1	н. в. 2128
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3 4 5	(By Delegates Fleischauer, Caputo, Marshall, Guthrie and Stowers)
6	[Introduced February 13, 2013; referred to the
7	Committee on Energy, Industry and Labor, Economic
8	Development and Small Business then the Judiciary.]
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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	railroad employee records; and requiring railroads 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) "Personnel file," as used in this section, means papers,
24	documents and reports pertaining to a particular employee which are
25	used or have been used by an employer to determine the employee's

1 eligibility for employment, promotion, additional compensation, 2 transfer, termination, disciplinary or other adverse personnel 3 action including employee evaluations or reports relating to the 4 employee's character, credit and work habits. "Personnel file" 5 does not mean stock option or management bonus plan records, 6 materials which are used by the employer to plan for future 7 operations, security files, information such as test information, 8 the disclosure of which would invalidate the test, or documents 9 which are being developed or prepared for use in civil, criminal or 10 grievance procedures. (b) "Security files," as used in this section, means 11 12 memoranda, documents or collections of information relating to 13 investigations of losses, misconduct or suspected crimes and 14 investigative information maintained pursuant to government 15 requirements, provided such memoranda, documents or information are 16 not used to determine an employee's eligibility for employment, 17 promotion, additional compensation, <u>transfer</u>, <u>termination</u>, 18 disciplinary or other adverse personnel action. 19 (c) Every employee, whether public or private, has the right 20 to inspect his or her personnel file, if the file exists. 21 Inspection shall take place during regular business hours at a 22 location at or reasonably near the employee's place of employment.

24 receipt of a written request from an employee, provide the employee

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(d) Each employer shall, within a reasonable time after

1 with a copy of all or any requested portion of his or her personnel 2 file, provided the request reasonably identifies the materials to 3 be copied. The employer may charge a fee of ten cents per page for 4 copying the file or any part of the file. An employer may not be 5 required to provide a copy of an employee's personnel file more 6 than two times per calendar year, unless the employee requesting 7 the personnel file has been terminated involuntarily. In that 8 circumstance, upon written request of the employee after notice of 9 the involuntary termination, the employer shall provide the 10 employee one additional opportunity to review or request a copy of 11 the personnel file. 12 (e) The provisions of this section may not be construed to 13 permit an employee to remove his or her original personnel file or 14 any part of the file from the employer's premises or the location 15 where it is made available for inspection. Each employer retains 16 the right to protect his or her files from loss, damage or 17 alteration to ensure their integrity. Each employer may require 18 that inspection of any personnel file take place in the presence of 19 a designated official.

NOTE: The purpose of this bill is to give all employees the right to review and copy their respective personnel files.

This section is new; therefore, it has been completely underscored.