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**SUBSTITUTE SENATE BILL 5200**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

**By** Senate Committee on Labor & Commerce (originally sponsored by Senators Skratek, Owen, Gaspard, Prentice, Moore and Winsley)

Read first time 03/03/93.

1 AN ACT Relating to the protection of private employee rights;  
2 amending RCW 49.60.250; adding a new chapter to Title 49 RCW; and  
3 prescribing penalties.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** This chapter may be cited as the private  
6 whistleblowers' protection act.

7 NEW SECTION. **Sec. 2.** Private employees have a right and should be  
8 encouraged to disclose, to the extent not expressly prohibited by law,  
9 actions by their employers that are in violation of federal, state, or  
10 local laws, rules, or regulations, or that otherwise create a threat to  
11 the health and safety of themselves or the public. It is the intent of  
12 the legislature that private employees who object to or report illegal  
13 actions by their employers or other persons or cooperate in the  
14 investigation or prosecution of illegal actions by their employers or  
15 other persons be protected from retaliation by their employers.

1        NEW SECTION.        **Sec. 3.**        Unless the context clearly requires  
2 otherwise, the definitions in this section apply throughout this  
3 chapter.

4        (1) "Damages" means damages for injury or loss caused by each  
5 violation of this chapter, including reasonable attorneys' fees.

6        (2) "Employee" means any employee as defined in common law and an  
7 individual acting as an independent contractor, and does not include  
8 any individual employed by his or her parents, spouse, or child, or in  
9 the domestic service of any person.

10       (3) "Private employer" means any corporation, partnership, joint  
11 venture, limited partnership, nonprofit association or corporation, or  
12 individual or any officer, employee, or agent thereof, and includes any  
13 private entity acting as an independent contractor employed by or  
14 acting on behalf of the federal, state, or local government.

15       (4) "Public body" means all of the following:

16       (a) An officer, employee, agency, department, division, bureau,  
17 board, commission, council, authority, or other body in the executive  
18 branch of the federal, state, or local government;

19       (b) An agency, board, commission, council, member, or employee of  
20 the legislative branch of the federal, state, or local government;

21       (c) The federal, state, or local judiciary and any member or  
22 employee thereof.

23       (5) "Retaliatory action" means an adverse action regarding the  
24 terms and conditions of employment of an employee or an individual  
25 working as an independent contractor, and includes, but is not limited  
26 to:

27       (a) Denial of adequate staff to perform duties;

28       (b) Frequent staff changes;

29       (c) Frequent or undesirable work site changes;

30       (d) Refusal to assign meaningful work;

31       (e) Unwarranted and unsubstantiated reprimands or unsatisfactory  
32 performance evaluations;

33       (f) Demotion;

34       (g) Reduction in pay;

35       (h) Denial of promotion;

36       (i) Suspension;

37       (j) Dismissal;

38       (k) Denial of employment; and

1 (1) A supervisor or superior encouraging coworkers to behave in a  
2 hostile manner toward the employee.

3 NEW SECTION. **Sec. 4.** (1) A private employer shall not take any  
4 retaliatory action or threaten to take any retaliatory action against  
5 an employee because:

6 (a) The employee, acting in good faith, or a person acting on  
7 behalf of the employee, reports, or was about to report, orally or in  
8 writing, what the employee has reasonable cause to believe is a  
9 violation of a law, rule, or regulation adopted under the laws of this  
10 state, a political subdivision of this state, or the United States to  
11 the employer or a public body;

12 (b) The employee, acting in good faith, or a person acting on  
13 behalf of the employee, reports, or was about to report, to the  
14 employer, or a public body, orally or in writing, what the employee has  
15 reasonable cause to believe is a condition or practice that would put  
16 at risk the health or safety of that employee or any other individual;

17 (c) The employee is requested or ordered by a public body or  
18 official to participate in an investigation, hearing, or inquiry, or in  
19 a court action the subject of which is illegal activity or other  
20 wrongdoing by his or her employer; or

21 (d) The employee, acting in good faith, has refused to carry out a  
22 directive that would expose the employee or any individual to a  
23 condition that would result in serious injury, illness, or death, after  
24 having sought and been unable to obtain a correction of the dangerous  
25 condition from the employer.

26 (2) Subsection (1) of this section does not apply to an employee  
27 who has reported or caused to be reported a violation or unsafe  
28 condition or practice to a public body, unless the employee has first  
29 brought the alleged violation, condition, or practice to the attention  
30 of a person having supervisory authority for the employer and has  
31 allowed the employer a reasonable opportunity to correct that  
32 violation, condition, or practice. Prior notice to an employer is not  
33 required if the employee has reasonable cause to believe: (i) That  
34 reports to the employer would result in retaliation or harassment; (ii)  
35 that a crime has been committed; (iii) that an emergency involving  
36 personal or public safety exists; or (iv) that the violation or unsafe  
37 condition is caused by a person other than the employer.

1 (3) A person shall not direct, encourage, or otherwise seek to  
2 persuade a private employer to take any retaliatory action or threaten  
3 to take any retaliatory action against an employee for any of the  
4 reasons set forth in subsection (1) (a), (b), or (c) of this section.

5 NEW SECTION. **Sec. 5.** (1) A person who alleges a violation of this  
6 chapter may bring a civil action for appropriate injunctive relief, or  
7 actual damages, or both within three years after the cessation of any  
8 occurrence of the alleged violation of this chapter.

9 (2) An action commenced pursuant to subsection (1) of this section  
10 may be brought in the superior court for the county where the alleged  
11 violation occurred, the county where the complainant resides, or the  
12 county where the person against whom the civil complaint is filed or  
13 has its principal place of business.

14 (3) An employee claiming that he or she or a person acting on his  
15 or her behalf was about to make a report of the nature described in  
16 section 4(1) (a) and (b) of this act shall prove that element of the  
17 claim by clear and convincing evidence in order to prevail. Claims  
18 based on other protected activities need only be proved by a  
19 preponderance of evidence.

20 (4) A court, in rendering a judgment in an action brought under  
21 this chapter, shall order, as the court considers appropriate,  
22 reinstatement of the employee, the payment of back wages, full  
23 reinstatement of fringe benefits and seniority rights, actual damages,  
24 or any combination of these remedies. A court may also award the  
25 complainant all or a portion of the costs of litigation, including  
26 reasonable attorneys' fees and witness fees, if the court determines  
27 that the award is appropriate.

28 (5) A person who violates this chapter is liable for a civil fine  
29 of not more than three thousand dollars. Any fine that is ordered  
30 pursuant to this chapter shall be paid into the state treasury and  
31 credited to the general fund.

32 NEW SECTION. **Sec. 6.** This chapter shall not be construed: (1) To  
33 diminish or impair the rights of a person under any collective  
34 bargaining agreement; (2) to derogate any common law rights of an  
35 employee; or (3) to limit in any way the rights and powers granted  
36 under RCW 4.24.500, 4.24.510, and 4.24.520.

1        NEW SECTION.    **Sec. 7.**    (1) A violation of this chapter is an unfair  
2 practice under chapter 49.60 RCW.

3        (2) An employee alleging a violation of this chapter may, as an  
4 alternative to commencing a civil action under section 5 of this act,  
5 file a complaint with the state human rights commission pursuant to  
6 chapter 49.60 RCW.

7        **Sec. 8.**    RCW 49.60.250 and 1992 c 118 s 5 are each amended to read  
8 as follows:

9        (1) In case of failure to reach an agreement for the elimination of  
10 such unfair practice, and upon the entry of findings to that effect,  
11 the entire file, including the complaint and any and all findings made,  
12 shall be certified to the chairperson of the commission.    The  
13 chairperson of the commission shall thereupon request the appointment  
14 of an administrative law judge under Title 34 RCW to hear the complaint  
15 and shall cause to be issued and served in the name of the commission  
16 a written notice, together with a copy of the complaint, as the same  
17 may have been amended, requiring the respondent to answer the charges  
18 of the complaint at a hearing before the administrative law judge, at  
19 a time and place to be specified in such notice.

20        (2) The place of any such hearing may be the office of the  
21 commission or another place designated by it.    The case in support of  
22 the complaint shall be presented at the hearing by counsel for the  
23 commission:    PROVIDED, That the complainant may retain independent  
24 counsel and submit testimony and be fully heard.    No member or employee  
25 of the commission who previously made the investigation or caused the  
26 notice to be issued shall participate in the hearing except as a  
27 witness, nor shall the member or employee participate in the  
28 deliberations of the administrative law judge in such case.    Any  
29 endeavors or negotiations for conciliation shall not be received in  
30 evidence.

31        (3) The respondent shall file a written answer to the complaint and  
32 appear at the hearing in person or otherwise, with or without counsel,  
33 and submit testimony and be fully heard.    The respondent has the right  
34 to cross-examine the complainant.

35        (4) The administrative law judge conducting any hearing may permit  
36 reasonable amendment to any complaint or answer.    Testimony taken at  
37 the hearing shall be under oath and recorded.

1 (5) If, upon all the evidence, the administrative law judge finds  
2 that the respondent has engaged in any unfair practice, the  
3 administrative law judge shall state findings of fact and shall issue  
4 and file with the commission and cause to be served on such respondent  
5 an order requiring such respondent to cease and desist from such unfair  
6 practice and to take such affirmative action, including, (but not  
7 limited to) hiring, reinstatement or upgrading of employees, with or  
8 without back pay, an admission or restoration to full membership rights  
9 in any respondent organization, or to take such other action as, in the  
10 judgment of the administrative law judge, will effectuate the purposes  
11 of this chapter, including action that could be ordered by a court,  
12 except that damages for humiliation and mental suffering shall not  
13 exceed one thousand dollars, and including a requirement for report of  
14 the matter on compliance.

15 (6) If a determination is made that retaliatory action, as defined  
16 in RCW 42.40.050, has been taken against a whistleblower, as defined in  
17 RCW 42.40.020, the administrative law judge may, in addition to any  
18 other remedy, impose a civil penalty upon the retaliator of up to three  
19 thousand dollars and issue an order to the state employer to suspend  
20 the retaliator for up to thirty days without pay. At a minimum, the  
21 administrative law judge shall require that a letter of reprimand be  
22 placed in the retaliator's personnel file. All penalties recovered  
23 shall be paid into the state treasury and credited to the general fund.

24 (7) If a determination is made that a private employer has  
25 retaliated against an employee in violation of the private  
26 whistleblowers' protection act, chapter 49.-- RCW (sections 1 through  
27 7 of this act), the administrative law judge may, in addition to any  
28 other remedy, impose a civil penalty upon the private employer of up to  
29 three thousand dollars. All penalties recovered shall be paid into the  
30 state treasury and credited to the general fund. In any case under the  
31 private whistleblowers' protection act, chapter 49.-- RCW (sections 1  
32 through 7 of this act) the administrative law judge may require payment  
33 to the general fund of all or a portion of the commission's actual  
34 costs of processing the case by any one or more of the parties joined  
35 in the case.

36 (8) The final order of the administrative law judge shall include  
37 a notice to the parties of the right to obtain judicial review of the  
38 order by appeal in accordance with the provisions of RCW 34.05.510

1 through 34.05.598, and that such appeal must be served and filed within  
2 thirty days after the service of the order on the parties.

3 ~~((+8))~~ (9) If, upon all the evidence, the administrative law judge  
4 finds that the respondent has not engaged in any alleged unfair  
5 practice, the administrative law judge shall state findings of fact and  
6 shall similarly issue and file an order dismissing the complaint.

7 ~~((+9))~~ (10) An order dismissing a complaint may include an award  
8 of reasonable attorneys' fees in favor of the respondent if the  
9 administrative law judge concludes that the complaint was frivolous,  
10 unreasonable, or groundless. In an order dismissing a complaint  
11 brought under the private whistleblowers' protection act, chapter 49.--  
12 RCW (sections 1 through 7 of this act) an order dismissing a complaint  
13 shall include an award of reasonable attorneys' fees in favor of the  
14 respondent and may impose a civil penalty of up to one thousand dollars  
15 against the complainant if the administrative law judge concludes that  
16 the complaint was frivolous, unreasonable, or groundless.

17 ~~((+10))~~ (11) The commission shall establish rules of practice to  
18 govern, expedite, and effectuate the foregoing procedure.

19 NEW SECTION. **Sec. 9.** Sections 1 through 7 of this act shall  
20 constitute a new chapter in Title 49 RCW.

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