

H. B. 2390

(By Delegates Fleischauer, Caputo, Marshall, Hatfield, Guthrie, Frazier and Stowers)

[Introduced January 12, 2011; referred to the Committee on Energy, Industry and Labor, Economic Development and Small Business then the Judiciary.]

A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-3-22, relating to providing that all employees have the right to review and copy the contents of their personnel file.

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.

(a) "Personnel file," as used in this section, means papers, documents and reports pertaining to a particular employee which are used or have been used by an employer to determine such employee's eligibility for employment, promotion, additional compensation,

1 transfer, termination, disciplinary or other adverse personnel
2 action including employee evaluations or reports relating to such
3 employee's character, credit and work habits. "Personnel file"
4 does not mean stock option or management bonus plan records,
5 materials which are used by the employer to plan for future
6 operations, security files, information such as test information,
7 the disclosure of which would invalidate the test, or documents
8 which are being developed or prepared for use in civil, criminal or
9 grievance procedures.

10 (b) "Security files," as used in this section, means
11 memoranda, documents or collections of information relating to
12 investigations of losses, misconduct or suspected crimes and
13 investigative information maintained pursuant to government
14 requirements, provided such memoranda, documents or information are
15 not used to determine an employee's eligibility for employment,
16 promotion, additional compensation, transfer, termination,
17 disciplinary or other adverse personnel action.

18 (c) Every employee, whether public or private, has the right
19 to inspect his or her personnel file, if the file exists.
20 Inspection shall take place during regular business hours at a
21 location at or reasonably near the employee's place of employment.

22 (d) Each employer shall, within a reasonable time after
23 receipt of a written request from an employee, provide the employee
24 with a copy of all or any requested portion of his or her personnel

1 file, provided the request reasonably identifies the materials to
 2 be copied. The employer may charge a fee of ten cents per page for
 3 copying the file or any part of the file. An employer may not be
 4 required to provide a copy of an employee's personnel file more
 5 than two times in a calendar year, unless the employee requesting
 6 the personnel file has been terminated involuntary. In that
 7 circumstance, upon written request of the employee after notice of
 8 the involuntary termination, the employer will provide another
 9 opportunity to review or request a copy of the personnel file.

10 (e) The provisions of this section may not be construed to
 11 permit an employee to remove the original of his or her personnel
 12 file or any part of the file from the employer's premises or where
 13 it is made available for inspection. Each employer retains the
 14 right to protect his or her files from loss, damage or alteration
 15 to ensure their integrity. Each employer may require that
 16 inspection of any personnel file take place in the presence of a
 17 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.