

HOUSE BILL REPORT

HB 1625

As Passed Legislature

Title: An act relating to employer disclosure of employee information.

Brief Description: Modifying employer disclosure of employee information.

Sponsors: By Representatives Clibborn, Condotta, Lantz, Armstrong, Morrell, Hinkle, Buri, Bailey, Grant, Pettigrew, Linville, Priest, Moeller, Simpson, Williams, Tom, Ericks, P. Sullivan, Darneille, Kilmer, Kagi, Hunter, O'Brien, Jarrett and Morris.

Brief History:

Committee Activity:

Judiciary: 2/8/05 [DP].

Floor Activity:

Passed House: 2/11/05, 92-6.

Passed Senate: 4/6/05, 48-0.

Passed Legislature.

Brief Summary of Bill

- Provides qualified immunity against civil liability to an employer who discloses information about a former or current employee's job performance to a prospective employer.

HOUSE COMMITTEE ON JUDICIARY

Majority Report: Do pass. Signed by 10 members: Representatives Lantz, Chair; Flannigan, Vice Chair; Williams, Vice Chair; Priest, Ranking Minority Member; Rodne, Assistant Ranking Minority Member; Campbell, Kirby, Serben, Springer and Wood.

Staff: Edie Adams (786-7180).

Background:

An employer who makes false statements about a current or former employee to a prospective employer is subject to potential liability for harm to the employee caused by the false statements. The tort of defamation is the usual theory of liability connected with false statements contained in job references.

An action for defamation requires a showing that a person wrongfully made a false statement to a third person that results in harm to the person defamed. Libel is a written defamatory

statement; slander is spoken. A *true* statement, even if it harms a person's reputation, is not defamatory, and the plaintiff has the burden of proving that the statement is false.

In some situations, a person may make a defamatory communication without being liable because of the existence of an absolute privilege or a qualified privilege. A person who has a qualified privilege to make a defamatory statement can lose the privilege if he or she makes the statement with actual malice or an absence of good faith. The plaintiff has the burden of proving actual malice by clear and convincing evidence. Actual malice exists if the statement was knowingly false or made with reckless disregard as to its truth or falsity.

The Washington Supreme Court has held that an employer has a qualified privilege to disclose potentially defamatory information to a former or current employee's prospective employer in response to an inquiry from the prospective employer.

Summary of Bill:

An employer who discloses information about a former or current employee to a prospective employer or employment agency at the request of the employer or employment agency is presumed to be acting in good faith and is immune from civil liability for the disclosure if the information relates to:

- the employee's ability to perform his or her job;
- the employee's diligence, skill, or reliability in carrying out job duties; or
- illegal or wrongful acts committed by the employee when related to job duties.

The presumption of good faith may be rebutted by clear and convincing evidence that the information disclosed was knowingly false, deliberately misleading, or made with reckless disregard for the truth.

An employer is advised to keep a written record of the identity of persons or entities to whom the disclosure is made for a period of two years. If a written record is made, the record must be included in the employee's personnel file, and the employee has a right to inspect the record.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: This bill has gone through a long and hard process, and many people have worked extremely hard on it to reach this good compromise. It strikes a fair balance by providing the comfort and security to businesses to freely and openly exchange information in good faith. At the same time, it ensures that employees are given the basic and fundamental

protection that there is some reasonable belief that the information is fair and accurate. It protects an employee from the disclosure of misleading, malicious, or reckless statements.

The whole purpose of this bill is to change the culture that has developed that you can only provide name, rank, and serial number when giving a reference. Businesses have been extremely frustrated with not being able to get good information about potential employees and also fearful about their potential exposure for providing job reference information.

This bill is important to business, especially to small businesses. Small businesses are particularly vulnerable because they don't have human resources staff or attorneys to advise them. This bill is also very important to financial institutions because their employees deal daily with large amounts of money and people's personal financial information, and there is the potential for bad employees to commit fraud or identity theft. It is vital for the protection of our members that we have good employees, and that can only happen if we have the ability to get good reference checks.

Testimony Against: None.

Persons Testifying: Representative Clibborn, prime sponsor; Larry Shannon, Washington State Trial Lawyers' Association; Carolyn Logne, National Federation of Independent Business; Kris Tefft, Association of Washington Business; Gary Gardner, Boeing Employees' Credit Union; Mike Doubleday, City of Bellevue; Stacy Augustine, Washington Credit Union League; and Gary Smith, Independent Business Association.

Persons Signed In To Testify But Not Testifying: None.