

HOUSE BILL REPORT

SHB 1886

As Passed House

March 13, 1997

Title: An act relating to information provided by former or current employers to prospective employers.

Brief Description: Providing immunity from civil liability for information provided by former or current employers to prospective employers.

Sponsors: By House Committee on Law & Justice (originally sponsored by Representatives Sheahan, McMorris, Sherstad, Lambert, Mulliken, Honeyford, Clements, Mitchell, Thompson and Sullivan).

Brief History:

Committee Activity:

Law & Justice: 2/28/97, 3/5/97 [DPS].

Floor Activity:

Passed House: 3/13/97, 58-36.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 7 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Carrell; Lambert; Radcliff; Sherstad and Skinner.

Minority Report: Do not pass. Signed by 6 members: Representatives Sterk, Vice Chairman; Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

Staff: David Bowman (786-7291).

Background: Employers are protected by a common-law qualified privilege to provide job reference information to other employers. A rationale behind the qualified privilege is that former and prospective employers share a common, legitimate interest in the information exchanged.

The Washington Supreme Court has rarely addressed the issue of employer job reference liability. In a 1918 case that remains controlling today, the court held that so long as not acting out of malice toward the employee, an employer has a qualified privilege to disclose information about a former employee to a prospective employer.

An employee must prove by a preponderance of the evidence that the employer acted out of ill will, with a design to causelessly or wantonly– injure the employee. Facts in a job reference need not be true, so long as they are published with an honest and reasonable belief of their truth. This privilege defeats an action for libel or slander, which are the usual theories of liability connected with job references.

There are at least two other theories of liability connected with job references that the Washington Supreme Court has not yet addressed. One theory is misrepresentation, or negligent referral,– in failing to fully disclose job reference information, the omission of which causes harm to the recipient or a third party. Another theory that the U.S. Supreme Court recently created is liability for unlawful retaliation in providing a negative job reference because the employee filed discrimination charges against the employer.

Summary of Bill: An employer who discloses job performance, conduct, or other work-related information about a former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure and its consequences. A former or current employee may rebut the presumption of good faith with proof by clear and convincing evidence that the employer provided knowingly false or deliberately misleading information.

A joint legislative task force is established to study and make recommendations concerning the liability of employers who provide job reference information. The task force will review issues such as the extent to which employers refuse to disclose job reference information, the status of litigation over job references, and the range of other protections available to workers. The task force will make recommendations to the Legislature by December 1, 1997, regarding the scope of immunity for employers who provide job references.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: Ninety days after adjournment of session in which bill is passed.

Testimony For: Fear of lawsuits prevents employers from providing useful job references regarding a current or former employee. This practice helps bad employees and hurts good employees, prospective employers, and the public at large. Reaffirming the existing qualified privilege given to employers by the courts, and clarifying the standard of proof an employee must meet to overcome the presumption of good faith in communications between employers, are needed actions. The bill accomplishes these goals. It would improve the culture among employers and promote a free exchange of job reference information.

Testimony Against: The bill creates additional confusion regarding job reference information. Although the exchange of certain information between employers is essential, the bill provides an overly broad scope of immunity and imposes a dual standard of proof upon an employee seeking redress for damages from a negative job reference. These scope and proof problems would unfairly disadvantage employees seeking new employment. Job reference immunity is too important an issue to enact legislation without a thorough study of the correct parameters.

Testified: Carolyn Logue, National Federation of Independent Business (pro); Betty Neighbors, Terra Personnel Group and Society of Human Resource Management (pro); Teresa Vaughn, Society of Human Resource Management and the Everett Clinic (pro); ; Andy Davidson, Washington State Hospital Association (pro); Clif Finch, Association of Washington Business (pro); Sharon DeHaan, City of Everett (pro); John Soth, Uniforce Staffing Services (pro); Robert Stern, Washington State Labor Council/AFL-CIO (con); and Regina LaBelle, Washington State Trial Lawyers Association (con).