

# MAINE STATE LEGISLATURE

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# 122nd MAINE LEGISLATURE

## FIRST SPECIAL SESSION-2005

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Legislative Document

No. 1652

H.P. 1166

House of Representatives, May 5, 2005

### **An Act To Establish a Fair System for the Protection of Volunteer Firefighters' Employment**

(AFTER DEADLINE)

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Approved for introduction by a majority of the Legislative Council pursuant to Joint Rule 205.

Reference to the Committee on Labor suggested and ordered printed.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative DUCHESNE of Hudson.  
Cosponsored by Representatives: ANNIS of Dover-Foxcroft, DUPLESSIE of Westbrook,  
HUTTON of Bowdoinham.

2 Be it enacted by the People of the State of Maine as follows:

4 Sec. 1. 26 MRSA c. 7, sub-c. 4-C is enacted to read:

6 SUBCHAPTER 4-C

8 VOLUNTEER FIREFIGHTER; ABSENCE FROM WORK

10 §809. Absence for emergency response

12 1. Definitions. As used in this subchapter, unless the  
context otherwise indicates, the following terms have the  
following meanings.

14 A. "Employer" means any private or public employer,  
including the State and political subdivisions of the State,  
that employs 5 or more full-time-equivalent employees.

16 B. "Responding to an emergency" means responding to,  
working at the scene of or returning from a fire call, a  
hazardous or toxic materials spill and cleanup or any other  
situation to which the fire department has been dispatched.

18 C. "Volunteer firefighter" has the same meaning as in Title  
30-A, section 3151.

20 2. Prohibition against discharge or disciplinary action.  
An employer may not discharge or take any other disciplinary  
action against an employee because of the employee's failure to  
report for work at the beginning of the employee's regular  
working hours if the employee failed to do so because the  
employee was responding to an emergency in the employee's  
capacity as a volunteer firefighter. An employer may charge the  
lost time against the employee's regular pay or against the  
employee's available leave time. This subsection does not apply  
to the absence of a volunteer firefighter from the volunteer  
firefighter's regular employment as a law enforcement officer, a  
utility worker or medical personnel when the services of that  
person are essential to protect public health or safety or if the  
employee has been designated as essential by the employer  
pursuant to subsection 6.

22 3. Notification; verification. If time permits, when an  
employee is responding as a volunteer firefighter to an  
emergency, the employee, the employee's designee or the fire  
department supervisor shall notify the employer that the employee  
will not report to work at the appointed time. At the request of  
an employer, an employee losing work time as provided in  
subsection 2 shall provide the employer with a statement from the

2 chief of the volunteer fire department stating that the employee  
3 was responding to an emergency call and the time of the call.

4 4. Enforcement; penalty for violation. If an employer has  
5 violated subsection 2, the employee may bring an action in  
6 Superior Court in the county in which the employee resides or in  
7 the county in which the employer's place of business is located.  
8 The action must be brought within one year of the date of the  
9 alleged violation. If the court finds that the employer violated  
10 subsection 2, and if the employee so requests, the court shall  
11 order the employer to reinstate the employee in the employee's  
12 former position without reduction of pay, seniority or other  
13 benefits. The court also shall order any other appropriate remedy  
14 necessary to return the employee to the position the employee  
15 would have been in had the employer not violated subsection 2,  
16 including payment of back pay and reinstatement of any other  
17 benefits lost during the period in which the discharge or  
18 disciplinary action was in effect.

20 5. Impact on individual agreements. This section does not  
21 apply if the employer and the employee have entered into a  
22 written agreement, signed by the employer and the employee, that  
23 governs procedures to be followed when the employee is called to  
24 respond to an emergency as a volunteer firefighter. This  
25 subsection applies only if:

26 A. The local official in charge of calling out firefighters  
27 has a written policy that:

30 (1) Specifies the circumstances under which  
31 firefighters will be ordered to remain at an emergency;  
32 and

33 (2) Affirms that firefighters will be released as soon  
34 as practicable; and

35 B. The employee presents a copy of the policy to the  
36 employer upon notifying the employer of the employee's  
37 status as a volunteer firefighter.

38 6. Designation as essential. Upon receiving notice of an  
39 employee's volunteer firefighter status, an employer may  
40 designate the employee essential to the employer's operations.  
41

## 46 SUMMARY

47 This bill protects a volunteer firefighter from being  
48 discharged or disciplined by an employer on the grounds that the  
49 volunteer firefighter arrives late or does not arrive at work  
50 because the volunteer firefighter is responding to an emergency

2 such as a fire, hazardous or toxic waste spill or other situation  
to which the fire department is called to respond. The bill  
allows written agreements between employers and employees to  
4 supersede the terms of the proposed law. The bill applies to  
employers with 5 or more full-time-equivalent employees and  
6 allows an employer to designate an employee as "essential" and  
therefore not subject to the employment protections.