

HOUSE BILL REPORT

HB 1881

As Reported by House Committee On:
Judiciary

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

Brief Description: Limiting liability for information provided by former or current employers to prospective employers.

Sponsors: Representatives Carrell, Woods, Benson, Reardon, Morris, Pennington, Anderson, O'Brien, Cairnes, DeBolt, Pflug and Hunt.

Brief History:

Committee Activity:

Judiciary: 2/22/01, 2/27/01 [DPA].

Brief Summary of Amended Bill

- Provides immunity from civil liability for certain information provided by former or current employers to prospective employers.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass as amended. Signed by 8 members: Representatives Carrell, Republican Co-Chair; Lantz, Democratic Co-Chair; Hurst, Democratic Vice Chair; Lambert, Republican Vice Chair; Boldt, Casada, Esser and Lovick.

Minority Report: Do not pass. Signed by 2 members: Representatives Dickerson and McDermott.

Staff: Katy Freeman (786-7386).

Background:

In the employment reference context, defamation occurs when an employer makes a false or potentially disparaging remark about a present or a former employee when giving an employment reference. In order to defend a defamation claim, an employer may assert that the content of what he or she said was true or the employer may claim a qualified

privilege.

An employer is protected by a common-law qualified privilege when providing job reference information to other employers. The qualified privilege allows an employer to disclose potentially defamatory information about an employee if the employer reasonably believes that the information is true after a fair and impartial investigation or upon reasonable grounds for the belief.

This privilege does not apply when the employer discloses the information with malice. Malice means acting in bad faith and with knowledge of falsity of statements. Once an employer establishes a qualified privilege, the burden shifts to the employee to prove by a preponderance of the evidence that the employer acted maliciously.

Additionally, under common law, an employer has no duty to disclose negative information about a former employee to a prospective employer, irrespective of any harm that results to that employer or others.

Washington statutes do not directly address the issue of employer job reference liability.

Summary of Amended Bill:

An employer who discloses job performance, conduct, or other work related information in writing via fax, mail, or e-mail about a former or current employee to a prospective employer or employment agency at their request 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 by clear and convincing evidence that the employer provided knowingly false or deliberately misleading information or provided the information with reckless disregard as to the falsity of the statement.

A person's statutory and constitutional rights are not affected by this act.

Amended Bill Compared to Original Bill:

The amended bill specifies the authorized methods for disclosing information about an employee. The amended bill also provides an additional way of rebutting the employer's presumption of good faith. Additionally, the amended bill declares that a person's statutory and constitutional rights are not affected by this section.

Appropriation: None.

Fiscal Note: Not Requested.

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

Testimony For: It is extremely difficult for a small business to find qualified employees. Prospective employers need the best information possible in order to make hiring decisions. It is difficult to get information about a prospective employee from the former employer other than the prospective employee's dates of hire and termination, because the former employers fear lawsuits. Resumes cannot tell a prospective employer about a prospective employee's aptitude and ability. The lack of information prevents some qualified candidates from obtaining jobs. Additionally, the failure to disclose negative information may harm the prospective employer. This bill provides a black line test that tells the former employers when they are safe to give information to a prospective employer. This bill will provide employers with a higher degree of protection than current law, and employers will be able to defend against defamation claims. Because the terms used in the qualified immunity privilege are all capable of dispute, the qualified immunity cases usually cannot be eliminated with a pretrial decision. This costs an employer a lot of money. This bill offers a practical, well-balanced solution to a long-standing problem.

Testimony Against: This bill will put the burden of proof on an employee to show that a former employer provided untrue information to a prospective employer. Under this bill, if a former or current employer provides inaccurate information to a prospective employer without intending to cause harm, the prospective employee will have no redress. Even if this bill is enacted, attorneys will still be advising their clients to give only an employee's name, rank, and serial number because attorneys always err on the side of caution. This bill will give no relief to the employer community. Under current law, an employer can give any truthful information to a prospective employer. Under current law, an employer can also give any information that is false, or even harmful, as long as he or she has a reasonable basis for making the statement. This bill will put Washington on the extreme end of states that have taken action in this area and will override existing laws.

Testified: (In support) Carolyn Logue and Susan Hahn, National Federation of Independent Business; Tim O'Connell, Association of Washington Business and Liability Reform Coalition; Sally Yates, Group Health Cooperative; Shaune Barton, Lamb-Grays Harbor County and Society for Human Resource Management; Julie Murray, King County; Jim Justin, in behalf of Doug Levy and the Association of Washington Cities; and Bob Mack, city of Bellevue.

(Opposed) Harold Abbe, Association of Washington Pulp and Paper Workers and Washington State Labor Council; and Larry Shannon, Washington State Trial Lawyers Association.

