2009 SENATE BILL 82

February 18, 2009 – Introduced by Senators LEIBHAM, COWLES, TAYLOR and OLSEN, cosponsored by Representatives HRAYCHUCK, TOWNSEND, MURTHA, LEMAHIEU, SPANBAUER, GUNDERSON, A. OTT, BIES, KLEEFISCH and MURSAU. Referred to Committee on Judiciary, Corrections, Insurance, Campaign Finance Reform, and Housing.

1 AN ACT *to create* 175.55 of the statutes; **relating to:** access to employment

2 records of candidates for law enforcement 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 who 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 or the Department of Justice (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 the law enforcement agency. In order for that requirement to apply, the law enforcement 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 law enforcement 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 to the requirement that a private employer provide employment information requested by a law enforcement agency. First, if any employment information is subject to a confidentiality agreement, the employer is required to comply with the law enforcement agency's request with respect to that information only if the release specifically authorizes the employer to provide that information to the law enforcement agency. If the release does not contain such an

authorization, the employer must inform the law enforcement 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 law enforcement agency of the order and comply with the order.

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

1   SECTION 1. 175.55 of the statutes is created to read:

2   **175.55   Law enforcement officer background investigations.   (1)**

3   DEFINITIONS. In this section:

4   (a) "Candidate" means a person applying or being considered for a position as

5   a law enforcement officer.

6   (b) "Employment information" means written information in connection with

7   job applications, performance evaluations, attendance records, disciplinary actions,

8   and eligibility for being rehired.

9   (c) "Law enforcement agency" means either the department of justice or a unit

10   of a political subdivision of this state that is established to prevent and detect crime

11   and enforce state laws or local ordinances and that employs one or more law

12   enforcement officers.

13   (d) "Law enforcement officer" means a person employed by either the

14   department of justice or a political subdivision of the state for the purpose of

15   detecting and preventing crime and enforcing laws or ordinances and who is

16   authorized to make arrests for violations of the laws or ordinances that the person

17   is employed to enforce.

18   (e) "Provide," with respect to employment information, includes making

19   available for inspection.

1   (f) "Release" means a document, signed by a candidate, authorizing the

2   candidate's current or former employer to provide employment information

3   regarding the candidate to a law enforcement agency.

4   **(2)** DISCLOSURE OF EMPLOYMENT INFORMATION. (a) A law enforcement agency

5   may request that a candidate's current or former employer provide employment

6   information regarding the candidate. Any such request shall be in writing, be signed

7   by an authorized representative of the law enforcement agency making the request,

8   and be accompanied by an original release.

9   (b) The employer shall comply with any request made under par. (a) with

10   respect to all employment information that is not subject to a confidentiality

11   agreement between the candidate and the employer. If some or all of the employment

12   information is subject to a confidentiality agreement, the employer shall comply with

13   a request made under par. (a) with respect to that information only if the release

14   specifically authorizes the employer to provide that information to the law

15   enforcement agency. If the release does not contain such an authorization, the

16   employer shall inform the law enforcement agency of the existence of the

17   confidentiality agreement.

18   (c) Notwithstanding par. (b), if a court has prohibited the disclosure of

19   employment information requested by a law enforcement agency under par. (a), the

20   employer shall comply with the court order but shall disclose to the law enforcement

21   agency the fact that the prohibition exists, along with information identifying the

22   court and number of the case in which the court established the prohibition.

23   **(3)** REFUSAL TO DISCLOSE EMPLOYMENT INFORMATION. If an employer refuses to

24   comply with a request for employment information under sub. (2) (b), the circuit

25   court for any county in which the employer does business or in which the law

1   enforcement agency is located may enter an ex parte order, upon the filing of a

2   petition by the law enforcement agency, to compel the disclosure of the employment

3   information. A petition filed under this subsection shall be made by a law

4   enforcement officer employed by the law enforcement agency and shall include a copy

5   of the original request for disclosure made upon the employer and a copy of the

6   candidate's release. The request must be signed by the petitioner and the district

7   attorney.

8   **(4)** EXEMPTION FOR CERTAIN EMPLOYERS. A candidate's current or former

9   employer is not required to provide employment information to a law enforcement

10   agency under this section if the employer is a unit of state or local government or if

11   the employer does not do business in this state.

12   **(END)**