

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 69

Session of  
2005

INTRODUCED BY VANCE, GREENLEAF, M. WHITE, ARMSTRONG, COSTA,  
ERICKSON, GORDNER, KITCHEN, LEMMOND, LOGAN, ORIE, PICCOLA,  
RAFFERTY, TOMLINSON, WENGER, D. WHITE, WONDERLING, BOSCOLA,  
STACK AND REGOLA, JANUARY 31, 2005

AS AMENDED ON SECOND CONSIDERATION, APRIL 4, 2005

## AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing for employer  
3 immunity from liability for disclosure of information  
4 regarding former or current employees.

5 The General Assembly of the Commonwealth of Pennsylvania  
6 hereby enacts as follows:

7 Section 1. Title 42 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a section to read:

9 § 8340.1. Employer immunity from liability for disclosure of  
10 information regarding former or current employees.

11 (a) General rule.--An employer who discloses information  
12 about a former or current employee to a prospective employer of <—  
13 the former or current employee upon request of the prospective  
14 employer or of the former or current employee is immune from any  
15 and all civil liability, including, but not limited to,  
16 defamation and interference with contract or prospective  
17 contract, for such disclosure or its consequences.

18 (b) Applicability. The immunity provided for in subsection

1 ~~(a) shall not apply if it is shown in any civil action by the~~  
2 ~~former or current employee by clear and convincing evidence that~~  
3 ~~the former or current employer intentionally disclosed~~  
4 ~~information knowing that it was false and acting out of ill-~~  
5 ~~will.~~

6 ~~(c) Construction. This section shall not be construed as~~  
7 ~~establishing a cause of action or substantive legal right~~  
8 ~~against an employer. This section does not affect any immunities~~  
9 ~~from civil liability or defenses established by another~~  
10 ~~provision of this title, other law or available at common law to~~  
11 ~~which an employer may be entitled.~~ ABOUT A CURRENT OR FORMER <—  
12 EMPLOYEE'S JOB PERFORMANCE TO A PROSPECTIVE EMPLOYER OF THE  
13 CURRENT OR FORMER EMPLOYEE, UPON REQUEST OF THE PROSPECTIVE  
14 EMPLOYER OR THE CURRENT OR FORMER EMPLOYEE, IS PRESUMED TO BE  
15 ACTING IN GOOD FAITH AND, UNLESS LACK OF GOOD FAITH IS  
16 DEMONSTRATED BY CLEAR AND CONVINCING EVIDENCE, IS IMMUNE FROM  
17 CIVIL LIABILITY FOR SUCH DISCLOSURE OR ITS CONSEQUENCES IN ANY  
18 CASE, BROUGHT AGAINST THE EMPLOYER BY THE CURRENT OR FORMER  
19 EMPLOYEE. THE PRESUMPTION OF GOOD FAITH MAY BE REBUTTED ONLY BY  
20 CLEAR AND CONVINCING EVIDENCE ESTABLISHING THAT THE EMPLOYER  
21 DISCLOSED INFORMATION THAT:

22 (1) THE EMPLOYER KNEW WAS FALSE OR IN THE EXERCISE OF  
23 DUE DILIGENCE SHOULD HAVE KNOWN WAS FALSE;

24 (2) THE EMPLOYER KNEW WAS MATERIALLY MISLEADING;

25 (3) WAS FALSE AND RENDERED WITH RECKLESS DISREGARD AS TO  
26 THE TRUTH OR FALSITY OF THE INFORMATION; OR

27 (4) WAS INFORMATION THE DISCLOSURE OF WHICH IS  
28 PROHIBITED BY ANY CONTRACT, CIVIL, COMMON LAW OR STATUTORY  
29 RIGHT OF THE CURRENT OR FORMER EMPLOYEE.

30 (B) EFFECT UPON IMMUNITY.--THIS SECTION SHALL NOT BE

1 CONSTRUED TO AFFECT IMMUNITIES FROM CIVIL LIABILITY OR DEFENSES,  
2 ESTABLISHED BY LAW OR AVAILABLE AT COMMON LAW, TO WHICH AN  
3 EMPLOYER MAY BE ENTITLED.

4 ~~(d)~~ (C) Definition.--As used in this section, the term <—  
5 "employer" means a business enterprise of whatever form, a  
6 public OR NONPROFIT entity or any person acting on behalf of the <—  
7 business enterprise or public OR NONPROFIT entity. <—

8 Section 2. This act shall take effect in 60 days.