



State of Wisconsin

LEGISLATIVE REFERENCE BUREAU

RESEARCH APPENDIX - **PLEASE DO NOT REMOVE FROM DRAFTING FILE**

Date Transfer Requested: 03/16/2005 (Per: MGD)



☞ The 2003 drafting file for LRB 03-3033

has been transferred to the drafting file for

2005 LRB 05-2416

☞ This cover sheet, the final request sheet, and the final version of the 2003 draft were copied on yellow paper, and returned to the original 2003 drafting file.

☞ The attached 2003 draft was incorporated into the new 2005 draft listed above. For research purposes, this cover sheet and the complete drafting file were transferred, as a separate appendix, to the 2005 drafting file. If introduced this section will be scanned and added, as a separate appendix, to the electronic drafting file folder.

2003 DRAFTING REQUEST

Bill

Received: **07/28/2003**

Received By: **mdsida**

Wanted: **As time permits**

Identical to LRB:

For: **Joseph Leibham (608) 266-2056**

By/Representing: **Brad**

This file may be shown to any legislator: **NO**

Drafter: **mdsida**

May Contact:

Addl. Drafters:

Subject: **Criminal Law - law enforcement
Employ Priv - miscellaneous
Employ Pub - miscellaneous
Courts - miscellaneous**

Extra Copies: **rlr, gmm, rac, mes**

Submit via email: **YES**

Requester's email: **Sen.Leibham@legis.state.wi.us**

Carbon copy (CC:) to:

Pre Topic:

No specific pre topic given

Topic:

Access to employment history of candidates for local law enforcement officer positions

Instructions:

See Attached

Drafting History:

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|------------------------|------------------------|----------------|------------------------|-----------------|-----------------|
| /? | mdsida 11/18/2003 | kfollett 12/18/2003 | | _____ | | | |
| /P1 | | | rschluet 12/18/2003 | _____ | sbasford 12/18/2003 | | |

| <u>Vers.</u> | <u>Drafted</u> | <u>Reviewed</u> | <u>Typed</u> | <u>Proofed</u> | <u>Submitted</u> | <u>Jacketed</u> | <u>Required</u> |
|--------------|----------------------|--|------------------------|----------------|----------------------|--|-----------------|
| /1 | mdsida 02/17/2004 | kfollett 03/03/2004 kfollett 03/11/2004 | jfrantze 03/12/2004 | _____ | lemery 03/12/2004 | lemery 03/12/2004 [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] | |

FE Sent For:

<END>

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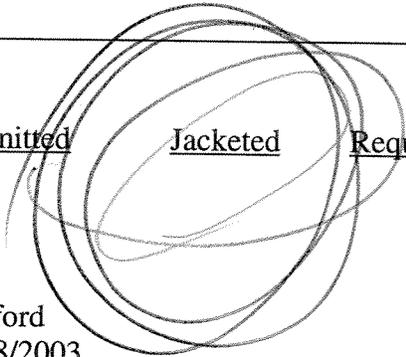
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| /? | mdsida 11/18/2003 | kfollett 12/18/2003 | | | | | |
| /P1 | | 11/18/03 3/11 | rschluet 12/18/2003 | | sbasford 12/18/2003 | | |



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Topic:

Background checks of law enforcement officers

Instructions:

See Attached

Drafting History:

Vers. Drafted Reviewed Typed Proofed Submitted Jacketed Required

/? mdsida

Handwritten: 1P/1K, 12/18

Large handwritten signature/initials

FE Sent For:

<END>

Dsida, Michael

Subject: FW: Draft for Senator Leibham

-----Original Message-----

From: Vogel, Brad
Sent: Tuesday, July 22, 2003 1:46 PM
To: Champagne, Rick
Subject: Draft for Senator Leibham

Rick -

Senator Leibham would like a bill drafted that would require employers (*who do business in the state of Wisconsin*) to disclose employment information of past employees applying for a peace officer position on the written request of a law enforcement agency conducting a background investigation and with the consent of the applicant. If an employer refuses to disclose employment information after such a request is made, the district court may issue an order, on the request of the recruiting law enforcement agency, requiring the disclosure of such employment records.

Such a bill would put Wisconsin in line with a similar provision that Minnesota currently has on the books, facilitating easier access to past employment records of applicants.

Please let me know if this is something within your realm. If it is, I can provide the appropriate Minnesota statute and a memo from Legislative Council outlining differences between that statute and Wisconsin law that would need to be bridged by new legislation.

Thank you,

Brad Vogel
Office of Senator Joe Leibham

920-457-7367

FOL
GRAD

5 pages
total

Reactive

Don Samson - 459-3354 - Walter (3-11-03)
- interviews for new officers -

BACKGROUND INVESTIGATIONS -

150 applicants - 12 final reviews
for background -

Dept has signed release from Applicants -

Minnesota - law law -

MA's office - Tom Fallon -

WHAT IS WI LAW?

STATE OF MINNESOTA
OFFICE OF THE ATTORNEY GENERAL

TO: Lieutenant Sorensen
Sheboygan Police Department

DATE: March 3, 2003

PHONE:

FAX: 920 459 0205

FROM: **DEBBY EVANS**
Citizen Assistance Analyst
445 Minnesota St., #1400
St. Paul, MN 55101-2131

PHONE: (651) 297-4737

FAX: (651) 296-9663

TTY: (651) 297-7206

SUBJECT:

TRANSMISSION BY FACSIMILE

NUMBER OF PAGES (including cover page): 7

COMMENTS:

FOR TRANSMISSION PROBLEMS, PLEASE CALL:

Minnesota Statutes 2002, 626.87

Minnesota Statutes 2002, Table of Chapters

Table of contents for Chapter 626

626.87 Law enforcement background investigations.

Subdivision 1. Background investigation required.

(a) A law enforcement agency shall conduct a thorough background investigation on an applicant for employment as a licensed peace officer or an applicant for a position leading to employment as a licensed peace officer before the applicant may be employed. The background investigation must determine at a minimum whether the candidate meets the following standards:

(1) standards established by the Minnesota board of peace officer standards and training; and

(2) established security standards for access to state and national computerized record and communication systems.

(b) This requirement does not prevent a law enforcement agency from establishing higher standards for law enforcement employees if those standards are not contrary to applicable law.

Subd. 2. Disclosure of employment information. Upon request of a law enforcement agency, an employer shall disclose or otherwise make available for inspection employment information of an employee or former employee who is the subject of an investigation under subdivision 1. The request for disclosure of employment information must be in writing, must be accompanied by an original authorization and release signed by the employee or former employee, and must be signed by a sworn peace officer or other authorized representative of the law enforcement agency conducting the background investigation.

Subd. 3. Refusal to disclose a personnel record. If an employer refuses to disclose employment information in accordance with this section, upon request the district court may issue an ex parte order directing the disclosure of the employment information. The request must be made by a sworn peace officer from the law enforcement agency conducting the background investigation and must include a copy of the original request for disclosure made upon the employer or former employer and the authorization and release signed by the employee or former employee. The request must be signed by the peace officer requesting the order and an attorney representing the state or the political subdivision on whose behalf the background investigation is being conducted. It is not necessary for the request or the order to be filed with the court administrator. Failure to comply with the court order subjects the person who fails to comply to civil or criminal contempt of court.

Subd. 4. Immunity from liability. In the absence of fraud or malice, an employer is immune from civil liability for employment information released to a law enforcement agency under this section, or for any subsequent publication made by the employee or former employee of employment information

895-487

sec.

Minnesota Statutes 2002, 626.87

released to a law enforcement agency under this section.

Subd. 5. **Notice of investigation.** Upon initiation of a background investigation under this section, the law enforcement agency shall give written notice to the peace officer standards and training board of:

- (1) the candidate's full name and date of birth; and
- (2) the candidate's peace officer license number, if known.

The initiation of a background investigation does not include the submission of an application for employment. Initiation of a background investigation occurs when the law enforcement agency begins its determination of whether an applicant meets the agency's standards for employment as a law enforcement employee.

Subd. 6. **Confidentiality agreements.** If employment information is subject to a confidentiality agreement between the employee or former employee and the employer, the employer shall disclose the fact that such an agreement exists. If the employee or former employee has authorized the release of employment information without regard to any previous agreement to the contrary, the employer shall also disclose the employment information in accordance with subdivision 2. If employment information is sealed or otherwise subject to a nondisclosure order by a court of competent jurisdiction, the employer shall disclose the fact that such an order exists, along with information identifying the court and court's file number.

Subd. 7. **Employment information.** For purposes of this section, "employment information" means written information in connection with job applications, performance evaluations, attendance records, disciplinary actions, and eligibility for rehire.

Subd. 8. **Application.** For purposes of this section, "employer" does not include an entity that is subject to chapter 13.

HIST: 1997 c 214 s 5

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JUL 03 2003



WISCONSIN LEGISLATIVE COUNCIL

Terry C. Anderson, Director
Laura D. Rose, Deputy Director

TO: SENATOR JOSEPH LEIBHAM
FROM: Dan Schmidt, Analyst *DWS.*
RE: Police Background Investigations
DATE: July 3, 2003

This memorandum, prepared at your request, discusses the required background checks for applicants for law enforcement officer positions in Wisconsin. In addition, this memorandum compares certain portions of s. 626.87 of the Minn. Stats., and relevant Wisconsin law relating to law enforcement officer applicant background checks.

Section LES 2.01 (1) (f) 2., Wis. Adm. Code

Section 165.85 (3) (c), Stats., permits the Wisconsin Law Enforcement Standards Board (LESB) to certify an individual as qualified for employment as a law enforcement officer in Wisconsin. In doing so, LESB has promulgated rules that establish minimum qualifications for law enforcement officer recruitment in Wisconsin. In addition to legal, educational and age requirements, the minimum qualifications require that an applicant for a law enforcement officer position must be of good character as determined in a written report which contains the following information:

1. The fingerprints of the applicant and the results of a search of local, state, and national fingerprint records.
2. A background investigation conducted by or on behalf of a potential law enforcement agency employer. The employer must certify in a document a reasonably appropriate background investigation has been conducted, what persons or agency conducted the investigation and where written results of the investigation are maintained on file.
3. Any other investigation as is deemed necessary to provide a basis of judgment on the applicant's loyalty to the United States or to detect conditions which adversely affect performance of one's duty as a law enforcement, tribal law enforcement, jail or secure detention officer. [See s. LES 2.01 (1) (f), Wis. Adm. Code.]

The LESB rules do not specify what elements the background investigation should contain. Conversations with Department of Justice's Mike Roberts, Administrator of the Division of Law Enforcement Services and Dennis Hanson, Director of the Training and Standards Bureau, indicated that the LESB rules are intentionally vague in order to allow local law enforcement agencies to pursue their own levels of scrutiny based on the positions and applicants. Mr. Roberts also indicated that a background check typically involves interviews with an applicant's prior employers to determine an applicant's character and fitness for law enforcement employment.

The following items from the Training and Standards Bureau are attached to this memorandum for your perusal:

- *An application for employment as a law enforcement or jail officer* -- The applicant submits this form upon application for a law enforcement officer position.
- *A verification of employment standards and application for certification* -- The employing local law enforcement department files this form with the Training and Standards Bureau upon completion of the background investigation and verification of other required standards.
- A copy of the Training and Standards Bureau's summary of standards for employment as a law enforcement officer in Wisconsin.

Section 626.87, Minn. Stats.

Similar to s. LES 2.01, s. 626.87, Minn. Stats., requires that a law enforcement agency must conduct a background investigation, subject to the standards of the Minnesota Board of Peace Officer Standards, on any applicant for a position as a licensed peace officer. In addition, Minnesota requires that an applicant for a peace officer position meet the security standards for access to state and national computerized record and communication systems.¹

The Minnesota law differs from that of Wisconsin by including provisions that require past employers of an applicant for employment as a peace officer to allow inspection of employment information with the consent of the applicant for a peace officer position and on the written request of a law enforcement agency conducting a background investigation. If an employer refuses to disclose employment information after such a request is made the district court may issue an order, on the request of the recruiting law enforcement agency, requiring the disclosure of such employment records. Wisconsin does not appear to have such a law. Mike Roberts and Dennis Hanson indicated that such employment records are usually shared on a voluntary basis in the interest of public safety. They also indicated that they had not heard of any problems from local law enforcement agencies regarding the inspection of records of prior employment.

Minnesota law also provides immunity from civil liability for employment information released to a law enforcement agency as part of a required background investigation and requires that the

¹ Mr. Roberts indicated that an individual who meets the standards for employment as a Wisconsin law enforcement officer required by the LESB would generally meet the standards for access to what Minnesota law refers to as "state and national computerized record and communications systems."

employer disclose any pre-existing confidentiality agreements between the employer and employee. Wisconsin law does not appear to have such provisions, as there does not appear to be any disclosure requirement for current or prior employers of law enforcement officer applicants.

If you have any questions, please feel free to contact me directly at the Legislative Council staff offices.

DWS:tlu

Attachments

MINN. CH. 13 ?

Tribal LEO?

8/25

Plc from Brad

Ok for it not to ~~span~~^{cover} govt employees

Don't worry about ~~state~~ DSS - local only ok

He will ✓ on stds

Dsida, Michael

From: Vogel, Brad
Sent: Monday, October 06, 2003 2:56 PM
To: Dsida, Michael
Subject: RE: Police officer background checks bill

Mike -

This analysis looks reasonable. It limits the release from the confidentiality agreement to "employment information" (or merely the existence of the agreement) which assists the law enforcement agency in its mission, the purpose of this bill, without treading excessively on the employer.

Remaining silent on the candidate consent for access to a confidentiality agreement is also beneficial to law enforcement agencies as it gives them some discretion. Being able to set a higher bar for applicants on the confidentiality agreements is in line with the thrust of this bill, which is to ensure high quality law enforcement officers without any "skeletons in their closets".

I will get in touch if the Senator has any concerns regarding this part of the bill.

Thanks for the update!

Brad Vogel
Office of Senator Leibham

P.S. I will get back to you asap on your question in the Computer Forfeitures Bill.

-----Original Message-----

From: Dsida, Michael
Sent: Monday, October 06, 2003 2:24 PM
To: Vogel, Brad
Subject: RE: Police officer background checks bill

After looking at it again, I think I have the Minnesota law, however unclear it is, figured out, and I think I can resume working on the draft based on that interpretation. Under the most reasonable construction of that law, if the law enforcement agency provides the employer with a consent from the employee that specifically authorizes the release of information from a confidentiality agreement, the employer must provide the agency "employment information" from any such agreement. If the employee provides a consent that does not specifically refer to confidentiality agreements, the employer only has to disclose the existence of the agreement.

FYI -- Minnesota law does not address whether the agency can require the candidate to sign a consent that covers information in a confidentiality agreement. In the absence of any such provision, the agency is probably free to do so.

Mike Dsida

-----Original Message-----

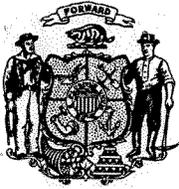
From: Vogel, Brad
Sent: Wednesday, October 01, 2003 4:34 PM
To: Dsida, Michael
Subject: .

As far as the Police Background Bill goes, he is still looking over the briefing I gave him. I'm also pursuing information on what we have for employer/employee confidentiality agreement law with DOJ. Would you be able to send me a single sentence about what, specifically, you want for this one? Would you like to know if we want the term confidentiality agreement in it or not (I too have found that it's only in the statutes linked to trade secrets, which don't apply)? Do you want to know if the whole provision of Subdivision 6 should be included? Or, do you want to know if employers should only acknowledge existence of such agreements or actually reveal the info. in them?

Sorry for the clumsy questions - I just want to make sure we're barking up the right tree in search of an answer that you need.

Thank you,

Brad
Office of Senator Joe Leibham



State of Wisconsin
2003 - 2004 LEGISLATURE

LRB-3033/29

MGD: K. P.

D-Note

12/22
MGN.

PRELIMINARY DRAFT - NOT READY FOR INTRODUCTION

Regen

1 AN ACT ...; relating to: access to employment records of candidates for local law
2 enforcement officer positions.

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

3 SECTION 1. 175.50 of the statutes is created to read:

4 **175.50 Local law enforcement officer background investigations.** (1) X

5 DEFINITIONS. In this section:

6 (a) "Candidate" means a person applying or being considered for a position as
7 a local law enforcement officer.

8 (b) "Employment information" means written information in connection with
9 job applications, performance evaluations, attendance records, disciplinary actions,
10 and eligibility for being rehired.

1 (c) "Local law enforcement agency" means a unit of a political subdivision of this
2 state that is established to prevent and detect crime and enforce state laws or local
3 ordinances and that employs one or more local law enforcement officers.

4 (d) "Local law enforcement officer" means a person employed by a political
5 subdivision of the state for the purpose of detecting and preventing crime and
6 enforcing laws or ordinances and who is authorized to make arrests for violations of
7 the laws or ordinances that the person is employed to enforce.

8 (e) "Provide," with respect to employment information, includes making
9 available for inspection.

10 (e) "Release" means a document, signed by a candidate, authorizing the
11 candidate's current or former employer to provide employment information
12 regarding the candidate to a local law enforcement agency.

13 (2) DISCLOSURE OF EMPLOYMENT INFORMATION. (a) A local law enforcement
14 agency may request that a candidate's current or former employer provide
15 employment information regarding the candidate. Any such request shall be in
16 writing, be signed by an authorized representative of the local law enforcement
17 agency making the request, and be accompanied by an original release.

18 (b) The employer shall comply with any request made under par. (a) with
19 respect to all employment information that is not subject to a confidentiality
20 agreement between the candidate and the employer. If some or all of the employment
21 information is subject to a confidentiality agreement, the employer shall comply with
22 a request made under par. (a) with respect to that information only if the release
23 specifically authorizes the employer to provide that information to the local law
24 enforcement agency. If the release does not, the employer shall inform the agency
25 of the existence of the confidentiality agreement.

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3033/2dn

MGD: *[Signature]*

Date

Brad:

Unlike Minnesota law, this bill does not contain an immunity provision. Employers are already covered by the immunity provision in s. 895.487(2). In addition, I cannot think of a situation in which an employer could be liable based on a candidate's release of information that the employer made available to a law enforcement agency.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

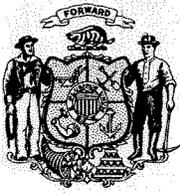
LRB-3033/P1dn
MGD:kjf:rs

December 18, 2003

Brad:

Unlike Minnesota law, this bill does not contain an immunity provision. Employers are already covered by the immunity provision in s. 895.487 (2). In addition, I cannot think of a situation in which an employer could be liable based on a candidate's release of information that the employer made available to a law enforcement agency.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867



State of Wisconsin
2003 - 2004 LEGISLATURE

Other

LRB-3033/P1

MGD:kjf:rs

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17 agency making the request, and be accompanied by an original release.

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**2003-2004 DRAFTING INSERT
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-3033/lins
MGD:.....

INSERT A

In general, under current law, an employer may, but is generally not required to, provide information regarding a current or former employee if the employee applies for a job elsewhere. This bill requires a private employer doing business in this state to provide employment information requested by a municipal or county law enforcement agency if a person who is working or has worked for that employer applies for or is being considered for a law enforcement position with that agency. In order for that requirement to apply, the agency's request must be signed and in writing and be accompanied by a release, signed by the candidate for the law enforcement position, which authorizes the current or former employer to provide employment information regarding the candidate to the agency. The bill authorizes a law enforcement agency to obtain a court order mandating the release of employment information if an employer does not comply with a proper request.

The bill contains two exceptions relating to this requirement. First, if any employment information is subject to a confidentiality agreement, the employer is required to comply with the agency's request with respect to that information only if the release specifically authorizes the employer to provide that information to the agency. If the release does not, ^{contain such an authorization} the employer must inform the agency of the existence of the confidentiality agreement and comply with the agreement. Second, if a court has prohibited the disclosure of relevant employment information, the employer must inform the agency of the order and comply with the order.



2003 BILL

- 1 AN ACT *to create* 175.50 of the statutes; **relating to:** access to employment
2 records of candidates for local law enforcement officer positions.

Analysis by the Legislative Reference Bureau

In general, under current law, an employer may, but is generally not required to, provide information regarding a current or former employee if the employee applies for a job elsewhere. This bill requires a private employer doing business in this state to provide employment information requested by a municipal or county law enforcement agency if a person who is working or has worked for that employer applies for or is being considered for a law enforcement position with that agency. In order for that requirement to apply, the agency's request must be signed and in writing and be accompanied by a release, signed by the candidate for the law enforcement position, which authorizes the current or former employer to provide employment information regarding the candidate to the agency. The bill authorizes a law enforcement agency to obtain a court order mandating the release of employment information if an employer does not comply with a proper request.

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BILL

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20 regarding the candidate to a local law enforcement agency.

BILL

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6 (b) The employer shall comply with any request made under par. (a) with
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9 information is subject to a confidentiality agreement, the employer shall comply with
10 a request made under par. (a) with respect to that information only if the release
11 specifically authorizes the employer to provide that information to the local law
12 enforcement agency. If the release does not contain such an authorization, the
13 employer shall inform the agency of the existence of the confidentiality agreement.

14 (c) Notwithstanding par. (b), if a court has prohibited the disclosure of
15 employment information requested by a local law enforcement agency under par. (a),
16 the employer shall comply with the court order but shall disclose to the agency the
17 fact that the prohibition exists, along with information identifying the court and
18 number of the case in which the court established the prohibition.

19 **(3) REFUSAL TO DISCLOSE EMPLOYMENT INFORMATION.** If an employer refuses to
20 comply with a request for employment information under sub. (2) (b), the circuit
21 court for any county in which the employer does business or in which the local law
22 enforcement agency is located may enter an ex parte order, upon the filing of a
23 petition by the agency, to compel the disclosure of the employment information. A
24 petition filed under this subsection shall be made by a local law enforcement officer
25 employed by the agency and shall include a copy of the original request for disclosure

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1 made upon the employer and a copy of the candidate's release. The request must be
2 signed by the petitioner and the district attorney.

3 (4) EXEMPTION FOR CERTAIN EMPLOYERS. A candidate's current or former
4 employer is not required to provide employment information to a local law
5 enforcement agency under this section if the employer is a unit of state or local
6 government or if the employer does not do business in this state.

7 (END)