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**SENATE BILL 5200**

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**State of Washington**                      **53rd Legislature**                      **1993 Regular Session**

**By** Senators Skratek, Owen, Gaspard, Prentice, Moore and Winsley

Read first time 01/15/93. Referred to Committee on Labor & Commerce.

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 or improper actions by their employers or other persons or cooperate in  
14 the investigation or prosecution of illegal or improper actions by  
15 their employers or other persons be protected from retaliation by their  
16 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.

8        (3) "Private employer" means any corporation, partnership, joint  
9 venture, limited partnership, nonprofit association or corporation, or  
10 individual or any officer, employee, or agent thereof and excludes the  
11 federal government, the state, and any political subdivision of the  
12 state.

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

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

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

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

21        (5) "Retaliatory action" means an adverse action regarding the  
22 terms and conditions of employment and the working relations with an  
23 individual working as an independent contractor, and includes, but is  
24 not limited to:

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

26        (b) Frequent staff changes;

27        (c) Frequent or undesirable work site changes;

28        (d) Refusal to assign meaningful work;

29        (e) Unwarranted and unsubstantiated reprimands or unsatisfactory  
30 performance evaluations;

31        (f) Demotion;

32        (g) Reduction in pay;

33        (h) Denial of promotion;

34        (i) Suspension;

35        (j) Dismissal;

36        (k) Denial of employment; and

37        (l) A supervisor or superior encouraging coworkers to behave in a  
38 hostile manner toward the employee.

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

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

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

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

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

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

37       (3) A person shall not direct, encourage, or otherwise seek to  
38 persuade a private employer to take any retaliatory action or threaten

1 to take any retaliatory action against an employee for any of the  
2 reasons set forth in subsection (1) (a), (b), or (c) of this section.

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

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

12 (3) An employee shall show by clear and convincing evidence that he  
13 or she or a person acting on his or her behalf was about to make a  
14 report of the nature described in section 4(1) (a) and (b) of this act.

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

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

27 NEW SECTION. **Sec. 6.** (1) A violation of this chapter is an unfair  
28 practice under chapter 49.60 RCW.

29 (2) An employee alleging a violation of this chapter may, as an  
30 alternative to commencing a civil action under section 5 of this act,  
31 file a complaint with the state human rights commission pursuant to RCW  
32 49.60.230.

33 (3) Any employee filing a complaint with the human rights  
34 commission pursuant to subsection (2) of this section waives his or her  
35 right to commence any civil action pursuant to section 5 of this act  
36 based upon the same act or acts of his or her employer and waives his  
37 or her right to appeal any final determinations of an administrative

1 law judge entered pursuant to RCW 49.60.250 except for an appeal on the  
2 grounds that the actions of the administrative law judge were arbitrary  
3 and capricious.

4 NEW SECTION. **Sec. 7.** This chapter shall not be construed: (1) To  
5 diminish or impair the rights of a person under any collective  
6 bargaining agreement; (2) to derogate any common law rights of an  
7 employee; or (3) to limit in any way the rights and powers granted  
8 under RCW 4.24.500, 4.24.510, and 4.24.520.

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

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

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

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

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

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

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

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

1       (8) The final order of the administrative law judge shall include  
2 a notice to the parties of the right to obtain judicial review of the  
3 order by appeal in accordance with the provisions of RCW 34.05.510  
4 through 34.05.598, and that such appeal must be served and filed within  
5 thirty days after the service of the order on the parties. In the  
6 event the final order is a ruling on a complaint filed pursuant to  
7 chapter 49.-- RCW (sections 1 through 7 of this act), the notice shall  
8 disclose that an appeal may be taken by the employee only on the  
9 grounds that the final determination of the administrative law judge  
10 was arbitrary and capricious.

11       ~~((+8+))~~ (9) If, upon all the evidence, the administrative law judge  
12 finds that the respondent has not engaged in any alleged unfair  
13 practice, the administrative law judge shall state findings of fact and  
14 shall similarly issue and file an order dismissing the complaint.

15       ~~((+9+))~~ (10) An order dismissing a complaint may include an award  
16 of reasonable attorneys' fees in favor of the respondent if the  
17 administrative law judge concludes that the complaint was frivolous,  
18 unreasonable, or groundless.

19       ~~((+10+))~~ (11) The commission shall establish rules of practice to  
20 govern, expedite, and effectuate the foregoing procedure.

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

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