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**ENGROSSED SUBSTITUTE HOUSE BILL 1692**

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**State of Washington 66th Legislature 2019 Regular Session**

**By** House State Government & Tribal Relations (originally sponsored by Representatives Jinkins, Caldier, Fitzgibbon, Doglio, Cody, Macri, Gregerson, Riccelli, Kilduff, Bergquist, Dolan, Appleton, Davis, Ryu, Robinson, Morgan, Blake, Stanford, Frame, Ormsby, Tarleton, Tharinger, Fey, Kloba, Valdez, Orwall, Callan, Harris, Kirby, Ortiz-Self, Senn, Goodman, Peterson, and Reeves)

AN ACT Relating to protecting information concerning agency employees who have filed a claim of harassment or stalking; adding new sections to chapter 42.56 RCW; creating a new section; prescribing penalties; and providing an effective date.

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

NEW SECTION. **Sec.**  The legislature finds that state agency employees operate in unique work environments in which there is a higher level of transparency surrounding their daily work activities. The legislature finds that we must act to protect the health and safety of state employees, but even more so when employees become the victims of sexual harassment or stalking. The legislature finds that when a state agency employee is the target of sexual harassment or stalking, there is a significant risk to the employee's physical safety and well-being. The legislature finds that workplace safety is of paramount importance and that the state has an interest in protecting against the inappropriate use of public resources to carry out actions of sexual harassment or stalking.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

(1) Except by court order issued pursuant to subsection (3) of this section, an agency may not disclose as a response to a public records request made pursuant to this chapter records concerning an agency employee if:

(a) The requestor is a person alleged in the claim to have harassed or stalked the agency employee who is named as the victim in the claim; and

(b) After conducting an investigation, the agency issued discipline resulting from the claim of workplace sexual harassment or stalking to the requestor described under (a) of this subsection.

(2)(a) The agency must immediately notify an agency employee upon any public records request for records concerning that agency employee if the agency conducted an investigation of the claim of workplace sexual harassment or stalking involving the agency employee and the agency issued discipline resulting from the claim.

(b) Upon notice provided in accordance with (a) of this subsection, the agency employee may bring an action in a court of competent jurisdiction to enjoin the agency from disclosing the records. The agency employee shall immediately notify the agency upon filing an action under this subsection. Except for the five-day notification required under RCW 42.56.520, the time for the employing agency to process a request for records is suspended during the pendency of an action filed under this subsection. Upon notice of an action filed under this subsection, the agency may not disclose such records unless by an order issued in accordance with subsection (3) of this section.

(3)(a) A court of competent jurisdiction, following sufficient notice to the employing agency, may order the release of some or all of the records described in subsections (1) and (2) of this section after finding that, in consideration of the totality of the circumstances, disclosure would not violate the right to privacy under RCW 42.56.050 for the agency employee. An agency that is ordered in accordance with this subsection to disclose records is not liable for penalties, attorneys' fees, or costs under RCW 42.56.550 if the agency has complied with this section.

(b) For the purposes of this section, it is presumed to be highly offensive to a reasonable person under RCW 42.56.050 to disclose, directly or indirectly, records concerning an agency employee who has made a claim of workplace sexual harassment or stalking with the agency, or is named as a victim in the claim, to persons alleged in the claim to have sexually harassed or stalked the agency employee named as the victim and where the agency issued discipline resulting from the claim after conducting an investigation.

(4) Nothing in this section restricts access to records described under subsections (1) and (2) of this section where the agency employee consents in writing to disclosure.

(5) For the purposes of this section:

(a) "Agency" means a state agency, including every state office, department, division, bureau, board, commission, or other state agency.

(b) "Agency employee" means a state agency employee who has made a claim of workplace sexual harassment or stalking with the employing agency, or is named as the victim in the claim.

(c) "Records concerning an agency employee" do not include work product created by the agency employee as part of his or her official duties.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

(1) Any person who requests and obtains a record concerning an agency employee, as described in section 2 of this act, is subject to civil liability if he or she uses the record or information in the record to harass, stalk, threaten, or intimidate that agency employee, or provides the record or information in the record to a person who uses it to harass, stalk, threaten, or intimidate that agency employee.

(2) Any person liable under subsection (1) of this section may be sued in superior court by any aggrieved party, or in the name of the state by the attorney general or the prosecuting authority of any political subdivision. The court may order an appropriate civil remedy. The plaintiff may recover up to one thousand dollars for each record used in violation of this section, as well as costs and reasonable attorneys' fees.

(3) For the purposes of this section:

(a) "Agency" means a state agency, including every state office, department, division, bureau, board, commission, or other state agency.

(b) "Agency employee" means a state agency employee who has made a claim of workplace sexual harassment or stalking with the employing agency, or is named as the victim in the claim.

(c) "Record concerning an agency employee" does not include work product created by the agency employee as part of his or her official duties.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

By January 1, 2020, the attorney general, in consultation with state agencies, shall create model policies for the implementation of this act.

NEW SECTION. **Sec.**  A new section is added to chapter 42.56 RCW to read as follows:

A state agency may not disclose lists of the names of agency employees, as defined under section 2 of this act, maintained by the agency in order to administer section 2 of this act.

NEW SECTION. **Sec.**  This act takes effect July 1, 2020.

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