

# STATE OF NEW YORK

6550

2019-2020 Regular Sessions

## IN ASSEMBLY

March 11, 2019

Introduced by M. of A. LiPETRI -- read once and referred to the Committee on Local Governments

AN ACT to amend the general municipal law, in relation to the defense and indemnification of volunteer firefighters

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. Subdivision 1 of section 205-g of the general municipal law  
2 is amended by adding a new paragraph e to read as follows:

3 e. "Attorney general" means the attorney general of the state of New  
4 York.

5 § 2. Subdivisions 2, 3, 5 and 6 of section 205-g of the general munic-  
6 ipal law, as added by chapter 559 of the laws of 2006, are amended to  
7 read as follows:

8 2. The [~~public entity~~] state shall provide for the defense of the  
9 volunteer firefighter in any civil action or proceeding, state or feder-  
10 al, arising out of any alleged act or omission which occurred or  
11 allegedly occurred while the volunteer firefighter was acting in the  
12 line of duty if the volunteer firefighter is in compliance with the  
13 provisions of subdivision seven of this section. This duty to provide  
14 for a defense shall not arise where such civil action or proceeding is  
15 brought by or at the behest of the public entity.

16 3. Subject to the conditions set forth in subdivision two of this  
17 section, the volunteer firefighter shall be entitled to be represented  
18 by private counsel of his or her choice in any civil action or proceed-  
19 ing whenever the [~~chief legal officer of the public entity or other~~  
20 ~~counsel designated by the public entity~~] attorney general determines  
21 that a conflict of interest exists, or whenever a court, upon appropri-  
22 ate motion or otherwise by a special proceeding, determines that a  
23 conflict of interest exists and that the volunteer firefighter is enti-  
24 tled to be represented by counsel of his or her choice, provided, howev-  
25 er, that the [~~chief legal officer or other counsel designated by the~~

EXPLANATION--Matter in italics (underscored) is new; matter in brackets  
[-] is old law to be omitted.

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1 ~~public entity~~] attorney general may require, as a condition to payment  
2 of the fees and expenses of such representation, that appropriate groups  
3 of such volunteer firefighters be represented by the same counsel.  
4 Reasonable attorneys' fees and litigation expenses shall be paid by the  
5 ~~public entity~~ state to such private counsel from time to time during  
6 the pendency of the civil action or proceeding with the approval of the  
7 ~~governing body of the public entity~~ state.

8 5. Where the volunteer firefighter delivers process and a written  
9 request for a defense to the public entity under subdivision seven of  
10 this section, the public entity shall notify the attorney general of  
11 such request, and the attorney general shall take the necessary steps on  
12 behalf of the volunteer firefighter to avoid entry of a default judgment  
13 pending resolution of any question pertaining to the obligation to  
14 provide for a defense.

15 6. a. The public entity shall indemnify and save harmless its volun-  
16 teer firefighters in the amount of any judgment obtained against such  
17 volunteer firefighters in a state or federal court, or in the amount of  
18 any settlement of a claim, provided that the act or omission from which  
19 such judgment or claim arose occurred while the volunteer firefighter  
20 was acting in the line of duty; provided further that in the case of a  
21 settlement the duty to indemnify and save harmless shall be conditioned  
22 upon the approval of the amount of settlement by the governing body of  
23 the public entity.

24 b. The duty to indemnify and save harmless shall be construed in the  
25 same manner as provided in section two hundred five-b of this article.

26 c. Nothing in this subdivision shall authorize a public entity to  
27 indemnify or save harmless a volunteer firefighter with respect to puni-  
28 tive or exemplary damages, fines or penalties, or money recovered from a  
29 volunteer firefighter pursuant to section fifty-one of this chapter;  
30 provided, however, that the public entity shall indemnify and save harm-  
31 less its volunteer firefighters in the amount of any ~~costs, attorneys'~~  
32 ~~fees,~~ damages, fines or penalties which may be imposed by reason of an  
33 adjudication that a volunteer firefighter, acting in the line of duty,  
34 has, without willfulness or intent on his or her part, violated a prior  
35 order, judgment, consent decree or stipulation of settlement entered in  
36 any court of this state or of the United States.

37 d. Upon entry of a final judgment against the volunteer firefighter,  
38 or upon the settlement of the claim, the volunteer firefighter shall  
39 serve a copy of such judgment or settlement, personally or by certified  
40 or registered mail within thirty days of the date of entry or settle-  
41 ment, upon the chief administrative officer of the public entity; and if  
42 not inconsistent with the provisions of this section, the amount of such  
43 judgment or settlement shall be paid by the public entity.

44 § 3. This act shall take effect immediately.