

ESHB 1692 - S COMM AMD

By Committee on State Government, Tribal Relations & Elections

ADOPTED 04/15/2019

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, as defined in subsection (5) of this section, if:

21 (a) The requestor is a person alleged in the claim of workplace
22 sexual harassment or stalking to have harassed or stalked the agency
23 employee who is named as the victim in 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) When the requestor is someone other than a person
28 described under subsection (1) of this section, the agency must
29 immediately notify an agency employee upon receipt of a public
30 records request for records concerning that agency employee if the

1 agency conducted an investigation of the claim of workplace sexual
2 harassment or stalking involving the agency employee and the agency
3 issued discipline resulting from the claim.

4 (b) Upon notice provided in accordance with (a) of this
5 subsection, the agency employee may bring an action in a court of
6 competent jurisdiction to enjoin the agency from disclosing the
7 records. The agency employee shall immediately notify the agency upon
8 filing an action under this subsection. Except for the five-day
9 notification required under RCW 42.56.520, the time for the employing
10 agency to process a request for records is suspended during the
11 pendency of an action filed under this subsection. Upon notice of an
12 action filed under this subsection, the agency may not disclose such
13 records unless by an order issued in accordance with subsection (3)
14 of this section, or if the action is dismissed without the court
15 granting an injunction.

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

25 (b) For the purposes of this section, it is presumed to be highly
26 offensive to a reasonable person under RCW 42.56.050 to disclose,
27 directly or indirectly, records concerning an agency employee who has
28 made a claim of workplace sexual harassment or stalking with the
29 agency, or is named as a victim in the claim, to persons alleged in
30 the claim to have sexually harassed or stalked the agency employee
31 named as the victim and where the agency issued discipline resulting
32 from the claim after conducting an investigation. The presumption set
33 out under this subsection may be rebutted upon showing of clear,
34 cogent, and convincing evidence that disclosure of the requested
35 record or information to persons alleged in the claim to have
36 sexually harassed or stalked the agency employee named as the victim
37 in the claim is not highly offensive.

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

1 (5) For the purposes of this section:

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

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

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

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

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

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

27 (3) For the purposes of this section:

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

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

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

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

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

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

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

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

ESHB 1692 - S COMM AMD

By Committee on State Government, Tribal Relations & Elections

ADOPTED 04/15/2019

10 On page 1, line 2 of the title, after "stalking;" strike the
11 remainder of the title and insert "adding new sections to chapter
12 42.56 RCW; creating a new section; prescribing penalties; and
13 providing an effective date."

EFFECT: (1) Requires agencies to notify employees who made a claim or were victims of workplace sexual harassment or stalking of requests for records concerning the employee only if the requestor is not the person alleged to have stalked or harassed the employee.

(2) Allows agencies to disclose records concerning employees who made a claim or were victims of workplace sexual harassment or stalking if an action challenging disclosure is dismissed without an injunction.

(3) Allows disclosure of records concerning an employee who made a claim or was a victim of workplace sexual harassment or stalking to a requestor who was disciplined for harassing or stalking the employee if the requestor demonstrates by clear, cogent, and convincing evidence that disclosure would not be highly offensive.

(4) Requires that a person who provides records concerning an agency employee who made a claim or was a victim of workplace sexual harassment or stalking to a person who uses those records to harass, stalk, threaten, or intimidate the employee know the other person's intent to use records for those purposes to be subject to civil liability.

--- END ---