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LABOR AND INDUSTRIAL RELATIONS
General Provisions: Provide Immunity to Health Care and Child Care Institutions for Good Faith Disclosure of Job Performance Information

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General Provisions: Provide Immunity to Health Care
and Child Care Institutions for Good Faith
Disclosure of Job Performance Information

CODE SECTION: O.C.G.A. § 34-1-4 (new)
BILL NUMBER: SB 175
ACT NUMBER: 510
SUMMARY: The Act allows selected current and former
employers—health care institutions, schools,
and child care institutions—to disclose negative
job performance information to prospective
employers, without fear of civil liability to an
employee unless the employee can prove bad
faith.
EFFECTIVE DATE: July 1, 1993

History

Robert W. Faver, a counselor at a Cobb County high school, pleaded
guilty in 1989 to sexual molestation of a male student.¹ Prior to his
Cobb County position, Faver had been fired by the Fayette County
School System for providing beer to a high school student, and for
providing a hotel room to two other high school students.² Public
concern was raised because despite his Fayette experience, Faver had
been able to secure employment at another nearby school system.³ It
turned out that Faver had concealed his Fayette experience when
applying for the job at Marietta High.⁴ Nonetheless, the incident
sparked concern about whether or not the information would have been
disclosed frankly if it had been sought as an employment reference from
Fayette County.⁵

². Id.
³. Telephone Interview with Sen. Charles “Chuck” Clay, Senate District No. 37 (Apr. 27, 1993) [hereinafter Clay Interview]. Sen. Clay was one of two sponsors of SB 175. Id.
⁵. Clay Interview, supra note 3. In response to publicity about a civil suit filed against the Fayette County School System, an attorney representing the system explained that Faver’s behavior was not reported to the state licensing agency because “[a]ll they had was students’ statements about two infractions totally unrelated to what happened to [the Cobb County student].” Vejnoska, supra note 1.
Joseph Dewey Akin, sometimes referred to as the "Code Blue Nurse" was convicted of murder in Alabama for injecting a lethal dose of lidocaine into a patient in 1991. The term "code blue" is hospital jargon for sudden coronary distress requiring emergency response by hospital personnel. By the time Akin was convicted in Alabama, he was suspected of creating "dozens of mysterious code blue medical emergencies at least five metro Atlanta hospitals." Some of the metro hospitals were contacted by Akin's Alabama employer, but they refused to disclose their suspicions. Yet Akin's fellow nurses at one hospital harbored suspicions strong enough that they decided to alert Roswell police, who later turned their investigation over the Georgia Bureau of Investigations. Absent a criminal conviction, former employers of Akin had feared civil liability to Akin for revealing suspicions they could not prove; instead, they faced civil liability to Akin's victims for failure to reveal their suspicions.

In the 1992 Georgia House of Representatives, the "code blue nurse" incident prompted introduction of a bill to limit liability for good faith references. In 1993, the "code blue" concerns prompted reintroduction of the house bill. The abusive high school counselor case and other
concerns about the safety of children prompted introduction of an identical senate bill, SB 175.  

**SB 175**

The overall purpose of the Act is “to send a message to employers, that [the Georgia General Assembly] want[s] you to be candid.” For selected employers, the bill provides statutory resolution of the dilemma of being sued when unprovable references are given or being sued when harm results from failure to give those references.  

The Act carefully limits which employers and other persons are entitled to immunity from civil liability. An employer must be “a hospital, health care institution, school, public health facility, day care center, or other child care center.” As introduced, the bill would have extended immunity to any employer. It was intended to address a problem all types of employers face where the workforce is highly mobile—difficulty in securing accurate information on previous work history. The focus of the bill was narrowed primarily due to opposition from organized labor groups, who were concerned that immunity might be abused by some employers, serving as a means to retaliate against certain employees. The Senate Judiciary Committee, and later the House Judiciary Committee, agreed to limit immunity to settings where the danger of harm from employees outweighed these labor concerns. By providing immunity to health care and child care institutions, the Act seeks to protect the health, safety, and welfare of those most easily harmed by employee incompetence or misconduct.

In addition to limiting immunity to employers providing specific types of service, the Act focuses on institutional employers. For example, a private physician’s office or a family employing a child care provider would not have immunity. Although the issue was never

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15. Clay Interview, supra note 3. According to Sen. Clay, constituents reported concerns about a number of publicized instances of child abuse in institutional settings. Id.
16. Id.
17. Id.
19. Id.
21. Clay Interview, supra note 3. Sen. Clay reported that constituent employers, especially hospitals, were concerned that they could secure no reference information other than dates of employment. Id.
22. Id.
23. Id.; Campbell Interview, supra note 13.
25. O.C.G.A. § 34-1-4(a)(2) (Supp. 1993). The only specified health care employers are “a hospital, health care institution, . . . [or a] public health facility.” Id. The only
specifying child care employers are "a . . . school, . . . day care center, or other child care center." Id.
29. Clay Interview, supra note 3. The labor groups that prompted other changes in the bill were not worried about fellow employees abusing immunity. Id.
30. Id.
31. See Ramona L. Paetzold & Steven L. Willborn, Employer (Ir)Rationality and the Demise of Employment References, 30 AM. BUS. L.J. 123 (1992). Employers tend not to provide meaningful reference information due to fear of defamation suits from employees and former employees. Id.
32. O.C.G.A. § 34-1-4(b) (Supp. 1993).
33. Id. O.C.G.A. § 34-1-4(b) states that “[a]n employer [is] as defined in subsection (a). . . .” Id.
34. Id.
35. See generally Paetzold & Willborn, supra note 31.
The Act grants immunity for information given about an employee, which it defines as "any person" who works for a covered employer. Information allowed to be revealed includes "information concerning job performance, any act committed by such employee which would constitute a violation of the laws . . . , or ability or lack of ability to carry out the duties of such job." The House Committee discussed narrowing the bill to employees with direct patient or child care duties, or to acts with consequences on the direct care of patients or children. However, the legislators chose to accept free disclosure of all types of job performance information, rather than to risk the possibility of inadvertently excluding some employees and functions that could represent danger to children or to patients.

Given the incidents which spurred introduction of SB 175, as well as the plain language of the Act, it is clearly intended to encourage exchange of information about criminal acts committed by employees, even where no charges have been made. The words of the Act also protect "information concerning job performance, . . . or ability or lack of ability to carry out the duties of such job." Aside from preventing directly harmful acts of employees, the Act is aimed at improving employee effectiveness. Employers expressed concern that they were hiring incompetent employees because former employers refused to provide any reference information other than dates of employment.

The Act extends immunity to employers who disclose information in good faith, and creates an express presumption that the employer is acting in good faith. In order to overcome this presumption, an employee would have to prove "lack of good faith . . . by a preponderance of the evidence." This was a significant change from the bill as introduced, which required "clear and convincing" evidence to rebut the presumption of good faith. Labor groups, especially the Georgia Association of Educators, worked with the Senate sponsor and

36. Id. § 34-1-4(a)(1) (Supp. 1993).
37. Id. § 34-1-4(b) (Supp. 1993).
38. Clay Interview, supra note 3.
39. Id.
40. The Act provides that "any act committed by such employee which would constitute a violation of the laws of this state if such act occurred in this state." O.C.G.A. § 34-1-4(b) (Supp. 1993).
41. Clay Interview, supra note 3.
42. O.C.G.A. § 34-1-4(b) (Supp. 1993).
43. Clay Interview, supra note 3.
44. Id.
45. O.C.G.A. § 34-1-4(b) (Supp. 1993).
46. Id.
47. SB 175, as introduced, 1993 Ga. Gen. Assem.
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Committee to change the standard. 48 Once again, the concern was that some employers might abuse the immunity, using it to "blackball" some employees. 49 The General Assembly was sensitive to disturbing the "delicate balance between management and labor." 50

Finally, the Act defines an exception when immunity does not apply, which is when "the information was disclosed in violation of a nondisclosure agreement or the information disclosed was otherwise considered confidential according to applicable federal, state, or local statute, rule, or regulation." 51 This phrase was not included in the proposed bill, but was added as a somewhat routine clarification by the Senate Judiciary Committee. 52

SB 175 was passed on March 23, 1993. Although the issues that encouraged introduction of SB 175 received widespread media attention, the bill itself passed without any media coverage. 53 It is unclear whether SB 175 will have a significant effect on the provision of honest employee references, but it does seem to encourage disclosure when an employer is balancing competing liabilities.

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48. Clay Interview, supra note 3.
49. Id.
50. Id.
53. According to sponsor Sen. Charles Clay, only one reporter even asked about the bill. Clay Interview, supra note 3.