



1995 ASSEMBLY BILL 860

February 7, 1996 - Introduced by Representatives LAZICH, HOVEN, VRAKAS, NASS, GROTHMAN, REYNOLDS, DUFF, GREEN, GUNDERSON, HAHN, HUBLER, HUTCHISON, KLUSMAN, OLSEN, OWENS, POWERS, SERATTI, UNDERHEIM and WILDER, cosponsored by Senators FITZGERALD, BRESKE and DARLING. Referred to Committee on Labor and Employment.

- 1 **AN ACT to create** 895.487 of the statutes; **relating to:** immunity from civil liabil-
2 ity for an employer who, in good faith, provides a reference concerning a current
3 or former employe.

Analysis by the Legislative Reference Bureau

Under current common law, a person who makes a false statement that damages the reputation of another person is subject to civil liability for defamation. Current common law, provides, however, that under certain circumstances a person has a conditional privilege to make false and defamatory statements about another person without civil liability so long as that privilege is not abused. Currently, an employer has a conditional privilege to provide a reference, that is, a statement about a current or former employe for the purpose of advising a prospective employer about the work capabilities of the employe, so long as that privilege is not abused. Currently, the privilege to provide a reference is abused if the employer knowingly or recklessly makes false statements in the reference, the employer makes a statement in the reference solely out of spite or ill will, the employer provides the reference to persons who have no interest in the employe's work capabilities (excessive publication) or the employer makes statements in the reference that are not necessary to advise about the employe's work capabilities.

This bill creates a presumption that an employer who provides a reference (defined in the bill as a statement about an employe's job performance or qualifications for employment, including a statement provided as part of the settlement of a dispute between the employer and employe or provided as part of an agreement relating to the termination of the employe's employment) to a prospective employer of a current or former employe is presumed to be acting in good faith. The bill provides that an employer who provides a reference is immune from all civil liability that may result from providing that reference, unless lack of good faith is shown by clear and convincing evidence. The presumption of good faith under the bill may be rebutted only upon a showing by clear and convincing evidence that the employer knowingly provided

false information in the reference, that the employer provided the reference maliciously or that the employer provided the reference in violation of the fair employment law, which forbids discrimination in employment.

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

1 **SECTION 1.** 895.487 of the statutes is created to read:

2 **895.487 Civil liability exemption; employment references.** (1) In this
3 section:

4 (a) "Employee" has the meaning given in s. 101.01 (2) (a) and also includes a for-
5 mer employe.

6 (b) "Employer" has the meaning given in s. 101.01 (2) (b).

7 (c) "Reference" means a statement about an employe's job performance or quali-
8 fications for employment and includes a statement about an employe's job perfor-
9 mance or qualifications for employment provided as part of the settlement of a dis-
10 pute between the employer and employe or provided as part of an agreement between
11 the employer and employe relating to the termination of the employe's employment.

12 (2) An employer who, on the request of an employe or a prospective employer
13 of the employe, provides a reference to that prospective employer is presumed to be
14 acting in good faith and, unless lack of good faith is shown by clear and convincing
15 evidence, is immune from all civil liability that may result from providing that refer-
16 ence. The presumption of good faith under this subsection may be rebutted only upon
17 a showing by clear and convincing evidence that the employer knowingly provided
18 false information in the reference, that the employer made the reference maliciously
19 or that the employer made the reference in violation of s. 111.322.

20 **SECTION 2. Initial applicability.**

1 (1) This act first applies to a reference, as defined in section 895.487 (1) (c) of
2 the statutes, as created by this act, provided by an employer, as defined in section
3 895.487 (1) (b) of the statutes, as created by this act, to a prospective employer on the
4 effective date of this subsection.

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(END)