**1692-S.E AMS SGTE S3297.1 - NOT FOR FLOOR USE**

**ESHB 1692** - S COMM AMD

By Committee on State Government, Tribal Relations & Elections

**ADOPTED 04/15/2019**

Strike everything after the enacting clause and insert the following:

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

(a) The requestor is a person alleged in the claim of workplace sexual harassment or stalking 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) When the requestor is someone other than a person described under subsection (1) of this section, the agency must immediately notify an agency employee upon receipt of a 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, or if the action is dismissed without the court granting an injunction.

(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. The presumption set out under this subsection may be rebutted upon showing of clear, cogent, and convincing evidence that disclosure of the requested record or information to persons alleged in the claim to have sexually harassed or stalked the agency employee named as the victim in the claim is not highly offensive.

(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, knowing that the person intends to use 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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**ADOPTED 04/15/2019**

On page 1, line 2 of the title, after "stalking;" strike the remainder of the title and insert "adding new sections to chapter 42.56 RCW; creating a new section; prescribing penalties; and 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.