
HOUSE BILL 2594

State of Washington 61st Legislature 2010 Regular Session

By Representatives Rolfes, Kagi, Ericks, and Moeller

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Commerce & Labor.

1 AN ACT Relating to law enforcement officers who are terminated for
2 dishonesty; amending RCW 41.12.080, 41.14.110, and 43.43.070; adding a
3 new section to chapter 43.101 RCW; and creating a new section.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5 NEW SECTION. **Sec. 1.** The legislature finds that a recent decision
6 of the Washington state supreme court may limit the ability of
7 employers to terminate law enforcement officers for dishonesty. As a
8 result of this decision, criminal prosecutions may be jeopardized and
9 public confidence in law enforcement eroded.

10 In *Kitsap County Deputy Sheriff's Guild v. Kitsap County*, No.
11 80720-5 (2009), the supreme court held that an arbitration decision
12 arising out of a collective bargaining agreement may be vacated if it
13 violates an "explicit, well-defined, and dominant public policy." The
14 supreme court, however, also concluded that there was no statute or
15 other expression of the state's public policy requiring the termination
16 or prohibiting the reinstatement of a law enforcement officer found to
17 have been untruthful. The supreme court ultimately declined to vacate
18 an arbitration decision stating that a law enforcement officer who was

1 terminated for untruthfulness and other acts of misconduct could return
2 to duty.

3 The legislature intends to amend state law to include an "explicit,
4 well-defined, and dominant public policy" requiring that law
5 enforcement officers be honest when acting in their official capacity,
6 so that criminal prosecutions are not jeopardized and public confidence
7 in law enforcement is not eroded. For this reason, the legislature
8 intends to clarify that an arbitrator shall not overturn the decision
9 of an employer to terminate a law enforcement officer for engaging in
10 an act or acts of dishonesty established by clear, cogent, and
11 convincing evidence.

12 **Sec. 2.** RCW 41.12.080 and 2007 c 218 s 13 are each amended to read
13 as follows:

14 (1) The tenure of everyone holding an office, place, position or
15 employment under the provisions of this chapter shall be only during
16 good behavior, and except as provided in subsection (2) of this
17 section, any such person may be removed or discharged, suspended
18 without pay, demoted, or reduced in rank, or deprived of vacation
19 privileges or other special privileges for any of the following
20 reasons:

21 ~~((1))~~ (a) Incompetency, inefficiency or inattention to or
22 dereliction of duty;

23 ~~((2))~~ (b) Dishonesty, intemperance, immoral conduct,
24 insubordination, discourteous treatment of the public, or a fellow
25 employee, or any other act of omission or commission tending to injure
26 the public service; or any other willful failure on the part of the
27 employee to properly conduct himself or herself; or any willful
28 violation of the provisions of this chapter or the rules and regulation
29 to be adopted hereunder;

30 ~~((3))~~ (c) Mental or physical unfitness for the position which the
31 employee holds;

32 ~~((4))~~ (d) Dishonest, disgraceful, immoral or prejudicial conduct;

33 ~~((5))~~ (e) Drunkenness or use of intoxicating liquors, narcotics,
34 or any other habit forming drug, liquid or preparation to such extent
35 that the use thereof interferes with the efficiency or mental or
36 physical fitness of the employee, or which precludes the employee from

1 properly performing the function and duties of any position under civil
2 service;

3 ~~((+6))~~ (f) Conviction of a felony, or a misdemeanor, involving
4 moral turpitude;

5 ~~((+7))~~ (g) Any other act or failure to act which in the judgment
6 of the civil service commissioners is sufficient to show the offender
7 to be an unsuitable and unfit person to be employed in the public
8 service.

9 (2) In the event that an employer terminates a person holding an
10 office, place, position, or employment under the provisions of this
11 chapter for engaging in an act or acts of dishonesty, and an arbitrator
12 finds that the employer established that the person engaged in the act
13 or acts of dishonesty by clear, cogent, and convincing evidence, the
14 termination: (a) Shall be deemed to be reasonably related to both the
15 seriousness of the offense and the record of the employee; and (b)
16 shall not be overturned by the arbitrator.

17 **Sec. 3.** RCW 41.14.110 and 1959 c 1 s 11 are each amended to read
18 as follows:

19 (1) The tenure of every person holding an office, place, position,
20 or employment under the provisions of this chapter shall be only during
21 good behavior, and except as provided in subsection (2) of this
22 section, any such person may be removed or discharged, suspended
23 without pay, demoted, or reduced in rank, or deprived of vacation
24 privileges or other special privileges for any of the following
25 reasons:

26 ~~((+1))~~ (a) Incompetency, inefficiency, or inattention to, or
27 dereliction of duty;

28 ~~((+2))~~ (b) Dishonesty, intemperance, immoral conduct,
29 insubordination, discourteous treatment of the public, or a fellow
30 employee, or any other act of omission or commission tending to injure
31 the public service; or any other wilful failure on the part of the
32 employee to properly conduct himself; or any wilful violation of the
33 provisions of this chapter or the rules and regulations to be adopted
34 hereunder;

35 ~~((+3))~~ (c) Mental or physical unfitness for the position which the
36 employee holds;

37 ~~((+4))~~ (d) Dishonest, disgraceful, or prejudicial conduct;

1 ((+5)) (e) Drunkenness or use of intoxicating liquors, narcotics,
2 or any other habit forming drug, liquid, or preparation to such extent
3 that the use thereof interferes with the efficiency or mental or
4 physical fitness of the employee, or which precludes the employee from
5 properly performing the function and duties of any position under civil
6 service;

7 ((+6)) (f) Conviction of a felony, or a misdemeanor involving
8 moral turpitude;

9 ((+7)) (g) Any other act or failure to act which in the judgment
10 of the civil service commission is sufficient to show the offender to
11 be an unsuitable and unfit person to be employed in the public service.

12 (2) In the event that an employer terminates a person holding an
13 office, place, position, or employment under the provisions of this
14 chapter for engaging in an act or acts of dishonesty, and an arbitrator
15 finds that the employer established that the person engaged in the act
16 or acts of dishonesty by clear, cogent, and convincing evidence, the
17 termination: (a) Shall be deemed to be reasonably related to both the
18 seriousness of the offense and the record of the employee; and (b)
19 shall not be overturned by the arbitrator.

20 **Sec. 4.** RCW 43.43.070 and 1984 c 141 s 2 are each amended to read
21 as follows:

22 (1) Discharge of any officer with probationary status and
23 discharge, demotion, or suspension of any officer with nonprobationary
24 status shall be only for cause, which shall be clearly stated in a
25 written complaint, sworn to by the person preferring the charges, and
26 served upon the officer complained of.

27 (2) Discharge of any officer for engaging in an act or acts of
28 dishonesty established by clear, cogent, and convincing evidence shall
29 be deemed to satisfy the "reasonableness and lawfulness" standard set
30 forth in RCW 43.43.100.

31 (3) Upon being ((se)) served with a written complaint, any such
32 officer shall be entitled to a public hearing before a trial board
33 consisting of two Washington state patrol officers of the rank of
34 captain, and one officer of equal rank with the officer complained of,
35 who shall be selected by the chief of the Washington state patrol by
36 lot from the roster of the patrol. In the case of complaint by an
37 officer, such officer shall not be a member of the trial board.

1 NEW SECTION. **Sec. 5.** A new section is added to chapter 43.101 RCW
2 to read as follows:

3 In the event that an employer terminates a person holding an
4 office, place, position, or employment that requires a law enforcement
5 certification under this chapter for engaging in an act or acts of
6 dishonesty, and an arbitrator finds that the employer established that
7 the person engaged in the act or acts of dishonesty by clear, cogent,
8 and convincing evidence, the termination: (1) Shall be deemed to be
9 reasonably related to both the seriousness of the offense and the
10 record of the employee; and (2) shall not be overturned by the
11 arbitrator.

12 NEW SECTION. **Sec. 6.** If any provision of this act or its
13 application to any person or circumstance is held invalid, the
14 remainder of the act or the application of the provision to other
15 persons or circumstances is not affected.

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