

SENATE BILL REPORT

HB 1625

As Reported By Senate Committee On:
Labor, Commerce, Research & Development, March 28, 2005

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

Brief Description: Modifying employer disclosure of employee information.

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

Committee Activity: Labor, Commerce, Research & Development: 3/22/05, 3/28/05 [DP].

SENATE COMMITTEE ON LABOR, COMMERCE, RESEARCH & DEVELOPMENT

Majority Report: Do pass.

Signed by Senators Kohl-Welles, Chair; Franklin, Vice Chair; Parlette, Ranking Minority Member; Brown, Hewitt, Honeyford and Keiser.

Staff: Jennifer Strus (786-7316)

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.

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 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 following: (1) the employee's ability to perform his or her job; (2) the employee's diligence, skill, or reliability in carrying out job duties; or (3) 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.

Committee/Commission/Task Force Created: No.

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

Testimony For: This bill is designed to allow good employees to obtain good references and keep bad or dangerous employees from being passed around unknowingly. Employers are more likely to disclose the positive aspects of an employee's work performance under this bill. The information to be disclosed under the provisions of the bill will allow all businesses, financial institutions in particular, the ability to better combat fraud and abuse. Employee reference checks represent one aspect of the Association of Washington Counties' liability reform agenda for this legislative session. As counties hire people, particularly for their parks and recreation departments, they want to make sure they have complete information on prospective employees.

Testimony Against: None.

Who Testified: PRO: Representative Clibborn, prime sponsor; Kris Tefft, Association of Washington Business; Mark Minickiello, Washington Credit Union League; Carolyn Logue, National federal of Independent Businesses; Larry Stevens, Mechanical Contractors & Electrical Contractors; Tammy Fellin, Association of Washington Counties.