

STORAGE NAME: h3535s1.leps

DATE: March 18, 1998

**HOUSE OF REPRESENTATIVES
COMMITTEE ON
LAW ENFORCEMENT AND PUBLIC SAFETY
BILL RESEARCH & ECONOMIC IMPACT STATEMENT**

BILL #: CS/HB 3535

RELATING TO: Release of Employee Information by Employers

SPONSOR(S): Committee on Law Enforcement and Public Safety and Representative Arnall

COMPANION BILL(S): SB 1106 (i), HB 3005 (s)

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

- (1) LAW ENFORCEMENT AND PUBLIC SAFETY YEAS 7 NAYS 0
 - (2) CIVIL JUSTICE AND CLAIMS
 - (3)
 - (4)
 - (5)
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I. SUMMARY:

The bill amends s. 768.095, F.S., to provide that a current employer who discloses information about a current employee's job performance to a prospective employer is presumed to be acting in good faith and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for the disclosure or its consequences. Presently, the law only applies to former employers and employees. The bill further provides that a current or former employer shall provide to a law enforcement background investigator the employment history of applicant and any other relevant information requested by the investigator. The bill also requires the use of an authorization form that is an original authorization form or copy of the original form, executed within one year prior to the request, specifying that it is furnished to the presenting law enforcement agency, and bearing the notarized signature of the applicant. Finally, the bill provides that any person who fails to comply with these provision commits a noncriminal violation that is punishable by a fine of up to \$500.

II. SUBSTANTIVE RESEARCH:

A. PRESENT SITUATION:

Section 768.095, F.S., provides that an employer who discloses information about a former employee's job performance to a prospective employer upon the request of the former employee is presumed to be acting in good faith and, unless it is shown by clear and convincing evidence, is immune from civil liability for such disclosures. Good faith is rebutted when the information released was knowingly false or deliberately misleading, was maliciously provided to the prospective employer, or violated the civil right of the former employee.

B. EFFECT OF PROPOSED CHANGES:

The bill amends s. 768.095, F.S., to provide that a former or current 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 and, unless lack of good faith is shown by clear and convincing evidence, is immune from civil liability for the disclosure or its consequences. As it is currently written, the law only applies to former employers and employees. The bill further provides that a current or former employer shall provide to a law enforcement background investigator the employment history of applicant and any other relevant information requested by the investigator. The bill also requires the investigator present to the former or current employer an authorization for release of information form that is either the original authorization form or copy of the original form, executed within one year prior to the request, specifying that it is furnished to the presenting law enforcement agency, and bearing the notarized signature of the applicant. Finally, the bill provides that any person who failure to comply with these provision commits a noncriminal violation that is punishable by a fine of up to \$500.

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?

N/A

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

N/A

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

N/A

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?

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?

N/A

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

N/A

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

N/A

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

N/A

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

N/A

3. Personal Responsibility:

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

N/A

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

N/A

4. Individual Freedom:

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

N/A

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

N/A

5. Family Empowerment:

- a. If the bill purports 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?

N/A

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?

N/A

(2) service providers?

N/A

(3) government employees/agencies?

N/A

D. STATUTE(S) AFFECTED:

Section 768.095, Florida Statutes

E. SECTION-BY-SECTION RESEARCH:

This section need be completed only in the discretion of the Committee.

III. FISCAL RESEARCH & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

4. Total Revenues and Expenditures:

N/A

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring Effects:

N/A

2. Recurring Effects:

N/A

3. Long Run Effects Other Than Normal Growth:

N/A

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

N/A

2. Direct Private Sector Benefits:

N/A

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

N/A

D. FISCAL COMMENTS:

N/A

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

A. APPLICABILITY OF THE MANDATES PROVISION:

N/A

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B. REDUCTION OF REVENUE RAISING AUTHORITY:

N/A

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

N/A

V. COMMENTS:

The bill was reviewed by the Criminal Justice Standards & Training Commission staff who indicate that some agencies do experience difficulties in getting complete background information on applicants for law enforcement, correctional, and correctional probation officer positions. The bill would probably assist those agencies in that a complete job employment history of the applicant would be available to the prospective agency administrator to determine if, after reviewing all of the criteria for the job, the applicant is a suitable candidate.

VI. AMENDMENTS OR COMMITTEE SUBSTITUTE CHANGES:

The bill was amended to provide that the investigating officer will also include correctional and correctional probation officers, as well as law enforcement officers who will be conducting the background investigations so that corrections and corrections probation will not have to rely on law enforcement officers to conduct the background investigations; the employing agency is identified so as to specify that the agency is constitutionally or statutorily authorized to employ such officers and that the investigating officer is employed with that agency; credentials are required so that the employer has some assurance that the investigating officer is employed with an agency that employs officers; an authorization-for-release-of-information form, which must be approved by the Criminal Justice Standards & Training Commission, be used by all background investigators.

VII. SIGNATURES:

COMMITTEE ON LAW ENFORCEMENT AND PUBLIC SAFETY:

Prepared by:

Legislative Research Director:

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