

HOUSE BILL REPORT

SB 6699

As Passed House - Amended:

March 5, 1998

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.

Brief History:

Committee Activity:

Law & Justice: 2/25/98, 2/26/98 [DP].

Floor Activity:

Passed House - Amended: 3/5/98, 55-42.

HOUSE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass. Signed by 8 members: Representatives Sheahan, Chairman; McDonald, Vice Chairman; Sterk, Vice Chairman; Carrell; Lambert; Mulliken; Robertson and Sherstad.

Minority Report: Do not pass. Signed by 5 members: Representatives Costa, Ranking Minority Member; Constantine, Assistant Ranking Minority Member; Cody; Kenney and Lantz.

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 or its consequences if the disclosed information relates to: (1) the employee's ability to perform his or her job; (2) the diligence, skill or reliability with which the employee performed his or her job; (3) any illegal or wrongful act committed by the employee. 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.

Appropriation: None.

Fiscal Note: Not requested.

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

Testimony For: The central question is whether or not there is a problem out there for employers, and the answer is yes. Under current law, employers are advised not to give out any information about employees because doing so poses a risk and no benefit. Employers are not sharing reference information because they fear the costs of having to go to court and defend an action, regardless of whether they win or lose. This bill would help good employees, who would have positive recommendations, as well as protect employers and the public from inadequate or even dangerous employees. The amendment is not helpful because it just codifies the existing law.

Testimony Against: There needs to be protection for the employees as well. The most important asset every person has is their reputation in their job and community. People depend on their reputation for their livelihood. Under the bill, employers have no obligation to provide accurate information. An employer can pass on rumor and innuendo with impunity. Employers should have a duty to investigate the legitimacy of the information they provide on their employees or former employees because of what is at stake. The current law provides enough protection for employers; they just don't use it. There has never been a reported case where an employer was held liable for passing on job reference information. The bill could allow employers to violate a worker's rights and engage in blacklisting. The amendment is supportable.

Testified: Chuck Mott, INNOVAC (pro); Marlene Winter, Korry Electronics and Association of Washington Businesses (pro); Jeff Mason, Southland Corporation and Washington Retail Association (pro); Doug Smith, attorney (pro); Douglas Kight, Boeing (pro); Pat Brock, city of Tumwater and Association of Washington Cities (pro); John Soth, Washington State Human Resources Management Society and Lake Washington Human Resources Association (pro); Lance Heise, Kittitas Valley Community Hospital (pro); Paul Chasco, town of Steilacoom (pro); Mary Christie, citizen (pro); Carolyn Logue, National Federation of Independent Business (pro); Cliff Webster, Liability Reform Coalition (pro); Clif Finch, Association of Washington Business (pro); Roy Moore, Washington Machinists Council (con); Harold Abbe, Association of Pulp and Paper Workers (con); Robby Stern, Washington State Labor Council (con); Regina LaBelle Washington State Trial Lawyers Association (con); Mary Ruth Mann, Washington State Trial Lawyers Association (con); and Tom Lewiston, citizen (con).