

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2354 Session of
2006

INTRODUCED BY WANSACZ, BIANCUCCI, FABRIZIO, FRANKEL, FREEMAN,
GOODMAN, JAMES, KOTIK, MANN, MARKOSEK, STABACK, TANGRETTI,
WALKO, BAKER, CRAHALLA, DENLINGER, GOOD, HARRIS, MCGILL,
MCILHATTAN AND SAYLOR, JANUARY 18, 2006

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 18, 2006

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for civil
3 immunity of employers relating to disclosure of former
4 employee information.

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. Civil immunity of employers relating to disclosure of
10 former employee information.

11 (a) Absolute immunity.--An employer who discloses
12 information about an employee to a prospective employer shall be
13 absolutely immune from civil liability if:

14 (1) The employer has a written policy governing the
15 disclosure of the information, setting forth what may be
16 disclosed, who may prepare the disclosure, who may maintain
17 any records associated with the disclosure and the procedures
18 for the employee to receive notice of the employer's intent

1 to disclose the information and the employee's opportunity to
2 respond to that disclosure.

3 (2) The employee or prospective employer requests the
4 information in writing.

5 (3) The employer discloses the information to the
6 prospective employer in writing.

7 (4) The disclosed information relates to the employee's
8 job performance, work-related conduct or characteristics, or
9 to acts committed by the employee at work that would
10 constitute violations of Federal or State law.

11 (5) The employer provides a copy of the information it
12 intends to disclose to the employee before forwarding the
13 information to the prospective employer.

14 (6) The employer provides the employee with an
15 opportunity to respond to the intended disclosure in writing
16 and, if a response is provided, that the response is
17 forwarded to the prospective employer with the employer's
18 information.

19 (b) Qualified immunity.--

20 (1) Except as otherwise provided under subsection (a),
21 an employer who discloses information about an employee to a
22 prospective employer shall be presumed to be acting in good
23 faith and is immune from civil liability if the disclosed
24 information relates to the employee's job performance, work-
25 related conduct or characteristics, or to acts committed by
26 the employee at work that would constitute violations of
27 Federal or State law.

28 (2) The presumption of good faith established in
29 paragraph (1) may be rebutted if at least one of the
30 following are proven by a preponderance of the evidence:

1 (i) The employer disclosed information that was
2 false.

3 (ii) The employer disclosed information that was
4 deliberately misleading.

5 (iii) The employer disclosed information with
6 reckless disregard as to whether it was true or false.

7 (iv) The employer disclosed information with
8 malicious intent.

9 (v) The employer disclosed information that violated
10 a civil, common law or constitutional or statutory right
11 of the employee.

12 (c) Fees and costs.--If an employer prevails in a civil suit
13 brought under this section, the court may order the employee to
14 pay the employer's reasonable attorney fees and costs.

15 (d) Other rights affected.--This section is intended to
16 abrogate any common law immunity available to an employer for
17 the conduct identified in this section.

18 (e) Definitions.--As used in this section, the following
19 words and phrases shall have the meanings given to them in this
20 subsection:

21 "Employee." An individual currently or formerly employed by
22 an employer.

23 "Employer." A person who employs at least one individual.
24 The term includes the Commonwealth and any of its political
25 subdivisions.

26 "Former employee." An individual who was previously employed
27 by an employer.

28 "Job performance, work-related conduct or characteristics."
29 The term includes information relating to skills, abilities,
30 duties, performance evaluations, disciplinary actions taken and

1 attendance.

2 "Prospective employee." An individual who has submitted an
3 application, resume or other correspondence, indicating an
4 interest in employment, to a prospective employer.

5 "Prospective employer." An employer to whom a prospective
6 employee has submitted an application, resume or other
7 correspondence, indicating an interest in employment.

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