
Judiciary Committee

HB 2779

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 Clibborn, Lantz, Pettigrew, Darneille and Rockefeller.

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| <p style="text-align: center;">Brief Summary of Bill</p> <ul style="list-style-type: none">• Provides an employer who discloses work-related information about a former or current employee to a prospective employer qualified immunity against civil liability. |
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Hearing Date: 2/3/04

Staff: Wendy Chen (786-7119); Edie Adams (786-7180).

Background:

Defamation is the act of harming a person's reputation by making a false statement to a third person. Libel is a written defamatory statement; slander is spoken. A *true* statement, even if it harms a person's reputation, is not defamatory; however, it is the defendant who has the burden of rebutting the presumption that the statement is false. Another defense to a charge of defamation is qualified privilege, which immunizes a person from suit when the privilege is properly exercised. Where a statement is qualifiedly privileged, it is the plaintiff who has the burden of proving that the defendant made the statement with actual malice, or ill will designed to causelessly or wantonly injure the plaintiff.

Where an employer makes a statement to a former or current employee's prospective employer in response to an inquiry from the prospective employer, a common law qualified privilege exists. This qualified privilege allows an employer to disclose potentially defamatory information about an employee if the employer reasonably believes that the information is true. *See Ecuyer v. New York Life Ins. Co.*, 101 Wash. 247 (1918).

Many other states have statutes protecting employers from civil liability for making such statements, including Alaska, Arkansas, Colorado, Delaware, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Louisiana, Maine, Maryland, Minnesota, Missouri, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, South Carolina, South Dakota, Tennessee, Texas, Wisconsin, Wyoming, and Virginia.

Summary of Bill:

An employer who discloses work-related information about a former or current employee to a prospective employer or employment agency is immune from civil liability for the disclosure, if the employer is acting in good faith.

The employer is presumed to be acting in good faith, but the presumption may be rebutted by clear and convincing evidence that the employer disclosed false or misleading information, which he or she knew was false or misleading.

The employer must forward the information disclosed to the employee within five business days of the disclosure.

Appropriation: None.

Fiscal Note: Not requested.

Effective Date: The bill takes effect 90 days after adjournment of session in which bill is passed.