

# SENATE STAFF ANALYSIS AND ECONOMIC IMPACT STATEMENT

(This document is based only on the provisions contained in the legislation as of the latest date listed below.)

BILL: SB 1826

SPONSOR: Senator Silver

SUBJECT: Release of Employee Information by Employers

DATE: April 19, 1999 REVISED: 4/20/99 \_\_\_\_\_

	ANALYST	STAFF DIRECTOR	REFERENCE	ACTION
1.	<u>Schmeling</u>	<u>Maclure</u>	<u>CM</u>	<u>Fav/1 amendment</u>
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____
4.	_____	_____	_____	_____
5.	_____	_____	_____	_____

## I. Summary:

This bill expands the immunity given to employers for the disclosure of information regarding former employees to include the disclosure of information regarding current employees. This bill further requires certain employers to provide complete employment histories to law enforcement background investigators.

This bill amends section 768.095, Florida Statutes.

## II. Present Situation:

### Release of Information to Prospective Employers

Currently, s. 768.095, F.S., provides an employer 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 ch. 760, F.S.

### Release of Information to Prospective Law Enforcement Employers

Section 943.133, F.S., currently requires an "employing agency" as defined in ch. 943, F.S., to collect, verify, and maintain documentation establishing an applicant's compliance with the job qualification 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.

### III. Effect of Proposed Changes:

**Section 1** amends s. 768.095, F.S., expanding the immunity given to employers for the disclosure of information regarding former employees to include the disclosure of information regarding current employees.

**Section 2** requires that when a law enforcement background investigator is conducting a background check on an applicant for temporary or permanent employment, or appointment as a full-time, part-time, or auxiliary law enforcement officer or correctional officer, the current or former employer of such individual must provide a complete employment history to the law enforcement background investigator. Release of such information is contingent upon the presentation to the employer of an authorization. Whoever fails to comply with the provisions of this section commits a noncriminal violation, punishable by a fine up to \$500.

**Section 3** provides that the bill shall take effect upon becoming law.

### IV. Constitutional Issues:

#### A. Municipality/County Mandates Restrictions:

None.

#### B. Public Records/Open Meetings Issues:

None.

#### C. Trust Funds Restrictions:

None.

### V. Economic Impact and Fiscal Note:

#### A. Tax/Fee Issues:

None.

#### B. Private Sector Impact:

Employers may experience costs related to compliance of employment history disclosure.

#### C. Government Sector Impact:

None.

**VI. Technical Deficiencies:**

None.

**VII. Related Issues:**

Section 1 of the bill addresses a provision of the Florida Statutes also contained in CS/SB 376, one of the Senate's litigation reform bills now in House messages. The difference in the bills, however, is that CS/SB 376 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.

**VIII. Amendments:**

#1 by Commerce and Economic Opportunities:

This amendment strikes the substantive portion of the bill by removing the amendments to s. 768.095, F.S. (which provided immunity to employers for release of information relating to current employees), and making the release of employment information by an applicant's current or former employer permissive. Additionally, this amendment extends the immunity provided in s. 768.095, F.S., to the employers and their agents who disclose background employment information to law enforcement, and allows such employers to seek reimbursement for the cost of any copies produced under the bill.

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This Senate staff analysis does not reflect the intent or official position of the bill's sponsor or the Florida Senate.

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