

1 COMMITTEE SUBSTITUTE

2 FOR

3 **H. B. 2128**

4 (By Delegates Fleischauer, Caputo, Marshall, Guthrie
5 and Stowers)

6
7 (Originating in the House Committee on the Judiciary)

8 [March 29, 2013]

9
10 A BILL to amend the Code of West Virginia, 1931, as amended, by
11 adding thereto a new section, designated §21-3-22, relating to
12 employee records; and requiring certain employers to provide
13 access to or copies of an employee's personnel file under
14 certain circumstances and with certain limitations.

15 *Be it enacted by the Legislature of West Virginia:*

16 That the Code of West Virginia, 1931, as amended, be amended
17 by adding thereto a new section, designated §21-3-22, to read as
18 follows:

19 **ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.**

20 **§21-3-22. Right of employees to inspect and copy personnel file;**
21 **frequency of inspection; employer's right to retain**
22 **personnel files on employer's premises.**

23 (a) As used in this section, unless the context clearly
24 indicates otherwise:

1 (1) "Personnel file" means papers, documents and reports
2 pertaining to a particular employee which are used or have been
3 used by an employer to determine the employee's eligibility for
4 employment, promotion, additional compensation, transfer,
5 termination, disciplinary or other adverse personnel action
6 including employee evaluations or reports relating to the
7 employee's character, credit and work habits. "Personnel file"
8 does not mean stock option or management bonus plan records,
9 materials which are used by the employer to plan for future
10 operations, security files, information such as test information,
11 the disclosure of which would invalidate the test, or documents
12 which are being developed or prepared for use in civil, criminal or
13 grievance procedures.

14 (2) "Employer" means railroad as defined in section twenty-
15 one, article one, chapter seventeen-c of this code. "Employee"
16 means a person employed by a railroad as defined in section twenty-
17 one, article one, chapter seventeen-c of this code.

18 (3) "Security files" means memoranda, documents or collections
19 of information relating to investigations of losses, misconduct or
20 suspected crimes and investigative information maintained pursuant
21 to government requirements, provided such memoranda, documents or
22 information are not used to determine an employee's eligibility for
23 employment, promotion, additional compensation, transfer,
24 termination, disciplinary or other adverse personnel action.

1 (b) Every employee has the right to inspect his or her
2 personnel file, if the file exists. Inspection shall take place
3 during regular business hours at a location at or reasonably near
4 the employee's place of employment.

5 (c) Each employer shall, within a reasonable time after
6 receipt of a written request from an employee, provide the employee
7 with a copy of all or any requested portion of his or her personnel
8 file, provided the request reasonably identifies the materials to
9 be copied. The employer may charge a fee of ten cents per page for
10 copying the file or any part of the file. An employer may not be
11 required to provide a copy of an employee's personnel file more
12 than two times per calendar year: *Provided*, That if the employee
13 requesting the personnel file has been terminated involuntarily,
14 upon written request of the employee after notice of the
15 involuntary termination, the employer shall provide the employee
16 one additional opportunity to review or request a copy of the
17 personnel file.

18 (d) The provisions of this section may not be construed to
19 permit an employee to remove his or her original personnel file or
20 any part of the file from the employer's premises or the location
21 where it is made available for inspection. Each employer retains
22 the right to protect his or her files from loss, damage or
23 alteration to ensure their integrity. Each employer may require
24 that inspection of any personnel file take place in the presence of

1 a designated official.