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HOUSE BILL NO. 1126

Offered January 24, 2000

A BILL to amend the Code of Virginia by adding a section numbered 8.01-46.1, relating to the disclosure of certain employment information.

Patrons—Sherwood, Drake, Harris, May, Ruff and Weatherholtz

Referred to Committee for Courts of Justice

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding a section numbered 8.01-46.1 as follows:

§ 8.01-46.1. Disclosure of employment-related information; presumptions; causes of action; definitions.

A. Any employer who, upon request by a person's prospective or current employer, furnishes information about that person's professional conduct, reasons for separation or job performance, including information contained in any written performance evaluations, shall be immune from civil liability for furnishing such information, provided that the employer is not acting in bad faith. An employer shall be presumed to be acting in good faith. The presumption of good faith shall be rebutted if it is shown by clear and convincing evidence that the employer disclosed such information with knowledge that it was false and with the intent to deliberately mislead.

B. Any employer who relies on information disclosed by another employer pertaining to an employee's job performance, professional conduct or reasons for separation shall be immune from civil liability whether alleged in an action for negligent hiring or otherwise stemming from such reliance. This section shall not be construed to create a civil action against an employer relating to the contents of a written performance evaluation performed as part of a program of employee performance evaluations by an employer or the employer's disclosure of such evaluation.

C. In a civil action brought against an employer for providing information about a current or former employee's job performance, professional conduct or reasons for separation or against an employer for relying on any such information, attorneys' fees may be awarded to the prevailing party.

D. In a civil action brought against an employer for disclosing the information described in subsection A, if the trier of fact determines the employer acted in bad faith, punitive damages may be awarded, as provided by § 8.01-38.1.

E. As used in this section, the following words and phrases shall have the following meanings:

"Employee" means any person, paid or unpaid, in the service of an employer.

"Employer" means any person, firm or corporation, including the Commonwealth of Virginia and its political subdivisions, and their agents, who has one or more employees or individuals performing services under any contract of hire or service, express or implied, oral or written.

"Information" includes facts, data and opinions.

"Job performance" includes ability, attendance, awards, demotions, duties, effort, evaluations, knowledge, skills, promotions, productivity and disciplinary actions.

"Professional conduct" includes the ethical standards which govern the employee's profession, or lawful conduct which is expected of the employee by the employer.

"Prospective employer" means any employer who is considering a person for employment.

2. That the provisions of this act shall apply to any cause of action accruing on or after July 1, 2000.

INTRODUCED

HB1126