

House Bill 887

By: Representatives Levitas of the 82nd, Lunsford of the 110th, Jerguson of the 22nd, Coan of the 101st, Peake of the 137th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 1 of Title 34 of the Official Code of Georgia Annotated, relating to
2 general provisions relating to labor, so as to change provisions relating to an employer's
3 immunity for disclosing job performance information; to provide for civil immunity under
4 certain circumstances; to provide for related matters; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Chapter 1 of Title 34 of the Official Code of Georgia Annotated, relating to general
9 provisions relating to labor, is amended by revising Code Section 34-1-4, relating to an
10 employer's immunity for disclosure of information regarding job performance, as follows:

11 "34-1-4.

12 (a) As used in this Code section, the term:

13 (1) 'Background check' means research by any lawful means, including electronic means,
14 into the background of an employee or prospective employee, including research into
15 state or federal criminal history repositories, social security status or verification, and
16 research conducted pursuant to the USA PATRIOT Act, 31 U.S.C. Section 5318(l),
17 regarding politically exposed persons, including known or suspected terrorists, money
18 launderers, drug kingpins, and persons debarred from conducting business with the
19 United States government, as well as any permissible purposes under the federal Fair
20 Credit Reporting Act, 15 U.S.C. Section 1681.

21 ~~(1)(2)~~ 'Employee' means any person who is employed by an employer ~~described in~~
22 ~~paragraph (2) of this subsection~~ whether the person is paid or unpaid.

23 ~~(2)(3)~~ 'Employer' means any individual engaged in a business, corporation,
24 S-corporation, limited liability company, partnership, limited liability partnership, sole
25 proprietorship, or association; or any government entity that has one or more employees

26 or individuals performing services under any contract of hire or service, expressed or
27 implied, oral or written.

28 (4) 'Job performance' includes, but shall not be limited to, attendance, attitude, awards,
29 demotions, duties, effort, evaluations, knowledge, skills, promotions, and disciplinary
30 actions.

31 (5) 'Owner' means any person, firm, or legal entity that is engaged in the production of
32 goods or services and who may engage in contractual relations with contractors to
33 perform any type of work on any leased or owned premises of the owner.

34 (6) 'Prospective employer' means any employer to which a prospective employee has
35 made an application, either oral or written, or forwarded a resume or other
36 correspondence expressing an interest in employment.

37 (7) 'Prospective employee' means any person who has made an application, either oral
38 or written, or has sent a resume or other correspondence expressing an interest in
39 employment.

40 ~~(b) An employer as defined in subsection (a) of this Code section or any person employed~~
41 ~~by an employer and designated as the employer's representative who discloses factual~~
42 ~~information concerning an employee's or former employee's job performance, any act~~
43 ~~committed by such employee which would constitute a violation of the laws of this state~~
44 ~~if such act occurred in this state, or ability or lack of ability to carry out the duties of such~~
45 ~~job to a prospective employer of such employee or former employee upon request of the~~
46 ~~prospective employer or of the person seeking employment is presumed to be acting in~~
47 ~~good faith unless lack of good faith is shown by a preponderance of the evidence, unless~~
48 ~~the information was disclosed in violation of a nondisclosure agreement or the information~~
49 ~~disclosed was otherwise considered confidential according to applicable federal, state, or~~
50 ~~local statute, rule, or regulation. Any employer that, upon request by a prospective~~
51 ~~employer or a current or former employee, provides accurate information about a current~~
52 ~~or former employee's job performance or reasons for separation shall be immune from civil~~
53 ~~liability and other consequences of such disclosure provided such employer is not acting~~
54 ~~in bad faith. An employer shall be considered to be acting in bad faith only if it can be~~
55 ~~shown by a preponderance of the evidence that the information disclosed was knowingly~~
56 ~~false and deliberately misleading.~~

57 (c) Any prospective employer who reasonably relies on information pertaining to an
58 employee's job performance or reasons for separation, disclosed by a current or former
59 employer, shall be immune from civil liability, including liability for negligent hiring,
60 negligent retention, and other causes of action related to the hiring of such employee, based
61 upon such reasonable reliance, unless further investigation, including, but not limited to,
62 a criminal background check, is required by law. Such immunity shall continue unless

63 additional investigation by the prospective employer makes known or should make known
64 to the prospective employer other information that could otherwise subject such employer
65 to civil liability.

66 (d) Any employer who has conducted a background check of an employee or prospective
67 employee after having obtained written consent from such employee or prospective
68 employee or at the request of the owner or operator of any facility where the employer
69 performs or may perform all or part of its work shall be immune from civil liability for any
70 and all claims arising out of the disclosure of the background information obtained. Such
71 limitation of liability shall extend to all claims of the employee or prospective employee
72 based upon a failure to hire, wrongful termination, and invasion of privacy, as well as all
73 claims of any owner, operator, or any third person for claims of negligent hiring or
74 negligent retention."

75

SECTION 2.

76 All laws and parts of laws in conflict with this Act are repealed.