

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 1997

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HOUSE BILL 538

Short Title: Truthful Employment References.

(Public)

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Sponsors: Representatives Neely; Baddour, Berry, Brawley, Cansler, Daughtry, Dockham, Esposito, Gray, Gulley, Hill, Kiser, McComas, McMahan, Miner, Morgan, Morris, Redwine, Russell, Smith, Warner, Watson, and C. Wilson.

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Referred to: Judiciary II.

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March 19, 1997

A BILL TO BE ENTITLED

AN ACT TO ENCOURAGE THE PROVIDING OF TRUTHFUL EMPLOYMENT REFERENCES IN ORDER TO PROMOTE SAFER WORKPLACES.

Whereas, the General Assembly finds that there currently exists a reluctance on the part of North Carolina employers to provide potential employers with information about former employees as well as a reluctance on the part of North Carolina employers to provide references for present or former employees seeking employment elsewhere; and Whereas, the General Assembly finds that it is in the interest of employees, employers, and the public that truthful employment information regarding past employees be shared with potential employers of those persons; Now, therefore,

The General Assembly of North Carolina enacts:

Section 1. Chapter 95 of the General Statutes is amended by adding the following new section to read:

**"§ 95-28.4. Employer immunity from civil liability for employment references.**

(a) Immunity. – An employer is absolutely immune from civil liability for providing or responding to a request for the following information about an employee to a prospective employer:

(1) Confirmation of employment.

- 1           (2)   Dates of employment.  
2           (3)   Pay levels and wage history.  
3           (4)   Job description(s) and duties.  
4           (5)   Record of absences from work.  
5           (6)   Whether or not the employee is eligible for rehire for future openings.  
6           (7)   Whether the employee was voluntarily or involuntarily separated from  
7           employment.  
8           (8)   The reason(s) for separation, which are reflected on a business record  
9           prepared on or about the time of the separation.  
10          (9)   Threats of violence, harassing acts or threatening behavior related to the  
11          workplace or directed at another worker.  
12          (b)   Opinion Information. – An employer is absolutely immune from civil liability  
13          for providing the following subjective or opinion information about an employee to a  
14          prospective employer requesting that information:  
15               (1)   Job performance.  
16               (2)   Reason for separation.  
17               (3)   Suitability for employment.  
18          (c)   False Information. – Notwithstanding subsections (a) and (b) of this section, an  
19          employer is not immune from civil liability for the intentional disclosure of false  
20          information regarding an employee.  
21          (d)   Effect. – Except as expressly provided herein, this section does not create new  
22          legal rights against an employer or additional employer obligations, nor does it limit any  
23          existing immunities under statutory or common law.  
24          (e)   Prospective Employer Immunity. – A prospective employer who reasonably  
25          relies upon information provided by another employer pursuant to subsection (b) of this  
26          section has qualified immunity from civil liability for causes of action related to the  
27          hiring of the employee, including a cause of action for negligent hiring. A prospective  
28          employer's reliance on this information without further investigation or inquiry is  
29          reasonable unless additional investigation or inquiry is specifically required by State or  
30          federal statute.  
31          (f)   Definitions. –  
32               (1)   'Employee' means an individual currently or formerly employed by an  
33               employer.  
34               (2)   'Employer' means a person currently or formerly acting directly or  
35               indirectly in the interest of an employer in relation to an employee.  
36               (3)   'Job performance' means duties, effort, skills, knowledge, abilities,  
37               reasons for separation, threats, violence or harassing act, rehire  
38               eligibility, awards, disciplinary actions, performance review and ratings,  
39               demotions, promotions, wage rates, drug test results, and suitability for  
40               positions currently sought.  
41               (4)   'Prospective employee' means a person who has expressed to an  
42               employer, its agents, or job placement service an interest in  
43               employment, placement, or reassignment.

1           (5)   'Prospective employer' means the recipient of a prospective employee's  
2                   interest in employment, placement, or reassignment.

3           (g)   Misrepresentation. – A person or entity that knowingly misrepresents its status  
4 as a prospective employer of an employee is liable for damages actually suffered due to  
5 the misrepresentation."

6           Section 2. This act is effective when it becomes law.