

# SENATE BILL REPORT

## ESHB 2779

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As Reported By Senate Committee On:  
Commerce & Trade, February 27, 2004

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

**Brief Description:** Limiting liability for information provided by former or current employers to prospective employers.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Clibborn, Lantz, Pettigrew, Darneille and Rockefeller).

**Brief History:**

**Committee Activity:** Commerce & Trade: 2/25/04, 2/27/04 [DPA, DNP].

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### SENATE COMMITTEE ON COMMERCE & TRADE

**Majority Report:** Do pass as amended.

Signed by Senators Honeyford, Chair; Hewitt, Vice Chair; Franklin and Mulliken.

**Minority Report:** Do not pass.

Signed by Senator Keiser.

**Staff:** Jennifer Strus (786-7316)

**Background:** The Washington Supreme Court has held that where an employer makes a statement to a former or current employee's prospective employer in response to an inquiry from the prospective employer, a common law qualified privilege exists. This qualified privilege allows an employer to disclose potentially defamatory information about an employee if the employer reasonably believes that the information is true.

**Summary of Amended Bill:** An employer who discloses information about a former or current employee's job performance to a prospective employer or employment agency is immune from civil liability for the disclosure, if the employer is acting in good faith. The employer is presumed to be acting in good faith, but the presumption may be rebutted by clear and convincing evidence that the employer knew that the information disclosed was false or misleading.

The employer must keep a written record of the substance of any information disclosed for at least two years from the date of the disclosure and include the record in the employee's personnel file. The employee has a right to inspect the record upon request. Failure to keep such a record results in a waiver of immunity and reversion to common law standards of civil liability.

"Job performance" is defined as the manner in which an employee performs employment duties and includes work-related attendance, conduct, attitude, effort, knowledge, behavior, skills, and adherence to safety and health laws.

**Amended Bill Compared to Substitute Bill:** The striking amendment removes a clause related to an employer's lawful employment policies from the definition of "job performance."

**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** It is important for prospective employers to be able to obtain accurate information about prospective employees from current or former employers. Because employers are concerned about their liability in providing job related information about an employee, many opt not to provide any or very little information. This bill will allow employers the protection they need to provide accurate reference information. The term "lawful" modifying "employment policies" should be removed; otherwise, employees may litigate the meaning of the term rather than the information provided in the reference. There is a great deal of protection for both the employer and employee because the information provided in a reference is reduced to writing.

**Testimony Against:** In the workplace, conflicts occur that are unrelated to job performance. If the word "lawful" is removed, then employers will be allowed to say what they want about an employee with immunity. When employees exercise their legal rights, they should not be dinged for it by their employer; if the word "lawful" is removed, then the bill is nothing more than a blacklisting bill.

**Testified:** PRO: Rep. Clibborn, prime sponsor; Gary Gardner, BECU (with amendment); Kris Tefft, AWB (with amendment); Carolyn Logue, NFIB (with amendment); CONCERNS: Robby Stern, WSLC; Michael Temple, WSTLA.