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SECOND SUBSTITUTE SENATE BILL 5033

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State of Washington 57th Legislature

2002 Regular Session

By Senate Committee on Labor, Commerce & Financial Institutions  
(originally sponsored by Senators Fairley and Costa)

READ FIRST TIME 02/05/2002.

1 AN ACT Relating to personnel files; amending RCW 49.12.005,  
2 49.12.250, and 49.12.260; repealing RCW 49.12.240; and prescribing  
3 penalties.

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

5 **Sec. 1.** RCW 49.12.005 and 1998 c 334 s 1 are each amended to read  
6 as follows:

7 For the purposes of this chapter:

8 (1) The term "department" means the department of labor and  
9 industries.

10 (2) The term "director" means the director of the department of  
11 labor and industries, or the director's designated representative.

12 (3) The term "employer" means any person, firm, corporation,  
13 partnership, business trust, legal representative, or other business  
14 entity which engages in any business, industry, profession, or activity  
15 in this state and employs one or more employees and for the purposes of  
16 RCW 49.12.270 through 49.12.295 and 49.12.450 also includes the state,  
17 any state institution, any state agency, political subdivisions of the  
18 state, and any municipal corporation or quasi-municipal corporation.

1 (4) The term "employee" means an employee who is employed in the  
2 business of the employee's employer whether by way of manual labor or  
3 otherwise.

4 (5) The term "conditions of labor" shall mean and include the  
5 conditions of rest and meal periods for employees including provisions  
6 for personal privacy, practices, methods and means by or through which  
7 labor or services are performed by employees and includes bona fide  
8 physical qualifications in employment, but shall not include conditions  
9 of labor otherwise governed by statutes and rules and regulations  
10 relating to industrial safety and health administered by the  
11 department.

12 (6) The term "temporary services agency" means any individual or  
13 entity that is engaged in the business of furnishing individuals to  
14 perform services on a part-time or temporary basis for a third party.

15 (7) The term "personnel files" means records kept by an employer,  
16 in any form, that are used or have been used to determine the  
17 employee's qualification for employment, promotion, additional  
18 compensation, or employment termination, or other disciplinary action.

19 (8) For the purpose of chapter 16, Laws of 1973 2nd ex. sess. a  
20 minor is defined to be a person of either sex under the age of eighteen  
21 years.

22 **Sec. 2.** RCW 49.12.250 and 1985 c 336 s 2 are each amended to read  
23 as follows:

24 (1) If an employer keeps a personnel file on an employee, the  
25 employer shall, at least annually, upon the request of that employee,  
26 permit that employee to inspect and copy without charges, except a  
27 reasonable copying charge, any or all of his or her own personnel  
28 file(s). These file(s) shall be retained by the employer for a minimum  
29 of three years after the employee ceases work for that employer.

30 (2) Each employer shall make such file(s) available locally within  
31 ~~((a reasonable period of time))~~ fifteen business days after the  
32 employee requests the file(s).

33 ~~((+2))~~ (3) An employee annually may petition that the employer  
34 review all information in the employee's personnel file(s) that are  
35 regularly maintained by the employer as a part of his business records  
36 or are subject to reference for information given to persons outside of  
37 the company. The employer shall determine if there is any irrelevant  
38 or erroneous information in the file(s), and shall remove all such

1 information from the file(s). If an employee does not agree with the  
2 employer's determination, the employee may at his or her request have  
3 placed in the employee's personnel file a statement containing the  
4 employee's rebuttal or correction. Nothing in this subsection prevents  
5 the employer from removing information more frequently.

6 ~~((+3))~~ (4) A former employee shall retain the right of rebuttal or  
7 correction ~~((for a period not to exceed two years))~~.

8 (5) Individuals performing personal services for, or for the  
9 benefit of, a third party pursuant to a contract with a temporary  
10 services agency shall be, for the purposes of this section and RCW  
11 49.12.050, employees of both the temporary services agency and the  
12 third party.

13 (6) The director shall assess any employer found to be in violation  
14 of this section, or rules or orders adopted or issued pursuant to this  
15 section, a civil penalty of not less than five hundred dollars a day  
16 for each violation. Each and every violation shall be a separate and  
17 distinct offense, and in case of a continuing violation, every day's  
18 continuance shall be a separate and distinct violation. Any penalty  
19 amount set in excess of five thousand dollars shall be set by the  
20 director in consideration of any previous history of violations by the  
21 violator.

22 (7) In addition to any other penalty provided by law, an employee  
23 whose request to inspect and copy personnel files has been denied in  
24 violation of this section may bring an action in any court of competent  
25 jurisdiction to recover damages for the violation in the amount of five  
26 thousand dollars. The court shall award reasonable attorney fees to a  
27 prevailing plaintiff.

28 (8) A criminal action need not be brought against an employer for  
29 that employer to be civilly liable under this section.

30 **Sec. 3.** RCW 49.12.260 and 1985 c 336 s 3 are each amended to read  
31 as follows:

32 RCW ~~((49.12.240 and))~~ 49.12.250 ~~((do))~~ does not apply to the  
33 records of an employee relating to the investigation of a possible  
34 criminal offense. RCW ~~((49.12.240 and))~~ 49.12.250 ~~((do))~~ does not  
35 apply to information or records compiled in preparation for an  
36 impending lawsuit which would not be available to another party under  
37 the rules of pretrial discovery for causes pending in the superior  
38 courts.

1        NEW SECTION.    **Sec. 4.**    RCW 49.12.240 (Employee inspection of  
2 personnel file) and 1985 c 336 s 1 are each repealed.

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