

# HOUSE BILL REPORT

## ESHB 1420

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### As Amended by the Senate

**Title:** An act relating to discrimination of volunteer fire fighters.

**Brief Description:** Prohibiting discrimination against volunteer fire fighters.

**Sponsors:** By House Committee on Commerce & Labor (originally sponsored by Representatives Hurst, Roach, Dunshee, Lovick, Woods, Jackley, Mielke, Wood, Carrell, Cooper, Sump, Hatfield, Pflug, Haigh, Conway, Reardon, Morris, Edmonds, Ruderman, O'Brien, Veloria, Poulsen, Morell, Kenney, Bush, Anderson, Cody, Santos, Rockefeller and Kessler).

### Brief History:

#### Committee Activity:

Commerce & Labor: 2/6/01, 2/23/01 [DPS].

#### Floor Activity:

Passed House: 3/13/01, 93-0.

Senate Amended.

Passed Senate: 4/6/01, 49-0.

### Brief Summary of Engrossed Substitute Bill

- Prohibits an employer from discharging or disciplining a volunteer fire fighter because of leave taken related to a fire alarm or emergency call.

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## HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hunt, Kenney, Lisk and McMorris.

**Staff:** Jill Reinmuth (786-7134).

### Background:

In Washington, the general rule is that employment is "terminable at-will." In other words, an employer may discharge an employee at any time without cause, and an

employee may quit employment at any time without cause. Similarly, an employer may take other employment action that he or she deems appropriate.

**Wrongful Discharge:** Exceptions to the general rule that employment is "terminable at-will" have been enacted by Congress and the Legislature, and recognized by Washington courts. For example, an employer may not discharge an employee for exercising rights under certain state and federal laws (e.g., the federal Family and Medical Leave Act and the state Minimum Wage Act). An employer also may not discharge an employee because he or she is a member of a protected class under the Washington Law Against Discrimination or other anti-discrimination laws. An employer may be liable for wrongful discharge for terminating an employee because he or she refused to commit an illegal act or because he or she performed a public duty.

**Wrongful Disciplinary Action:** Exceptions to the general rule that an employer may take other employment action that he or she deems appropriate also have been enacted by Congress and the Legislature. For example, an employer may not use the taking of FMLA-leave as a negative factor in employment actions, such as hiring, promotions or disciplinary actions. An employer also may not discriminate against a person in compensation or in other terms or conditions of employment because he or she is a member of a protected class under anti-discrimination laws.

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### **Summary of Bill:**

An employer is prohibited from discharging or disciplining a volunteer fire fighter because of leave taken related to an alarm of fire or an emergency call, but not related to training or other nonemergency activities. These protections apply only to a volunteer fire fighter who is not at his or her place of employment when called to serve as a volunteer, and who has been ordered to remain at his or her position by the commanding authority at the scene.

A volunteer fire fighter who is discharged or disciplined because of such leave may file a complaint with the director of the Department of Labor and Industries within 90 days of the discharge or the disciplinary action. Upon receipt of a complaint, the director must investigate and determine whether the volunteer fire fighter was discharged or disciplined because of such leave. The director also must send a notice of his or her determination to the volunteer fire fighter and the employer within 90 days of receipt of the complaint. If the director determines that the volunteer fire fighter was discharged or disciplined because of such leave and the employer fails to reinstate the employee or withdraw the disciplinary action within 30 days of receipt of notice of the director's determination, the volunteer fire fighter may bring an action against the employer in superior court seeking reinstatement or withdrawal of the disciplinary action. Reinstatement or withdrawal of the disciplinary action must be with back pay, without loss of seniority or benefits, and with removal of any related adverse material from the volunteer fire fighter's personnel

file.

An employer is a person who employed 20 or more full-time equivalent employees in the previous year.

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**EFFECT OF SENATE AMENDMENT(S):**

Adds section expressing legislative findings and intent. Modifies definition of employer– to include employers with less than 20 employees.

**Appropriation:** None.

**Fiscal Note:** Requested on February 20, 2001.

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

**Testimony For:** Volunteer fire fighters need protection. They should not lose their job or their benefits for reasons related to volunteer fire fighting activities. Volunteers are critical to fire protection in rural areas. It is already difficult to recruit volunteers. Anything that makes it more difficult to volunteer is a problem. One volunteer fire fighter was disciplined because he was late to work after returning from a fire. Another volunteer fire fighter was discharged because she was injured while fighting a fire and was temporarily disabled. Although these incidents are infrequent, they are traumatic to volunteers and their families.

**Testimony Against:** In the original bill, the duties are too broadly defined; they go far beyond responding to fires and emergencies. The remedy is not acceptable; some sort of administrative remedy is needed. A provision recognizing undue hardships or exempting small businesses is necessary. This is not a pervasive problem.

**Testified:** (In support) Representative Hurst, co-prime sponsor; Representative Roach, co-prime sponsor; T.J. Nedrow, Washington State Fire Fighters' Association; Dan Packer, East Pierce County Fire and Rescue; Alan Predmore, city of Buckley Fire Department; and Brigette Smith, Board for Volunteer Fire Fighters and Law Enforcement Officers.

(With concerns) Clif Finch, Association of Washington Business.