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ACLU OF RI POSITION: SUPPORT/AMEND

TESTIMONY ON 26-S 2498, RELATING TO INSPECTION OF PERSONNEL FILES March 4, 2026

It has been thirty years since the state law governing an employee's access to their personnel file has been amended, and it shows. That is why legislation like this bill is in order. Although we believe that two specific amendments to this proposal should be adopted, the ACLU of Rhode Island strongly supports this bill's meaningful goal.

Under current law, employees are not allowed to obtain a copy of their personnel records. Instead, the only way they can even view them is under the watchful eye of their employer. That requirement is certain to deter some individuals from exercising the right that the law is designed to provide them. Instead, this legislation commendably allows employees to obtain copies of their records for their personal perusal, and to inspect them without having to do so in the direct presence of their employer. The bill also recognizes that the current penalty for violating the law – a \$100 fine – is clearly insufficient to deter unscrupulous employers from violating the mandates of the statute, and therefore would allow a fine of up to \$3,000 to be imposed for violations.

While the ACLU supports these revisions, we do wish to urge two amendments to the bill. First, on Page 2, lines 26-28, the bill eliminates current language in the law that exempts from disclosure, among other things, "records prepared for use in any civil, criminal, or grievance proceedings." While we agree that the law's current exemption language is too broad, we are concerned that the deletion of this language could inadvertently require the release of documents that meet the bill's definition of "personnel records" but that would otherwise be protected under the work product privilege or attorney-client privilege. We would therefore urge that section (a)(5) on Page 2, line 25, be amended to read: "This section does not apply to records of an employee relating to the investigation of a possible criminal offense. This section shall not be interpreted to abrogate the work-product or attorney-client privilege where otherwise available."

Finally, while we support the increased monetary fines contained in the bill, our general wariness of mandatory minimum penalties prompts our view that the provision on Page 4, lines 6-7, mandating a minimum \$1,500 fine even for acknowledged first-time "innocent mistakes" is too harsh, especially considering that the law applies to every employer regardless of workforce size. In order to address the case of admittedly innocent mistakes, we believe that language should be included to grant DLT the discretion to waive the mandatory penalty for first offenses upon a showing by the employee of inadvertence or other excusable neglect.

With these suggestions, we urge the committee's support of this bill in support of workers' rights.