

## **BILL ANALYSIS**

Senate Research Center

C.S.H.B. 341  
By: McCall (Nelson)  
Economic Development  
5/5/1999  
Committee Report (Substituted)

### **DIGEST**

Under current law, an employer can be found liable for disclosing or withholding certain information about current or former employees. As a result, many employers provide only limited information to a prospective employer about a current or former employee's job performance, or limit the information provided to only a confirmation that the employment occurred and the dates of employment. C.S.H.B. 341 would set forth provisions regulating the use of certain information regarding a current or former employee.

### **PURPOSE**

As proposed, C.S.H.B. 341 sets forth provisions regulating the use of certain information regarding a current or former employee.

### **RULEMAKING AUTHORITY**

This bill does not grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 3, Labor Code, by adding Chapter 103, as follows:

#### **CHAPTER 103. DISCLOSURE BY EMPLOYER OF INFORMATION REGARDING CERTAIN EMPLOYEES OR FORMER EMPLOYEES**

Sec. 103.001. **PURPOSE; LEGISLATIVE FINDING.** Provides that the legislature finds that the disclosure by an employer of truthful information regarding a current or former employee protects employment relationships and benefits the public welfare. Provides that it is the intent of the legislature that an employer who makes a disclosure based on information obtained by the employer that any employer would reasonably believe to be true should be immune from civil liability for that disclosure.

Sec. 103.002. **DEFINITIONS.** Defines "employee," "employer," "job performance," "prospective employee," and "prospective employer."

Sec. 103.003. **AUTHORIZED DISCLOSURE; APPLICATION TO CERTAIN EMPLOYEES.** Authorizes an employer to disclose information about a current or former employee's job performance to a prospective employer of the current or former employee on the request of the prospective employer or the employee. Prohibits an employer from disclosing information about a licensed nurse or licensed vocational nurse that relates to conduct that is protected under Article 4525d, V.T.C.S. Requires the employer to provide an affected nurse with an opportunity to submit a statement of reasonable length to the employer to establish the application of Article 4525d, V.T.C.S.

Sec. 103.004. **IMMUNITY FROM CIVIL LIABILITY; EMPLOYER REPRESENTATIVES.** Provides that an employer who discloses information about a current or former employee under Section 103.003, is immune from civil liability for that disclosure or any damages proximately caused by that disclosure unless it is proven by clear and convincing evidence that the information disclosed was known by that employer to be false at the time the disclosure was made or was made with malice or in reckless disregard for the truth or falsity of the disclosure. Defines "known."

Provides that this chapter applies to a managerial employee or other representative of the employer who is authorized to provide and who provides information in accordance with this chapter in the same manner that it applies to an employer.

Sec. 103.005. EMPLOYMENT REFERENCE. Provides that this chapter does not require an employer to provide an employment reference to or about a current or former employee.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: September 1, 1999.

SECTION 4. Emergency clause.

#### **SUMMARY OF COMMITTEE CHANGES**

SECTION 1.

Amends Section 103.004(a), Labor Code, by deleting proposed text “preponderance of the evidence,” and substituting “clear and convincing evidence,” and adding text to the end of the same sentence regarding “or was made with malice or in reckless disregard for the truth or falsity of the disclosure.”