

FINAL BILL REPORT

HB 1625

C 103 L 05

Synopsis as Enacted

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.

House Committee on Judiciary

Senate Committee on Labor, Commerce, Research & Development

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. 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:

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.

Votes on Final Passage:

House	92	6
Senate	48	0

Effective: July 24, 2005