

terms or conditions of the original stay order, the stay shall be removed and the department shall revoke the operator's license for a period of five years.

Passed the House March 19, 1985.

Passed the Senate April 11, 1985.

Approved by the Governor April 22, 1985.

Filed in Office of Secretary of State April 22, 1985.

CHAPTER 102

[Substitute House Bill No. 444]

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM—INJURIES OR SICKNESS INCURRED IN THE LINE OF DUTY

AN ACT Relating to the law enforcement officers' and fire fighters' retirement system; amending RCW 41.26.120, 41.26.270, 41.26.005, and 41.50.090; adding a new section to chapter 41.26 RCW; creating new sections; and declaring an emergency.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. As expressed in RCW 41.26.270, the intent of the legislature in enacting the law enforcement officers' and fire fighters' retirement system was to provide in RCW 41.26.120 a statute in the nature of a workers' compensation act which provides compensation to employees for personal injuries or sickness incurred in the course of employment. The sole purpose of this 1985 act is to clarify that intent.

Sec. 2. Section 12, chapter 209, Laws of 1969 ex. sess. as last amended by section 2, chapter 294, Laws of 1981 and RCW 41.26.120 are each amended to read as follows:

Any member, regardless of his age or years of service may be retired by the disability board, subject to approval by the director as hereinafter provided, for any disability incurred in the line of duty which has been continuous since his discontinuance of service and which renders him unable to continue his service(~~(; whether incurred in the line of duty or not)~~). No disability retirement allowance shall be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of his application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to his full monthly salary and shall continue to receive all other benefits provided to active employees from his employer for such period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, his disability leave allowance shall be canceled and he shall be restored to duty in the same rank or position, if any, held by the beneficiary at the time he became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he is or is believed to be physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of said member, or a person acting in his behalf, stating that said member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless said member or someone in his behalf, in case of the incapacity of a member, shall have filed the application within a period of one year from and after the discontinuance of service of said member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability has been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter as now or hereafter amended, granting the member a disability retirement allowance; otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a duty disability retirement allowance, the disability board shall make a finding ~~((of whether or not))~~ that the disability was incurred in line of duty.

(3) Every order of a disability board granting a duty disability retirement allowance shall forthwith be reviewed by the director except the finding ~~((of whether))~~ that the disability was incurred in the line of duty. The director may affirm the decision of the disability board or remand the case for further proceedings if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(4) Every member who can establish, to the disability board, that he is physically or mentally disabled from the further performance of duty, that such disability was incurred in the line of duty, and that such disability will be in existence for a period of at least six months may waive the six-month period of disability leave and be immediately granted a duty disability retirement allowance, subject to the approval of the director as provided in subsection (3) above.

NEW SECTION. Sec. 3. A new section is added to chapter 41.26 RCW to read as follows:

Any member, regardless of age or years of service, may be retired by the disability board, subject to approval by the director as provided in this section, for any disability not incurred in the line of duty which has been continuous since discontinuance of service and which renders the member unable to continue service. No disability retirement allowance may be paid until the expiration of a period of six months after the discontinuance of service during which period the member, if found to be physically or mentally unfit for duty by the disability board following receipt of the member's application for disability retirement, shall be granted a disability leave by the disability board and shall receive an allowance equal to the member's full monthly salary and shall continue to receive all other benefits provided to active employees from the member's employer for the period. However, if, at any time during the initial six-month period, the disability board finds the beneficiary is no longer disabled, the disability leave allowance shall be canceled and the member shall be restored to duty in the same rank or position, if any, held by the member at the time the member became disabled. Applications for disability retirement shall be processed in accordance with the following procedures:

(1) Any member who believes he or she is, or is believed to be, physically or mentally disabled shall be examined by such medical authority as the disability board shall employ, upon application of the member, or a person acting in the member's behalf, stating that the member is disabled, either physically or mentally: PROVIDED, That no such application shall be considered unless the member or someone acting in the member's behalf, in case of the incapacity of a member, has filed the application within a period of one year from and after the discontinuance of service of the member.

(2) If the examination shows, to the satisfaction of the disability board, that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability had been continuous from the discontinuance of service, the disability board shall enter its written decision and order, accompanied by appropriate findings of fact and by conclusions evidencing compliance with this chapter, granting the member a disability retirement allowance. Otherwise, if the member is not found by the disability board to be so disabled, the application shall be denied pursuant to a similar written decision and order, subject to appeal to the director in accordance with RCW 41.26.200: PROVIDED, That in any order granting a nonduty disability retirement allowance, the disability board shall make a finding that the disability was not incurred in the line of duty.

(3) Every order of a disability board granting a nonduty disability retirement allowance shall forthwith be reviewed by the director except the finding that the disability was not incurred in the line of duty. The director

may affirm the decision of the disability board or remand the case for further proceedings if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(4) Every member who can establish to the disability board that the member is physically or mentally disabled from the further performance of duty, that such disability was not incurred in the line of duty, and that such disability will be in existence for a period of at least six months, may waive the six-month period of disability leave and be immediately granted a non-duty disability retirement allowance, subject to the approval of the director as provided in subsection (3) of this section.

Sec. 4. Section 14, chapter 257, Laws of 1971 ex. sess. and RCW 41.26.270 are each amended to read as follows:

The legislature of the state of Washington hereby declares that the relationship between members of the law enforcement officers' and fire fighters' retirement system and their governmental employers is similar to that of workmen to their employers and that the sure and certain relief granted by this chapter is desirable, and as beneficial to such law enforcement officers and fire fighters as workmen's compensation coverage is to persons covered by Title 51 RCW. The legislature further declares that removal of law enforcement officers and fire fighters from workmen's compensation coverage under Title 51 RCW necessitates the (1) continuance of sure and certain relief for personal injuries incurred in the course of employment or occupational disease, which the legislature finds to be accomplished by the provisions of this chapter and (2) protection for the governmental employer from actions at law; and to this end the legislature further declares that the benefits and remedies conferred by this chapter upon law enforcement officers and fire fighters covered hereunder, shall be to the exclusion of any other remedy, proceeding, or compensation for personal injuries or sickness, caused by the governmental employer except as otherwise provided by this chapter; and to that end all civil actions and civil causes of actions by such law enforcement officers and fire fighters against their governmental employers for personal injuries or sickness are hereby abolished, except as otherwise provided in this chapter.

Sec. 5. Section 18, chapter 294, Laws of 1977 ex. sess. as amended by section 1, chapter 249, Laws of 1979 ex. sess. and RCW 41.26.005 are each amended to read as follows:

The provisions of the following sections of this chapter shall apply only to persons who establish membership in the retirement system on or before September 30, 1977: RCW 41.26.080, 41.26.090, 41.26.100, 41.26.110, 41.26.120, section 3 of this 1985 act, 41.26.130, 41.26.140, 41.26.150, 41.26.160, 41.26.170, 41.26.190, 41.26.200, 41.26.240, 41.26.250, 41.26.260, and 41.26.270.

Sec. 6. Section 11, chapter 105, Laws of 1975-'76 2nd ex. sess. as last amended by section 97, chapter 3, Laws of 1983 and RCW 41.50.090 are each amended to read as follows:

(1) Except as otherwise provided in this section, on the effective date of transfer as provided in RCW 41.50.030, the department shall succeed to and is vested with all powers, duties, and functions now or by any concurrent act of this 1976 legislature vested in the individual retirement boards set forth in RCW 41.50.030 relating to the administration of their various retirement systems, including but not limited to the power to appoint a staff and define the duties thereof: PROVIDED, That actuarial services required by the department shall be performed by the state actuary as provided in RCW 44.44.040.

(2) The department shall keep each retirement board fully informed on the administration of the corresponding retirement system, and shall furnish any information requested by a retirement board.

(3) Rules proposed by the director under RCW 2.10.070, 41.26.060, 41.32.160, or 41.40.020(~~(, or 43.43.140)~~) shall be submitted to the appropriate retirement boards for review prior to adoption. After receiving approval of the members of the appropriate board, such rules shall become effective as provided by the administrative procedure act, chapter 34.04 RCW.

(4) Each retirement board shall continue to perform all functions as are vested in it by law with respect to applications for benefits paid upon either temporary or permanent disability, with such staff assistance from the department as may be required. The director shall perform those functions with respect to disability benefits as are vested in him or her by RCW 41.26.120, section 3 of this 1985 act, and 41.26.200.

NEW SECTION. Sec. 7. The provisions of this 1985 act apply retrospectively to all disability leave and disability retirement allowances granted under chapter 41.26 RCW on or after March 1, 1970.

NEW SECTION. Sec. 8. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state

government and its existing public institutions, and shall take effect immediately.

Passed the House March 14, 1985.

Passed the Senate April 10, 1985.

Approved by the Governor April 22, 1985.

Filed in Office of Secretary of State April 22, 1985.

CHAPTER 103

[House Bill No. 657]

LAW ENFORCEMENT OFFICERS' AND FIRE FIGHTERS' RETIREMENT SYSTEM—DISABILITY BOARD DETERMINATIONS

AN ACT Relating to the law enforcement officers' and fire fighters' retirement system; amending RCW 41.26.140; and adding a new section to chapter 41.26 RCW.

Be it enacted by the Legislature of the State of Washington:

NEW SECTION. Sec. 1. A new section is added to chapter 41.26 RCW to read as follows:

(1) A disabled member who believes that his or her disability has ceased in accordance with RCW 41.26.130(3) may make application to the disability board which originally found the member to be disabled, for a determination that the disability has ceased.

(2) Every order of a disability board determining that a member's disability has ceased pursuant to RCW 41.26.130(3) shall forthwith be reviewed by the director. The director may affirm the decision of the disability board or remand the case for further proceedings if the director finds the disability board's findings, inferences, conclusions, or decisions are:

- (a) In violation of constitutional provisions; or
- (b) In excess of the statutory authority or jurisdiction of the disability board; or
- (c) Made upon unlawful procedure; or
- (d) Affected by other error of law; or
- (e) Clearly erroneous in view of the entire record as submitted and the public policy contained in this chapter; or
- (f) Arbitrary or capricious.

(3) Determinations of whether a disability has ceased under RCW 41.26.130(3) and this section shall be made in accordance with the same procedures and standards governing other cancellations of disability retirement.

Sec. 2. Section 14, chapter 209, Laws of 1969 ex. sess. as last amended by section 4, chapter 294, Laws of 1981 and RCW 41.26.140 are each amended to read as follows:

(1) Upon the basis of reexaminations of members on disability retirement as provided in RCW 41.26.130, the disability board shall determine