

# HOUSE BILL REPORT

## HB 1295

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As Passed House  
January 19, 1994

**Title:** An act relating to recodifying RCW 41.26.281 related to law enforcement officers and fire fighters.

**Brief Description:** Recodifying RCW 41.26.281.

**Sponsors:** Representatives Orr, Mielke, Heavey, Scott, Quall, Chappell, R. Meyers, R. Fisher, Zellinsky, Ludwig, R. Johnson, Wood, Grant, Riley, Mastin, Johanson, Franklin, Locke, Flemming, Jacobsen, H. Myers, Romero, King, Morris, Forner, Leonard, Brown, Wang, Finkbeiner, Holm, Eide, Karahalios, G. Cole, Ogden, Jones, Sheldon, Bray, G. Fisher, Long, Dellwo, Roland, Tate, Springer, Thibaudeau, Cothorn, L. Johnson, J. Kohl, Veloria, Dunshee, Basich, Campbell, Kessler, Vance, Brough, Schmidt, Cooke and Brumsickle.

**Brief History:**

Reported by House Committee on:  
Commerce & Labor, January 26, 1993, DP;  
Passed House, February 26, 1993, 73-22;  
Passed House, January 19, 1994, 74-21.

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**HOUSE COMMITTEE ON COMMERCE & LABOR**

**Majority Report:** Do pass. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Franklin; Horn; King; Springer; and Veloria.

**Staff:** Chris Cordes (786-7117).

**Background:** Law enforcement officers and fire fighters have been covered under a modern retirement system since 1969 (LEOFF). The system was amended in 1971 to add disability benefits. Under these amendments, the system's disability benefits were the exclusive remedies for personal injuries or sickness. However, officers and fire fighters were given a cause of action against the employer if injury or death of the employee resulted from the intentional or negligent act of the employer -- the "right to sue" provision. Officers and fire fighters subject to these disability provisions were not covered under the state industrial insurance system.

In 1977, the Legislature amended the LEOFF retirement and disability system to create Plan I and Plan II. LEOFF employees hired before October 1, 1977, belong to Plan I, and those employees hired on or after October 1, 1977, belong to Plan II.

Plan II employees are insured for workplace injury or illness under the state Industrial Insurance Act. Plan I employees are not covered by the Industrial Insurance Act, but remain under the disability program established in 1971.

When Plan I and Plan II were separated in 1977, the new law listed many sections of the LEOFF statute that were to apply only to Plan I. The list included the section making the LEOFF disability program the exclusive remedy for employee personal injuries. The list did not include the "right to sue" provision allowing a LEOFF employee to bring a civil suit based on the employer's negligent or intentional act.

The Legislature reorganized the LEOFF statutes in 1991 (SHB 1270). The 1991 act codified the "right to sue" provision in the section of the law that applied to both Plan I and Plan II. In 1992, a second bill (HB 2260) made changes to the 1991 act, including a recodification of the "right to sue" provision. The "right to sue" provision is now codified in the section applying only to Plan I.

Under the state Industrial Insurance Act, the remedies under the act are the exclusive remedies for employees suffering workplace injuries or illnesses. Employers are not subject to a civil suit for these injuries or illnesses, unless the employer acts with deliberate intention to produce the injury.

**Summary of Bill:** The provision giving law enforcement officers and fire fighters a cause of action against the governmental employer when an officer's or fire fighter's injury or death results from the intentional or negligent act of his or her employer is recodified to apply to both Plan I and Plan II of the Law Enforcement Officers' and Fire Fighters' Retirement System.

The act is intended to be remedial and procedural and applies retroactively to June 11, 1992.

**Fiscal Note:** Requested January 26, 1993.

**Effective Date:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** This bill is necessary because of a 1992 technical amendment bill that made a significant change in

the law. For nearly 15 years before the 1992 bill passed, the statute had not been changed and the LEOFF employees believed that the law permitted them to sue their employer for negligence. As a policy matter, these employees should have the right to sue because they put their lives at risk every day to benefit the public. The 1992 change was enacted without public discussion.

**Testimony Against:** The 1992 bill was not an oversight, but was reviewed by legislative committees who believed the change was technical. In 1977, when the LEOFF II system was created, employers believed that the employer immunity provisions of the industrial insurance applied to them. If employees are allowed to sue their employers, it raises fundamental questions about the industrial insurance system.

**Witnesses:** (In favor): Representative George Orr, prime sponsor; Michael Withey, Washington State Trial Lawyers Association; Michael Patrick, Washington Council of Police Officers; and Ken Snider, Washington Council of Fire Fighters. (Opposed): Kathleen Collins, Association of Washington Cities.