

SENATE BILL REPORT

SHB 1886

As of March 19, 1997

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

Brief Description: Providing immunity from civil liability for information provided by former or current employers to prospective employers.

Sponsors: House Committee on Law & Justice (originally sponsored by Representatives Sheahan, McMorris, Sherstad, Lambert, Mulliken, Honeyford, Clements, Mitchell, Thompson and Sullivan).

Brief History:

Committee Activity: Law & Justice: 3/26/97.

SENATE COMMITTEE ON LAW & JUSTICE

Staff: Mal Murphy (786-7412)

Background: In libel and slander actions, employers are protected by a common-law qualified privilege when providing job reference information to other employers. A rationale behind the privilege is that former and prospective employers share a common, legitimate interest in the information exchanged.

In a 1918 case that still stands today, the Washington Supreme Court held that so long as not acting out of malice toward the employee, an employer has a qualified privilege to disclose information about an employee or former employee to a prospective employer. 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 communication need not be true, so long as they are published with an honest and reasonable belief in their truth.

There are at least two other theories of liability connected with job references that the Washington Supreme Court has not yet addressed. One theory is misrepresentation, or negligent referral,— in failing to fully disclose job reference information, the omission of which causes harm to the recipient or a third party. Another theory, recently approved by the U.S. Supreme Court, is liability for unlawful retaliation in providing a negative job reference because the employee filed discrimination charges against the employer.

Summary of Bill: An employer who discloses job performance, conduct, or other work-related information, about a former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure and its consequences. A former or current employee may rebut the presumption of good faith with proof by clear and convincing evidence that the employer provided knowingly false or deliberately misleading information.

A joint legislative task force is established to study and make recommendations concerning the liability of employers who provide job reference information. The task force is to review issues such as the extent to which employers refuse to disclose job reference information, the status of litigation over job references, and the range of other protections available to workers. The task force must make recommendations to the Legislature by December 1, 1997, regarding the scope of immunity for employers who provide job references.

Appropriation: None.

Fiscal Note: Not requested.

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