (2005)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

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SENATE BILL No. 561



A BILL FOR AN ACT to amend the Indiana Code concerning local government.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 34-11-2-10.5 IS ADDED TO THE INDIANA
2 CODE AS A **NEW** SECTION TO READ AS FOLLOWS
3 [EFFECTIVE JULY 1, 2005]: **Sec. 10.5. An action brought by a**
4 **volunteer firefighter against the volunteer firefighter's employer**
5 **for being disciplined for being absent from employment while**
6 **responding to an emergency must be commenced within one (1)**
7 **year after the date of the disciplinary action, as provided in:**

8 (1) IC 36-8-12-10.5(e); and

9 (2) IC 36-8-12-10.7(d).

10 SECTION 2. IC 36-8-12-2 IS AMENDED TO READ AS
11 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. As used in this
12 chapter:

13 "Employee" means a person in the service of another person
14 under a written or implied contract of hire or apprenticeship.

15 "Employer" means:

16 (1) a political subdivision;

17 (2) an individual or the legal representative of a deceased



- 1 **individual;**
- 2 **(3) a firm;**
- 3 **(4) an association;**
- 4 **(5) a limited liability company;**
- 5 **(6) an employer that provides on-the-job training under the**
- 6 **federal School to Work Opportunities Act (20 U.S.C. 6101 et**
- 7 **seq.) to the extent set forth in IC 22-3-2-2.5; or**
- 8 **(7) a corporation or its receiver or trustee;**
- 9 **that uses the services of another person for pay.**

10 "Nominal compensation" means annual compensation of not more
 11 than twenty thousand dollars (\$20,000).

12 **"Public servant" has the meaning set forth in IC 35-41-1-24.**

13 "Responsible party" has the meaning set forth in IC 13-11-2-191(d).

14 "Volunteer fire department" means a department or association
 15 organized for the purpose of answering fire alarms, extinguishing fires,
 16 and providing other emergency services, the majority of members of
 17 which receive no compensation or nominal compensation for their
 18 services.

19 "Volunteer firefighter" means a firefighter:

- 20 (1) who, as a result of a written application, has been elected or
- 21 appointed to membership in a volunteer fire department;
- 22 (2) who has executed a pledge to faithfully perform, with or
- 23 without nominal compensation, the work related duties assigned
- 24 and orders given to the firefighter by the chief of the volunteer
- 25 fire department or an officer of the volunteer fire department,
- 26 including orders or duties involving education and training as
- 27 prescribed by the volunteer fire department or the state; and
- 28 (3) whose name has been entered on a roster of volunteer
- 29 firefighters that is kept by the volunteer fire department and that
- 30 has been approved by the proper officers of the unit.

31 SECTION 3. IC 36-8-12-10.5 IS AMENDED TO READ AS
 32 FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10.5. (a) This section
 33 does not apply to an employee of the state subject to IC 4-15-10-7.

34 (b) This section applies to an employee of a political subdivision
 35 who:

- 36 (1) is a volunteer firefighter; and
- 37 (2) has notified the employee's employer in writing that the
- 38 employee is a volunteer firefighter.

39 (c) The political subdivision employer may not discipline an
 40 employee:

- 41 (1) for being absent from employment by reason of responding to
- 42 a fire or emergency call that was received before the time that the

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1 employee was to report to employment; or
2 (2) for leaving the employee's duty station to respond to a fire or
3 an emergency call if the employee has secured authorization from
4 the employee's supervisor to leave the duty station in response to
5 a fire or an emergency call received after the employee has
6 reported to work.

7 (d) The political subdivision employer may require an employee
8 who has been absent from employment as set forth in subsection (c)(1)
9 or (c)(2) to present a written statement from the fire chief or other
10 officer in charge of the volunteer fire department at the time of the
11 absence indicating that the employee was engaged in emergency
12 firefighting or emergency activity at the time of the absence.

13 (e) An employee who is disciplined by the employer in violation of
14 subsection (c) may bring a civil action against the employer in the
15 county of employment. In the action, the employee may seek the
16 following:

- 17 (1) Payment of back wages.
- 18 (2) Reinstatement to the employee's former position.
- 19 (3) Fringe benefits wrongly denied or withdrawn.
- 20 (4) Seniority rights wrongly denied or withdrawn.

21 An action brought under this subsection must be filed within one (1)
22 year after the date of the disciplinary action.

23 **(f) A public servant who permits or authorizes an employee of**
24 **a political subdivision under the supervision of the public servant**
25 **to be absent from employment as set forth in subsection (c) is not**
26 **considered to have committed a violation of IC 35-44-2-4(b).**

27 SECTION 4. IC 36-8-12-10.7 IS ADDED TO THE INDIANA AS
28 A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1,
29 2005]: **Sec. 10.7. (a) This section applies to an employee of a private**
30 **employer who:**

- 31 **(1) is a volunteer firefighter; and**
- 32 **(2) has notified the employee's employer in writing that the**
33 **employee is a volunteer firefighter.**

34 **(b) The employer may not discipline an employee for being**
35 **absent from employment by reason of responding to a fire or**
36 **emergency call that was received before the time that the employee**
37 **was scheduled to report to employment.**

38 **(c) The employer may require an employee who has been absent**
39 **from employment as set forth in subsection (b) to present a written**
40 **statement from the fire chief or other officer in charge of the**
41 **volunteer fire department at the time of the absence indicating that**
42 **the employee was engaged in emergency firefighting or emergency**

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1 activity at the time of the absence.

2 (d) An employee who is disciplined by the employer in violation
3 of subsection (b) may bring a civil action against the employer in
4 the county of employment. In the action, the employee may seek
5 the following:

- 6 (1) Payment of back wages.
- 7 (2) Reinstatement to the employee's former position.
- 8 (3) Fringe benefits wrongly denied or withdrawn.
- 9 (4) Seniority rights wrongly denied or withdrawn.

10 An action brought under this subsection must be commenced
11 within one (1) year after the date of the disciplinary action.

12 SECTION 5. IC 36-8-12-10.9 IS ADDED TO THE INDIANA
13 CODE AS A NEW SECTION TO READ AS FOLLOWS
14 [EFFECTIVE JULY 1, 2005]: Sec. 10.9. (a) The employer may
15 require an employee who will be absent from employment as set
16 forth in:

- 17 (1) section 10.5(c)(1); or
- 18 (2) section 10.7(b);

19 of this chapter to notify the employer before the employee's
20 scheduled start time for the absence from employment to be
21 excused by the employer.

22 (b) The employer is not required to pay salary or wages to an
23 employee who has been absent from employment as set forth in
24 section 10.5(c) or section 10.7(b) of this chapter for the time away
25 from the employee's duty station. The employee may seek
26 remuneration for the absence from employment by the use of:

- 27 (1) vacation leave;
- 28 (2) personal time; or
- 29 (3) compensatory time off.

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