

CERTIFICATION OF ENROLLMENT
ENGROSSED SUBSTITUTE HOUSE BILL 1692

Chapter 373, Laws of 2019

66th Legislature
2019 Regular Session

AGENCY EMPLOYEE WORKPLACE HARASSMENT AND STALKING--PUBLIC RECORDS ACT

EFFECTIVE DATE: July 1, 2020

Passed by the House April 22, 2019
Yeas 96 Nays 0

FRANK CHOPP

Speaker of the House of Representatives

Passed by the Senate April 15, 2019
Yeas 44 Nays 1

CYRUS HABIB

President of the Senate

Approved May 13, 2019 3:55 PM

JAY INSLEE

Governor of the State of Washington

CERTIFICATE

I, Bernard Dean, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **ENGROSSED SUBSTITUTE HOUSE BILL 1692** as passed by the House of Representatives and the Senate on the dates hereon set forth.

BERNARD DEAN

Chief Clerk

FILED

May 16, 2019

**Secretary of State
State of Washington**

ENGROSSED SUBSTITUTE HOUSE BILL 1692

AS AMENDED BY THE SENATE

Passed Legislature - 2019 Regular Session

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)

READ FIRST TIME 02/22/19.

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

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

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

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

1 (1) Except by court order issued pursuant to subsection (3) of
2 this section, an agency may not disclose as a response to a public
3 records request made pursuant to this chapter records concerning an
4 agency employee, as defined in subsection (5) of this section, if:

5 (a) The requestor is a person alleged in the claim of workplace
6 sexual harassment or stalking to have harassed or stalked the agency
7 employee who is named as the victim in the claim; and

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

11 (2)(a) When the requestor is someone other than a person
12 described under subsection (1) of this section, the agency must
13 immediately notify an agency employee upon receipt of a public
14 records request for records concerning that agency employee if the
15 agency conducted an investigation of the claim of workplace sexual
16 harassment or stalking involving the agency employee and the agency
17 issued discipline resulting from the claim.

18 (b) Upon notice provided in accordance with (a) of this
19 subsection, the agency employee may bring an action in a court of
20 competent jurisdiction to enjoin the agency from disclosing the
21 records. The agency employee shall immediately notify the agency upon
22 filing an action under this subsection. Except for the five-day
23 notification required under RCW 42.56.520, the time for the employing
24 agency to process a request for records is suspended during the
25 pendency of an action filed under this subsection. Upon notice of an
26 action filed under this subsection, the agency may not disclose such
27 records unless by an order issued in accordance with subsection (3)
28 of this section, or if the action is dismissed without the court
29 granting an injunction.

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

39 (b) For the purposes of this section, it is presumed to be highly
40 offensive to a reasonable person under RCW 42.56.050 to disclose,

1 directly or indirectly, records concerning an agency employee who has
2 made a claim of workplace sexual harassment or stalking with the
3 agency, or is named as a victim in the claim, to persons alleged in
4 the claim to have sexually harassed or stalked the agency employee
5 named as the victim and where the agency issued discipline resulting
6 from the claim after conducting an investigation. The presumption set
7 out under this subsection may be rebutted upon showing of clear,
8 cogent, and convincing evidence that disclosure of the requested
9 record or information to persons alleged in the claim to have
10 sexually harassed or stalked the agency employee named as the victim
11 in the claim is not highly offensive.

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

15 (5) For the purposes of this section:

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

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

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

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

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

34 (2) Any person liable under subsection (1) of this section may be
35 sued in superior court by any aggrieved party, or in the name of the
36 state by the attorney general or the prosecuting authority of any
37 political subdivision. The court may order an appropriate civil
38 remedy. The plaintiff may recover up to one thousand dollars for each

1 record used in violation of this section, as well as costs and
2 reasonable attorneys' fees.

3 (3) For the purposes of this section:

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

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

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

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

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

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

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

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

Passed by the House April 22, 2019.

Passed by the Senate April 15, 2019.

Approved by the Governor May 13, 2019.

Filed in Office of Secretary of State May 16, 2019.

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