

STORAGE NAME: h0757a.jud

DATE: April 7, 1999

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
JUDICIARY
ANALYSIS**

BILL #: HB 757

RELATING TO: Employee Information

SPONSOR(S): Representative Flanagan

COMPANION BILL(S): SB 1826 (s)

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

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

I. SUMMARY:

The bill amends s. 768.095, F.S., to immunize employers from liability for disclosing information about former *and* current employees. An employer who discloses information about a former or current employee's job performance to a prospective employer is presumed to be acting in good faith unless a plaintiff proves, by clear and convincing evidence, that the employer did not act in good faith. Moreover, the presumption may be rebutted upon a showing that the information disclosed by the former or current employer was knowingly false or deliberately misleading, was rendered with a malicious purpose, or violated any civil right of the former or current employee provided under Chapter 760, F.S.

The bill also requires 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 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. The bill also expands the immunity from liability to apply to information disclosed beyond information about an employee's job performance. Further, this section narrows the grounds for subjecting the employer to liability by requiring a showing of clear and convincing evidence that the information disclosed by the employer was knowingly false or violated the person's civil rights. Under current law, the employer may also be subject to liability if the information was intentionally misleading or was disclosed with a malicious purpose. This section eliminates those two grounds.

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 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 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.

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:

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

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

- (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:

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

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

- (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:

- (1) parents and guardians?

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

- (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:

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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 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:

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. By demanding such information, without waiver by the former or current employees, the bill may infringe upon a person's constitutional rights of speech, privacy, and the right against unlawful search and seizure and self-incrimination.

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 language requiring employers to provide employment information to law enforcement, substituting the term "encouraged." The second amendment provides immunity for employers 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.

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VII. SIGNATURES:

COMMITTEE ON JUDICIARY:

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