

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE SENATE BILL 5577

63rd Legislature
2013 Regular Session

Passed by the Senate April 24, 2013
YEAS 47 NAYS 0

President of the Senate

Passed by the House April 15, 2013
YEAS 96 NAYS 1

Speaker of the House of Representatives

Approved

Governor of the State of Washington

CERTIFICATE

I, Hunter G. Goodman, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE SENATE BILL 5577** as passed by the Senate and the House of Representatives on the dates hereon set forth.

Secretary

FILED

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE SENATE BILL 5577

AS AMENDED BY THE HOUSE

Passed Legislature - 2013 Regular Session

State of Washington 63rd Legislature 2013 Regular Session

By Senate Human Services & Corrections (originally sponsored by
Senator Carrell)

READ FIRST TIME 02/20/13.

1 AN ACT Relating to protecting public employees who act ethically
2 and legally; amending RCW 42.52.410, 42.52.360, 42.52.420, 42.52.460,
3 and 42.56.240; adding a new section to chapter 42.52 RCW; creating a
4 new section; and prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that ensuring public
7 trust in government is a priority. The public expects its elected
8 officials and state employees to adhere to the highest ethical
9 standards during their service, and this includes a commitment to full
10 and independent investigations, with proper penalties, in cases where
11 the ethics in public service act is violated.

12 **Sec. 2.** RCW 42.52.410 and 1994 c 154 s 211 are each amended to
13 read as follows:

14 (1) A person may, personally or by his or her attorney, make, sign,
15 and file with the appropriate ethics board a complaint on a form
16 provided by the appropriate ethics board. The complaint shall state
17 the name of the person alleged to have violated this chapter or rules

1 adopted under it and the particulars thereof, and contain such other
2 information as may be required by the appropriate ethics board.

3 (2) If it has reason to believe that any person has been engaged or
4 is engaging in a violation of this chapter or rules adopted under it,
5 an ethics board may issue a complaint.

6 (3)(a) A state employee who files a complaint with the appropriate
7 ethics board shall be afforded the protection afforded to a
8 whistleblower under RCW 42.40.050 and 49.60.210(2), subject to the
9 limitations of RCW 42.40.035 and 42.40.910. An agency, manager, or
10 supervisor may not retaliate against a state employee who, after making
11 a reasonable attempt to ascertain the correctness of the information
12 furnished, files a complaint with the appropriate ethics board.

13 (b) A state employee may not be denied the protections in chapter
14 42.40 RCW even if the ethics board denies an investigation of the
15 complaint.

16 (4) If a determination is made that a reprisal or retaliatory
17 action has been taken against the state employee, the retaliator may be
18 subject to a civil penalty of up to five thousand dollars.

19 **Sec. 3.** RCW 42.52.360 and 2005 c 106 s 5 are each amended to read
20 as follows:

21 (1) The executive ethics board shall enforce this chapter and rules
22 adopted under it with respect to statewide elected officers and all
23 other officers and employees in the executive branch, boards and
24 commissions, and institutions of higher education.

25 (2) The executive ethics board shall enforce this chapter with
26 regard to the activities of university research employees as provided
27 in this subsection.

28 (a) With respect to compliance with RCW 42.52.030, 42.52.110,
29 42.52.130, 42.52.140, and 42.52.150, the administrative process shall
30 be consistent with and adhere to no less than the current standards in
31 regulations of the United States public health service and the office
32 of the secretary of the department of health and human services in
33 Title 42 C.F.R. Part 50, Subpart F relating to promotion of objectivity
34 in research.

35 (b) With respect to compliance with RCW 42.52.040, 42.52.080, and
36 42.52.120, the administrative process shall include a comprehensive
37 system for the disclosure, review, and approval of outside work

1 activities by university research employees while assuring that such
2 employees are fulfilling their employment obligations to the
3 university.

4 (c) With respect to compliance with RCW 42.52.160, the
5 administrative process shall include a reasonable determination by the
6 university of acceptable private uses having de minimis costs to the
7 university and a method for establishing fair and reasonable
8 reimbursement charges for private uses the costs of which are in excess
9 of de minimis.

10 (3) The executive ethics board shall:

11 (a) Develop educational materials and training;

12 (b) Adopt rules and policies governing the conduct of business by
13 the board, and adopt rules defining working hours for purposes of RCW
14 42.52.180 and where otherwise authorized under chapter 154, Laws of
15 1994;

16 (c) Issue advisory opinions;

17 (d) Investigate, hear, and determine complaints by any person or on
18 its own motion;

19 (e) Impose sanctions including reprimands and monetary penalties;

20 (f) Recommend to the appropriate authorities suspension, removal
21 from position, prosecution, or other appropriate remedy; and

22 (g) Establish criteria regarding the levels of civil penalties
23 appropriate for violations of this chapter and rules adopted under it.

24 (4) The board may:

25 (a) Issue subpoenas for the attendance and testimony of witnesses
26 and the production of documentary evidence relating to any matter under
27 examination by the board or involved in any hearing;

28 (b) Administer oaths and affirmations;

29 (c) Examine witnesses; and

30 (d) Receive evidence.

31 (5) The board shall not delegate to the board's executive director
32 its authority to issue advisories, advisory letters, or opinions.

33 (6) Except as provided in RCW 42.52.220, the executive ethics board
34 may review and approve agency policies as provided for in this chapter.

35 ((+6+)) (7) This section does not apply to state officers and state
36 employees of the judicial branch.

1 **Sec. 4.** RCW 42.52.420 and 2000 c 211 s 1 are each amended to read
2 as follows:

3 (1) After the filing of any complaint, except as provided in RCW
4 42.52.450, the staff of the appropriate ethics board shall investigate
5 the complaint.

6 (~~The investigation shall be limited to the allegations contained~~
7 ~~in the complaint.~~) The ethics board may request the assistance of the
8 office of the attorney general or a contract investigator in conducting
9 its investigation.

10 (2) The results of the investigation shall be reduced to writing
11 and the staff shall either make a determination that the complaint
12 should be dismissed pursuant to RCW 42.52.425, or recommend to the
13 board that there is or that there is not reasonable cause to believe
14 that a violation of this chapter or rules adopted under it has been or
15 is being committed.

16 (3) The board's determination on reasonable cause shall be provided
17 to the complainant and to the person named in such complaint.

18 (4) The identity of a person filing a complaint under RCW
19 42.52.410(1) is exempt from public disclosure, as provided in RCW
20 42.56.240.

21 **Sec. 5.** RCW 42.52.460 and 1994 c 154 s 216 are each amended to
22 read as follows:

23 Any person who has notified the appropriate ethics board and the
24 attorney general in writing that there is reason to believe that RCW
25 42.52.180 is being or has been violated may, in the name of the state,
26 bring a citizen action for any of the actions authorized under this
27 chapter. A citizen action may be brought only if the appropriate
28 ethics board or the attorney general have failed to commence an action
29 under this chapter within forty-five days after notice from the person,
30 the person has thereafter notified the appropriate ethics board and the
31 attorney general that the person will commence a citizen's action
32 within ten days upon their failure to commence an action, and the
33 appropriate ethics board and the attorney general have in fact failed
34 to bring an action within ten days of receipt of the second notice. An
35 action is deemed to have been commenced when the appropriate ethics
36 board or the board's executive director accepts a complaint for filing
37 and initiates a preliminary investigation.

1 If the person who brings the citizen's action prevails, the
2 judgment awarded shall escheat to the state, but the person shall be
3 entitled to be reimbursed by the state of Washington for costs and
4 attorneys' fees incurred. If a citizen's action that the court finds
5 was brought without reasonable cause is dismissed, the court may order
6 the person commencing the action to pay all costs of trial and
7 reasonable attorneys' fees incurred by the defendant.

8 Upon commencement of a citizen action under this section, at the
9 request of a state officer or state employee who is a defendant, the
10 office of the attorney general shall represent the defendant if the
11 attorney general finds that the defendant's conduct complied with this
12 chapter and was within the scope of employment.

13 NEW SECTION. **Sec. 6.** A new section is added to chapter 42.52 RCW
14 to read as follows:

15 (1) Each executive branch agency shall designate an ethics advisor
16 or advisors to assist the agency's employees in understanding their
17 obligations under the ethics in public service act. Agencies shall
18 inform the executive ethics board of their designated advisors. As
19 funding permits and as determined by the executive ethics board and the
20 agency head, the advisors shall receive regular ethics training.

21 (2) Executive branch officers and employees are encouraged to
22 attend ethics training offered by the executive ethics board at least
23 once every thirty-six months.

24 **Sec. 7.** RCW 42.56.240 and 2012 c 88 s 1 are each amended to read
25 as follows:

26 The following investigative, law enforcement, and crime victim
27 information is exempt from public inspection and copying under this
28 chapter:

29 (1) Specific intelligence information and specific investigative
30 records compiled by investigative, law enforcement, and penology
31 agencies, and state agencies vested with the responsibility to
32 discipline members of any profession, the nondisclosure of which is
33 essential to effective law enforcement or for the protection of any
34 person's right to privacy;

35 (2) Information revealing the identity of persons who are witnesses
36 to or victims of crime or who file complaints with investigative, law

1 enforcement, or penology agencies, other than the commission, if
2 disclosure would endanger any person's life, physical safety, or
3 property. If at the time a complaint is filed the complainant, victim,
4 or witness indicates a desire for disclosure or nondisclosure, such
5 desire shall govern. However, all complaints filed with the commission
6 about any elected official or candidate for public office must be made
7 in writing and signed by the complainant under oath;

8 (3) Any records of investigative reports prepared by any state,
9 county, municipal, or other law enforcement agency pertaining to sex
10 offenses contained in chapter 9A.44 RCW or sexually violent offenses as
11 defined in RCW 71.09.020, which have been transferred to the Washington
12 association of sheriffs and police chiefs for permanent electronic
13 retention and retrieval pursuant to RCW 40.14.070(2)(b);

14 (4) License applications under RCW 9.41.070; copies of license
15 applications or information on the applications may be released to law
16 enforcement or corrections agencies;

17 (5) Information revealing the identity of child victims of sexual
18 assault who are under age eighteen. Identifying information means the
19 child victim's name, address, location, photograph, and in cases in
20 which the child victim is a relative or stepchild of the alleged
21 perpetrator, identification of the relationship between the child and
22 the alleged perpetrator;

23 (6) The statewide gang database referenced in RCW 43.43.762;

24 (7) Data from the electronic sales tracking system established in
25 RCW 69.43.165;

26 (8) Information submitted to the statewide unified sex offender
27 notification and registration program under RCW 36.28A.040(6) by a
28 person for the purpose of receiving notification regarding a registered
29 sex offender, including the person's name, residential address, and e-
30 mail address; (~~and~~)

31 (9) Personally identifying information collected by law enforcement
32 agencies pursuant to local security alarm system programs and vacation
33 crime watch programs. Nothing in this subsection shall be interpreted
34 so as to prohibit the legal owner of a residence or business from
35 accessing information regarding his or her residence or business; and

36 (10) The identity of a state employee or officer who has in good
37 faith filed a complaint with an ethics board, as provided in RCW

1 42.52.410, or who has in good faith reported improper governmental
2 action, as defined in RCW 42.40.020, to the auditor or other public
3 official, as defined in RCW 42.40.020.

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