

SHB 1692 - H AMD 246

By Representative Jenkins

ADOPTED 03/07/2019

1 Strike everything after the enacting clause and insert the
2 following:

3 "NEW SECTION. **Sec. 1.** The legislature finds that state agency
4 employees operate in unique work environments in which there is a
5 higher level of transparency surrounding their daily work activities.
6 The legislature finds that we must act to protect the health and
7 safety of state employees, but even more so when employees become the
8 victims of sexual harassment or stalking. The legislature finds that
9 when a state agency employee is the target of sexual harassment or
10 stalking, there is a significant risk to the employee's physical
11 safety and well-being. The legislature finds that workplace safety is
12 of paramount importance and that the state has an interest in
13 protecting against the inappropriate use of public resources to carry
14 out actions of sexual harassment or stalking.

15 NEW SECTION. **Sec. 2.** A new section is added to chapter 42.56
16 RCW to read as follows:

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

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

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

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

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

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

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

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

32 (5) For the purposes of this section:

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

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

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

4 NEW SECTION. **Sec. 3.** A new section is added to chapter 42.56
5 RCW to read as follows:

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

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

20 (3) For the purposes of this section:

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

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

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

30 NEW SECTION. **Sec. 4.** A new section is added to chapter 42.56
31 RCW to read as follows:

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

35 NEW SECTION. **Sec. 5.** A new section is added to chapter 42.56
36 RCW to read as follows:

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

4 NEW SECTION. **Sec. 6.** This act takes effect July 1, 2020."

5 Correct the title.

EFFECT: Adds a definition for "agency" to mean a state agency.

Adds a definition of "agency employee" to mean 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.

Expands records covered under the bill to include records concerning an agency employee who has filed a claim of workplace sexual harassment or stalking on behalf of the victim.

Specifies that this act applies only to an agency's response to a public records request.

Requires that the agency issued discipline because of the claim to trigger the prohibition on disclosure or the notice requirement by the agency under the bill, rather than require that the agency reasonably believe that sexual harassment or stalking occurred by the person alleged in the claim.

Removes the provision in the bill that suspends the time for the agency to respond to a request upon notice of an action for an injunction, and instead suspends the time for the agency to respond beginning after the five-day notification required under statute.

Authorizes an agency to disclose records concerning an agency employee who has filed a claim of workplace sexual harassment or stalking, or is named as a victim in the claim, if the agency employee consents in writing to disclosure.

Prohibits a state agency from disclosing lists of names of agency employees who have made a claim of workplace sexual harassment, or are named as a victim in a claim, maintained by the agency to administer this act.

Requires the Attorney General to create model policies for the implementation of this act by January 1, 2020.

Removes the emergency clause and adds an effective date of July 1, 2020.

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