Georgia State University Law Review

Volume 13
Issue 1 *November 1996*

Article 50

3-29-2012

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Georgia State University Law Review

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Recommended Citation
Georgia State University Law Review (1996) "LABOR AND INDUSTRIAL RELATIONS General Provisions: Expand Scope of Employer Immunity for Disclosure of Information Regarding Employee Job Performance," *Georgia State University Law Review*: Vol. 13: Iss. 1, Article 50.
Available at: http://digitalarchive.gsu.edu/gsulr/vol13/iss1/50

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LABOR AND INDUSTRIAL RELATIONS

General Provisions: Expand Scope of Employer Immunity for Disclosure of Information Regarding Employee Job Performance

CODE SECTION:	O.C.G.A. § 34-1-4 (amended)
BILL NUMBER:	HB 1492
ACT NUMBER:	984
GEORGIA LAWS:	1996 Ga. Laws 1238
SUMMARY:	The Act expands the scope of immunity for an employer who discloses information concerning a past or present employee's job performance, including illegal acts committed by the employee or other information concerning an employee's ability to perform the duties of his or her position. The Act allows all employers the presumption that a disclosing employer is acting in good faith.
EFFECTIVE DATE:	April 15, 1996[1]

History

Code section 34-1-4 as originally enacted in 1993 was intended to encourage candid communication between a person's current or former employer and a prospective employer.[2] This was needed to encourage employers to disclose to prospective employers their suspicions that certain employees were dangerous to others.[3] The 1993 law was limited to a particular group of employers due, in part, to opposition by organized labor.[4] The labor groups were concerned that employers would abuse the immunity and "retaliate" against employees.[5] Employers covered by the Code section were "presumed to be acting in good faith unless lack of good faith [was] shown by a preponderance of

1. The Act became effective upon approval by the Governor.

2. 1993 Ga. Laws 1056, § 1, at 1056-57 (formerly found at O.C.G.A. § 34-1-4 (Supp. 1995)); *see Legislative Review*, 10 GA. ST. U. L. REV. 146, 146-48 (1993).

3. *Legislative Review, supra* note 2.

4. *Id.* at 148. When the bill leading to the 1993 law was originally introduced, it met opposition because it extended immunity to "any employer." *Id.* The law enacted applied only to a limited group of institutional employers, including hospitals, health care institutions, schools, public health facilities, day care centers, and other child care centers. 1993 Ga. Laws 1056, § 1, at 1056-57 (formerly found at O.C.G.A. § 34-1-4 (Supp. 1995)). The law was amended in 1995 to apply to banks, licensed home care providers, home health agencies, savings and loan associations, and credit unions as well. 1995 Ga. Laws 982 (formerly found at O.C.G.A. § 34-1-4 (Supp. 1995)).

5. *Legislative Review, supra* note 2, at 148.

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the evidence" and were prohibited from disclosing information protected by a "nondisclosure agreement" or that was "considered confidential according to applicable federal, state, or local statute, rule, or regulation."[6]

Representative Roger Byrd presented HB 1492 after being approached by members of the business community who wished to broaden the scope of immunity to all employers.[7]

HB 1492

The Act expands immunity to all employers who disclose information regarding an employee's job performance to prospective employers.[8] This enables prospective employers to know whom they are hiring,[9] while allowing current or former employers to reveal information without the fear that litigation will ensue if they disclose truthful information in good faith.[10]

The Act changes the definitions of employer and employee to include all types of employers and their employees.[11] To prevent employers from abusing their immunity, the House Committee on Industrial Relations amended HB 1492 and limited immunity to "factual" information and information disclosed by individuals "designated as the employer's representative."[12] The term "factual" excludes rumors or opinions that may be released by employers or their representatives.[13] These provisions responded to concerns that the Act makes it more difficult for an employee to sue his employer for disclosing

6. 1993 Ga. Laws 1056, § 1, at 1057 (formerly found at O.C.G.A. § 34-1-4 (Supp. 1995)); 1995 Ga. Laws 982, § 1, at 982-83 (formerly found at O.C.G.A. § 34-1-4 (Supp. 1995)).

7. Telephone Interview with Rep. Roger C. Byrd, House District No. 170 (May 8, 1996) [hereinafter Byrd Interview I]. Representative Byrd stated that the National Federation of Independent Businesses was instrumental in bringing about this legislation. *Id.; see also NFIB Pushes For Small Business Legislative Reforms*, BUS. WIRE, Jan. 30, 1996.

8. O.C.G.A. § 34-1-4(b) (Supp. 1996).

9. Telephone Interview with Rep. Dorothy Gail Johnson, House District No. 97 (May 9, 1996) [hereinafter Johnson Interview].

10. Byrd Interview I, *supra* note 7. Representative Byrd further stated that only those employees who had something to hide were benefitting under the former Code section. *Id.*

11. O.C.G.A. § 34-1-4(a) (Supp. 1996).

12. *Id.* § 34-1-4(b); HB 1492 (HCA), 1996 Ga. Gen. Assem. The employer can choose a representative by any method. Telephone Interview with Rep. Roger C. Byrd, House District No. 170 (June 7, 1996) [hereinafter Byrd Interview II]. A responsible prospective employer should ask the person contacted if he or she is a designated representative. *Id.*

13. Byrd Interview II, *supra* note 12. Factual information includes such information as attendance, tardiness, or drug abuse. *Id.*

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information.[14] The Georgia General Assembly passed the Act as amended.[15]

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14. Byrd Interview I, *supra* note 7; Johnson Interview, *supra* note 9.
15. O.C.G.A. § 34-1-4 (Supp. 1996).

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