

1989

Session Law 89-036

Florida Senate & House of Representatives

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H 672 GENERAL BILL/1ST ENG by Silver and others (Similar S 442)
Financial Institution/Employee Info; provides that person may furnish information to financial institutions & certain other persons about employees, which information has been reported to state or federal authorities; provides for limitation of civil liability under certain circumstances. Creates 655.51. Effective Date: 06/01/89.

03/10/89 HOUSE Prefiled
03/14/89 HOUSE Referred to Commerce
04/04/89 HOUSE Introduced, referred to Commerce -HJ 67; On subcommittee agenda—Commerce, 04/05/89, 10:15 am, 24-HOB
04/05/89 HOUSE Subcommittee Recommendation: Favorable with 1 amendment
04/10/89 HOUSE On Committee agenda—Commerce, 04/12/89, 3:30 pm, 21-HOB
04/12/89 HOUSE Preliminary Committee Action by Commerce: Favorable with 1 amendment
04/13/89 HOUSE Comm. Report: Favorable with 1 amendment(s) by Commerce, placed on Calendar -HJ 225
04/25/89 HOUSE Placed on Special Order Calendar; Read second time; Amendment adopted -HJ 272
04/27/89 HOUSE Read third time; Passed as amended; YEAS 115 NAYS 0 -HJ 285
04/28/89 SENATE In Messages
05/05/89 SENATE Received, referred to Commerce -SJ 272
05/12/89 SENATE Extension of time granted Committee Commerce
05/16/89 SENATE Withdrawn from Commerce; Substituted for SB 442; Passed; YEAS 36 NAYS 0 -SJ 372
05/18/89 Ordered enrolled
05/25/89 Signed by Officers and presented to Governor -HJ 657
06/01/89 Approved by Governor; Chapter No. 89-36 -HJ 1123

NOTES: Above bill history from Division of Legislative Information's *FINAL LEGISLATIVE BILL INFORMATION, 1989 SESSIONS*. Staff Analyses for bills amended beyond final committee action may not be in accordance with the enacted law. Journal page numbers (HJ & SJ) refer to daily Journals and may not be the same as final bound Journals.

AS PASSED BY THE 1989 LEGISLATURE

STORAGE NAME: h672-f.com
 DATE: 06/20/89

HOUSE OF REPRESENTATIVES
 COMMITTEE ON COMMERCE
 FINAL FINAL STAFF ANALYSIS & ECONOMIC IMPACT STATEMENT

BILL #: HB 672
 RELATING TO: Financial institutions; employment information
 SPONSOR(S): Representative Silver
 EFFECTIVE DATE: Upon becoming a law
 DATE BECAME LAW: June 1, 1989
 CHAPTER #: 89-36, Laws of Florida
 COMPANION BILL(S): SB 442
 OTHER COMMITTEES OF REFERENCE: (1) None
 (2)

I. SUMMARY:

The bill provides civil immunity to anyone who furnishes employment information regarding a known or suspected violation of state or federal law, rule or regulation, unless the information is false and the person providing the information does so with reckless disregard for the truth.

A. PRESENT SITUATION:

It is not a crime under Florida law to disclose information pertaining to a former employee to potential subsequent employers. To the extent that such information is false, and is injurious to the reputation of the employee, disclosure would constitute libel or slander. Where the false expression includes an accusation that the person has committed a crime involving moral turpitude, such as embezzlement, the statement would be libel per se, and damage to reputation would not need to be proved.

Rather than risk a lawsuit, certain employers, particularly financial institutions, do not share negative information about former employees with potential subsequent employers. This has resulted in some instances of repeated bank fraud and embezzlement by bank employees.

B. EFFECT OF PROPOSED CHANGES:

The bill creates a new section of law in the banking code which does two things. First, it codifies existing law with respect to the legality of providing employment information about former employees to potential subsequent employers.

Second, under certain conditions, it provides civil immunity to anyone who furnishes information regarding a current or former employee to a financial institution or to anyone who provides employment information to financial institutions. The latter phrase is intended to cover disclosure to merchants' associations and other organizations which gather background information about persons seeking employment and make it available to financial institutions. Immunity would only be given if the information was true and not provided with reckless disregard for the truth. Additionally, the information would have to pertain to known or suspected involvement by the employee in a violation of state or federal law, rule or regulation and that involvement must have been reported to the appropriate authorities.

C. SECTION-BY-SECTION ANALYSIS:

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT:

A. FISCAL IMPACT ON STATE AGENCIES/STATE FUNDS:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

3. Long Run Effects Other Than Normal Growth:

None

4. Appropriations Consequences:

None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS AS A WHOLE:

1. Non-recurring or First Year Start-Up Effects:

None

2. Recurring or Annualized Continuation Effects:

None

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3. Long Run Effects Other Than Normal Growth:

None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

1. Direct Private Sector Costs:

2. Direct Private Sector Benefits:

This legislation has the direct benefit of protecting former employers, managers, and fellow-employees from having to answer in damages for certain statements made about a former employee relating to suspected violations of state or federal law, rule or regulation. Additionally, to the extent it acts to screen out undesirable employees, it could prevent future occurrences of internal bank fraud and embezzlement. Finally, it may have an indirect benefit of assisting financial institutions in the prevention of hiring employees who would engage in illegal activities for which the financial institution might be held vicariously liable.

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

This legislation could allow for the freer flow of information among financial institutions regarding their personnel.

D. FISCAL COMMENTS:

III. LONG RANGE CONSEQUENCES:

None

IV. COMMENTS:

Identical legislation passed the House in the 1988 session and died in committee in the Senate.

The bill is consistent with the Mission Statement of the Commerce Committee as it would serve to strengthen Florida's position in the regional, national and international financial marketplace by enhancing the ability of financial institutions to protect their economic integrity.

V. LEGISLATIVE HISTORY:

A. ENACTED BILL:

House Bill 672 was introduced on April 4 and referred to the Commerce Committee. At its meeting on April 12, the Banking and Commerce Subcommittee recommended one amendment to the bill. The Commerce Committee on April 12 reported the bill out favorably with the one technical amendment. The House adopted the amendment on April 25 and two days later passed the bill as amended by unanimous vote of 115-0 (HJ 00285). The Senate referred the bill to its Commerce Committee, withdrew it from there and substituted it for SB 442. On May 16, it passed by a vote of 36-0 (SJ 00372). The Governor approved the bill on June 1 and it was given Chapter law number 89-36 (HJ 01123).

B. DISPOSITION OF COMPANION:

Senate bill 442 by Senator Gardner was introduced on April 4 and referred to the Commerce Committee. On April 17 the committee reported it out favorably and placed it on the calendar. The bill initially passed by a vote of 36-0 (SJ 00371), but was reconsidered and the House bill substituted. The Senate bill was then laid on the table (SJ 00372).

VI. SIGNATURES:

SUBSTANTIVE COMMITTEE:

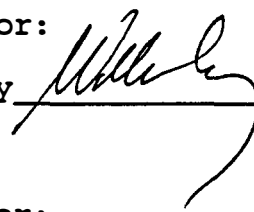
Prepared by:

Staff Director:

Ivy Cream Harris



William Leary



SECOND COMMITTEE OF REFERENCE:

Prepared by:

Staff Director:

APPROPRIATIONS:

Prepared by:

Staff Director:

REVISED: _____

BILL NO. SB 442DATE: April 13, 1989Page 1

SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

| <u>ANALYST</u> | <u>STAFF DIRECTOR</u> | <u>REFERENCE</u> | <u>ACTION</u> |
|--------------------|-------------------------|------------------|------------------|
| 1. <u>Jones JJ</u> | <u>Wilkes</u> <i>SW</i> | 1. <u>COM</u> | <u>Favorable</u> |
| 2. _____ | _____ | 2. _____ | _____ |
| 3. _____ | _____ | 3. _____ | _____ |
| 4. _____ | _____ | 4. _____ | _____ |

SUBJECT:

BILL NO. AND SPONSOR:

Employees of Financial
InstitutionsSB 442 by
Senator GardnerI. SUMMARY:

A. Present Situation:

Florida law does not generally prevent the disclosure of employment information to potential employers or to persons providing employment information to potential employers. To the extent that such information is false, and is injurious to the reputation of the potential employee, it would constitute libel or slander. Where the false statement includes an accusation that the person has committed a crime involving moral turpitude, such as embezzlement, the statement would also be a first degree misdemeanor pursuant to s. 836.01, F.S.

The first amendment of the U.S. Constitution accords statements about public persons a privilege which offers protection against libel actions. Current defamation law as it evolved from New York Times, Co. v. Sullivan, 376 U.S. 254 (1965), requires that "public" persons, in order to overcome this privilege, must furnish clear and convincing evidence that a defamer published false statements with "actual malice." The Times rule defines actual malice as with knowledge of or with reckless disregard of the information's falsity. New York Times, 376 U.S. at 279.

From Gertz v. Robert Welch, Inc., 418 U.S. 323 (1974), forward, a distinction between general and limited purpose public figures marked the degree of privilege which would be allowed as a defense against a libel action. If the plaintiff were a private person and not a public figure the plaintiff could collect damages based on evidence in the record (actual money damages) concerning the defendant's negligence. Gertz, 418 U.S. at 350. Private plaintiffs have to prove the higher New York Times actual malice standard only if they seek punitive damages or damages not supported by the evidence (presumed damages).

B. Effect of Proposed Changes:

This legislation would provide civil immunity to a financial institution and certain others who provide false employment information, about employees, regarding a known or suspected violation of state or federal law or regulation. However, if the person providing the false information does so knowing that the information is false or provides it with reckless disregard for the truth, then the civil immunity is removed. Thus, the bill creates a defense to a libel or slander action brought by the employee against the financial institution employer and certain others.

II. ECONOMIC IMPACT AND FISCAL NOTE:**A. Public:**

This legislation could prevent an injured employee from recovering in a libel or slander suit where a financial institution employer or certain others provide false information about the employee to a financial institution or to a person providing employment information to employers. Thus, this legislation has the direct benefit of protecting former employers and others from having to answer in damages for false statements made about a former employee relating to suspected violations of state or federal law or regulation. It may also have an indirect benefit of assisting employers in the prevention of hiring employees who would engage in illegal activities against the employer or for which the employer might be held vicariously liable.

B. Government:

The economic impact upon the governmental sector is indeterminate.

III. COMMENTS:

The evolution of the Times rule, requiring public persons to prove actual malice with convincing clarity, is the Supreme Court's struggle to strike a balance between the first amendment's encouragement of free speech and a person's privacy and good name. Rosenbloom v. Metromedia, Inc., 403 U.S. 29, 50 (1971). The first amendment defends liberty to speak and to publish freely, but it gives "no special license to destroy lives or careers." Curtis Publishing Co. v. Butts, 388 U.S. 130, 170 (1967) reh. denied, 389 U.S. 889 (1967). This legislation takes the actual malice standard which was created by the U.S. Supreme Court and applies it to a class of persons which the Court has not previously applied the standard to - nonpublic figures seeking monetary damages.

Finally it is unclear what exactly would constitute the outer limits of "employment information" since the term is not defined within SB 442.

IV. AMENDMENTS:

None.