COMMITTEE SUBSTITUTE

FOR

H. B. 2128

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(BY DELEGATE(S) FLEISCHAUER, CAPUTO, MARSHALL,

GUTHRIE AND STOWERS)

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(Originating in the House Committee on the Judiciary)

[March 29, 2013]

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

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 3. SAFETY AND WELFARE OF EMPLOYEES.

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

1   (a) As used in this section, unless the context clearly

2   indicates otherwise:

3   (1) "Personnel file" means papers, documents and reports

4   pertaining to a particular employee which are used or have been

5   used by an employer to determine the employee's eligibility for

6   employment, promotion, additional compensation, transfer,

7   termination, disciplinary or other adverse personnel action

8   including employee evaluations or reports relating to the

9   employee's character, credit and work habits. "Personnel file"

10   does not mean stock option or management bonus plan records,

11   materials which are used by the employer to plan for future

12   operations, security files, information such as test information,

13   the disclosure of which would invalidate the test, or documents

14   which are being developed or prepared for use in civil, criminal

15   or grievance procedures.

16   (2) "Employer" means railroad as defined in section twenty-

17   one, article one, chapter seventeen-c of this code. "Employee"

18   means a person employed by a railroad as defined in section

19   twenty-one, article one, chapter seventeen-c of this code.

20   (3) "Security files" means memoranda, documents or

21   collections of information relating to investigations of losses,

22   misconduct or suspected crimes and investigative information

23   maintained pursuant to government requirements, provided such

24   memoranda, documents or information are not used to determine

25   an employee's eligibility for employment, promotion, additional

26   compensation, transfer, termination, disciplinary or other

27   adverse personnel action.

28   (b) Every employee has the right to inspect his or her

29   personnel file, if the file exists. Inspection shall take place during

30   regular business hours at a location at or reasonably near the

31   employee's place of employment.

32   (c) Each employer shall, within a reasonable time after

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

34   employee with a copy of all or any requested portion of his or

35   her personnel file, provided the request reasonably identifies the

36   materials to be copied. The employer may charge a fee of ten

37   cents per page for copying the file or any part of the file. An

38 employer may not be required to provide a copy of an em-

39 ployee's personnel file more than two times per calendar year:

40 *Provided,* That if the employee requesting the personnel file has

41 been terminated involuntarily, upon written request of the

42 employee after notice of the involuntary termination, the

43 employer shall provide the employee one additional opportunity

44 to review or request a copy of the personnel file.

45   (d) The provisions of this section may not be construed to

46 permit an employee to remove his or her original personnel file

47 or any part of the file from the employer's premises or the

48 location where it is made available for inspection. Each em-

49 ployer retains the right to protect his or her files from loss,

50 damage or alteration to ensure their integrity. Each employer

51 may require that inspection of any personnel file take place in

52 the presence of a designated official.