

SENATE BILL REPORT

ESHB 1420

As Reported By Senate Committee On:
Labor, Commerce & Financial Institutions, March 29, 2001

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 (co-prime sponsor), Roach (co-prime sponsor), Dunshee, Lovick, Woods, Jackley, Mielke, Wood, Carrell, Cooper, Sump, Hatfield, Pflug, Haigh, Conway, Reardon, Morris, Edmonds, Ruderman, O'Brien, Voloria, Poulsen, Morell, Kenney, Bush, Anderson, Cody, Santos, Rockefeller and Kessler).

Brief History:

Committee Activity: Labor, Commerce & Financial Institutions: 3/27/01, 3/29/01 [DPA].

SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

Majority Report: Do pass as amended.

Signed by Senators Prentice, Chair; Gardner, Vice Chair; Benton, Franklin, Hochstatter, Honeyford, Patterson, Rasmussen, Regala, West and Winsley.

Staff: Jack Brummel (786-7428)

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 antidiscrimination laws.

Summary of Amended 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.

Amended Bill Compared to Original Bill: Legislative findings and intent are added in the amended bill. The amended bill applies to all employers, not just those with 20 or more 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: There are 18,000 volunteer fire fighters in the state, 75 percent of the total number of fire fighters. There is no protection for fire fighters from negative employment action.

Testimony Against: None.

Testified: Representative Hurst, Representative Roach, co-prime sponsors; David Frasier.