

HOUSE BILL ANALYSIS

SB 6699

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

Brief Description: Limiting the liability of a current or former employer who provides information about a current or former employee's work record to a prospective employer.

Sponsors: Senators Schow, Anderson, Newhouse, Zarelli, Horn, Winsley, Stevens, Benton, Rossi, Long, Sellar and Oke.

HOUSE COMMITTEE ON LAW & JUSTICE

Staff: Elizabeth Chambers (786-7291); Edie Adams (786-7180).

Background: An employer is generally protected by a common-law qualified privilege to provide job reference information to other employers. The rationale for providing this qualified privilege is that former and prospective employers share a common, legitimate interest in the information exchanged.

In a 1918 Washington Supreme Court case, the court held that an employer has a qualified privilege to disclose information about a former employee to a prospective employer as long as the employer is not acting out of malice toward the employee. 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, or for defamation, which are the usual theories of liability connected with job references.

Summary of Bill: The Legislature finds that employers are discouraged from disclosing job reference information, and that full disclosure of such information will increase productivity and enhance safety in the workplace.

An employer who discloses information about a former or current employee to a prospective employer is presumed to be acting in good faith and is immune from civil liability for such disclosure. A former or present employee may rebut this presumption of good faith only by clear and convincing evidence that the disclosure was knowingly false or misleading.

Fiscal Note: Not requested.

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

Office of Program Research