

**STORAGE NAME:** h0757a.go

**DATE:** April 15, 1999

**HOUSE OF REPRESENTATIVES  
AS REVISED BY THE COMMITTEE ON  
GOVERNMENTAL OPERATIONS  
ANALYSIS**

**BILL #:** HB 757

**RELATING TO:** Employee Information

**SPONSOR(S):** Representative Flanagan

**COMPANION BILL(S):** SB 1826 (similar), CS/SB 1st ENG 376 (compare), SB 1652 (compare), and SB 1654 (compare)

**ORIGINATING COMMITTEE(S)/COMMITTEE(S) OF REFERENCE:**

- (1) JUDICIARY YEAS 9 NAYS 0
  - (2) GOVERNMENTAL OPERATIONS YEAS 5 NAYS 0
  - (3)
  - (4)
  - (5)
- 

**I. SUMMARY:**

The bill amends s. 768.095, F.S., to immunize employers from liability for disclosing information about current employees, as it already does for disclosing information about past employees.

The bill also requires a former or current employer, or their agent, to provide the complete employment record and any other verifiable information relating to whether an applicant fails to meet certain job qualifications to a law enforcement officer, who is conducting a background examination of the applicant for temporary or permanent employment or appointment as a full-time, part-time, or auxiliary law enforcement, correctional, or correctional probation officer with a law enforcement employing agency. The law enforcement officer conducting a background examination of an applicant is required to present his or her credentials and an authorization for release form to the former or current employer.

The bill additionally provides for a release of information form and includes a non-criminal penalty provision (up to \$500 fine) for persons failing to comply with the background investigation requirements.

The bill shall become effective upon becoming law.

II. SUBSTANTIVE ANALYSIS:

A. PRESENT SITUATION:

**Release of Information to Prospective Employers**

Currently, s. 769.095, F.S., provides employers with civil immunity when providing information about a former employee's job performance to a prospective employer. The employer is presumed to have acted in good faith unless the former employee shows by clear and convincing evidence that the information was knowingly false, deliberately misleading, rendered with malicious purpose or violated the former employee's civil rights under chapter 760, F.S.

**Release of Information to Prospective Law Enforcement Employers**

Section 943.133, F.S., currently requires an "employing agency" as defined in Chapter 943, F.S., to collect, verify, and maintain documentation establishing an applicant's compliance with the job qualifications provisions of ss. 943.13 and 943.131, F.S. Section 943.133, F.S., requires the Criminal Justice Standards and Training Commission to promulgate rules relating to the relevant forms and the background check that must be undertaken by an employing agency of an applicant for a position as a full-time, part-time, or auxiliary law enforcement officer, correctional officer, or correctional probation officer. Section 943.133, F.S., does not provide any disclosure requirements for current or former employers of an applicant.

B. EFFECT OF PROPOSED CHANGES:

Section 1 of the bill will amend s. 768.095, F.S., to broaden the immunity from liability for information disclosed by an employer about a former employee to a prospective employer, to apply also to information disclosed about current employees.

Section 2 of the bill will require a former or current employer, or their agent, to provide the complete employment record and any other verifiable information relating to whether an applicant fails to meet certain job qualifications to a law enforcement officer who is conducting a background examination of the applicant for temporary or permanent employment or appointment as a full-time, part-time, or auxiliary law enforcement, correctional, or correctional probation officer with a law enforcement employing agency. The law enforcement officer conducting a background examination of an applicant is required to present his or her credentials and an authorization for release form to the former or current employer. The bill also provides for a release of information form and a non-criminal penalty of a fine of up to \$500 for persons failing to comply with that section.

C. APPLICATION OF PRINCIPLES:

1. Less Government:

a. Does the bill create, increase or reduce, either directly or indirectly:

(1) any authority to make rules or adjudicate disputes?

No.

(2) any new responsibilities, obligations or work for other governmental or private organizations or individuals?

Yes. It mandates that current or former employers assist law enforcement in discovering information about job applicants.

(3) any entitlement to a government service or benefit?

No.

- b. If an agency or program is eliminated or reduced:

The bill does not eliminate or reduce any agency or program.

- (1) what responsibilities, costs and powers are passed on to another program, agency, level of government, or private entity?

N/A

- (2) what is the cost of such responsibility at the new level/agency?

N/A

- (3) how is the new agency accountable to the people governed?

N/A

2. Lower Taxes:

- a. Does the bill increase anyone's taxes?

No.

- b. Does the bill require or authorize an increase in any fees?

No.

- c. Does the bill reduce total taxes, both rates and revenues?

No.

- d. Does the bill reduce total fees, both rates and revenues?

No.

- e. Does the bill authorize any fee or tax increase by any local government?

No.

3. Personal Responsibility:

- a. Does the bill reduce or eliminate an entitlement to government services or subsidy?

No.

- b. Do the beneficiaries of the legislation directly pay any portion of the cost of implementation and operation?

No.

4. Individual Freedom:

- a. Does the bill increase the allowable options of individuals or private organizations/associations to conduct their own affairs?

No.

- b. Does the bill prohibit, or create new government interference with, any presently lawful activity?

Yes. Employers are presently free to choose not to cooperate with law enforcement in the absence of a subpoena for records. The bill would require employers to cooperate.

5. Family Empowerment:

- a. If the bill purports to provide services to families or children:

The bill does not purport to provide services to families or children.

- (1) Who evaluates the family's needs?

N/A

- (2) Who makes the decisions?

N/A

- (3) Are private alternatives permitted?

N/A

- (4) Are families required to participate in a program?

N/A

- (5) Are families penalized for not participating in a program?

N/A

- b. Does the bill directly affect the legal rights and obligations between family members?

No.

- c. If the bill creates or changes a program providing services to families or children, in which of the following does the bill vest control of the program, either through direct participation or appointment authority:

The bill does not create or change a program providing services to families or children.

- (1) parents and guardians?

N/A

- (2) service providers?

N/A

- (3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

S. 768.095, F.S.

E. SECTION-BY-SECTION ANALYSIS:

Section 1 of the bill will amend s. 768.095, F.S., to broaden the immunity from liability for information disclosed by an employer about a former employee to a prospective employer, to apply also to information disclosed about current employees.

Section 2 of the bill will require the former or current employer, or their agent, to provide the complete employment record and any other verifiable information relating to whether an applicant fails to meet certain job qualifications to a law enforcement officer who is conducting a background examination of the applicant for temporary or permanent employment or appointment as a full-time, part-time, or auxiliary law enforcement, correctional, or correctional probation officer with a law enforcement employing agency. The law enforcement officer conducting a background examination of an applicant is required to present his or her credentials and an authorization for release form to the former or current employer. The bill also provides for a release of information form and a non-criminal penalty of a fine of up to \$500 for persons failing to comply with that section.

Section 3 provides that the bill will be effective upon becoming law.

III. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

The Florida Department of Law Enforcement estimates the effects to be minimal.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

4. Total Revenues and Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

None.

2. Recurring Effects:

None.

3. Long Run Effects Other Than Normal Growth:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

The Florida Department of Law Enforcement estimates the effects to be minimal.

2. Direct Private Sector Benefits:

None.

3. Effects on Competition, Private Enterprise and Employment Markets:

None.

D. FISCAL COMMENTS:

N/A

IV. CONSEQUENCES OF ARTICLE VII, SECTION 18 OF THE FLORIDA CONSTITUTION:

A. APPLICABILITY OF THE MANDATES PROVISION:

The bill does not require a city or county to expend funds or to take action requiring the expenditure of funds. Therefore the bill is exempt from the provisions of Article VII, Section 18 of the Florida Constitution.

B. REDUCTION OF REVENUE RAISING AUTHORITY:

The bill does not affect city or county revenues.

C. REDUCTION OF STATE TAX SHARED WITH COUNTIES AND MUNICIPALITIES:

The bill does not reduce shared state taxes.

V. COMMENTS:

*Comments by the Committee on Judiciary*

Section 2 of the bill will mandate disclosure of the complete employment history and other relevant information by former and current employers of an affected applicant. This provision does not afford these employers any right to seek reasonable payment for the preparation of such information or provide these employers with any immunity, as is provided in section 1, while imposing a monetary penalty on those employers that do not comply with the bill.

By imposing fines on private employers who fail to provide background employment information on their current or former employees, the bill effectively "coerces" such employers to serve as information sources for law enforcement. This coercion is maintained outside of either the judicial system or any licensing/regulatory system created by statute.

*Comments by the Committee on Governmental Operations*

The second amendment adopted by the Committee on Judiciary provides for a blanket immunity from all causes of action to employers who provide background employment information to law enforcement, even if they knowingly provide false and defamatory information about an employee. To avoid such a result, it may be desirable to provide immunity from liability for voluntary disclosure of employment information to law enforcement in the same manner as sec. 768.095, Florida Statutes.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

On April 5, 1999, the Committee on Judiciary adopted two amendments, which are traveling with the bill. The first amendment removes the word "shall" requiring employers to provide employment information to law enforcement, substituting the phrase "is encouraged to" instead. The second amendment provides blanket immunity from all claims to the employers and their agents who disclose background employment information to law enforcement and allows such employers to seek reimbursement from law enforcement for the cost of any records produced under the bill.

**STORAGE NAME:** h0757a.go

**DATE:** April 15, 1999

**PAGE 7**

On April 14, 1999, the Committee on Governmental Operations adopted an amendment, which will travel with the bill. It provides that the immunity from liability given to those employers is pursuant to s. 768.095, F.S.

VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

Prepared by:

Michael W. Carlson

Staff Director:

Don Rubottom

AS REVISED BY THE COMMITTEE ON GOVERNMENTAL OPERATIONS:

Prepared by:

Douglas Pile

Staff Director:

Jimmy O. Helms