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ENGROSSED SUBSTITUTE HOUSE BILL 2779

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State of Washington

58th Legislature

2004 Regular Session

By House Committee on Judiciary (originally sponsored by Representatives Clibborn, Lantz, Pettigrew, Darneille and Rockefeller)

READ FIRST TIME 02/06/04.

1 AN ACT Relating to information provided by former or current  
2 employers to prospective employers; adding a new section to chapter  
3 4.24 RCW; adding a new section to chapter 49.12 RCW; and creating a new  
4 section.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 1.** The legislature finds that employers are  
7 becoming increasingly discouraged from disclosing job reference  
8 information. The legislature further finds that full disclosure of  
9 such information will increase productivity, enhance the safety of the  
10 workplace, and provide greater opportunities to disadvantaged groups  
11 who may not have the educational background or resumes of other  
12 workers.

13 NEW SECTION. **Sec. 2.** A new section is added to chapter 4.24 RCW  
14 to read as follows:

15 (1) An employer who discloses information about a former or current  
16 employee's job performance, conduct, or other work-related information  
17 to a prospective employer, or employment agency as defined by RCW  
18 49.60.040, at the specific request of that individual employer or

1 employment agency, is presumed to be acting in good faith and is immune  
2 from civil liability for such disclosure or its consequences. For  
3 purposes of this section, the presumption of good faith may only be  
4 rebutted upon a showing by clear and convincing evidence that the  
5 employer knew that the information was false or misleading.

6 (2) The employer must retain a written record of the substance of  
7 any information disclosed under this section for a minimum of two years  
8 from the date of the disclosure. The employee has a right to inspect  
9 the written record upon request. The written record shall become part  
10 of the employee's personnel file, subject to the provisions of chapter  
11 49.12 RCW. Failure to maintain a written record of the disclosure  
12 waives the immunity provided under subsection (1) of this section, and  
13 civil liability for such disclosure shall be evaluated under common law  
14 standards without regard to this act.

15 (3) For the purposes of this section, "job performance" means the  
16 manner in which the employee performs the duties of a position of  
17 employment and includes an analysis of the employee's attendance at  
18 work; conduct, attitude, effort, knowledge, behavior, and skills that  
19 are work related; and adherence to the employer's lawful employment  
20 policies and to safety and health laws subject to the limitation of RCW  
21 51.48.025.

22 NEW SECTION. **Sec. 3.** A new section is added to chapter 49.12 RCW  
23 to read as follows:

24 Any written record made under section 2 of this act shall become  
25 part of an employee's personnel file.

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