

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND THIRTEENTH LEGISLATURE

Legislative Document

NO. 1049

H.P. 777 House of Representatives, April 1, 1987.
Reference to the Committee on Judiciary suggested and
ordered printed.

EDWIN H. PERT, Clerk
Presented by Representative JALBERT of Lisbon.

STATE OF MAINE

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-SEVEN

1 AN ACT to Accord Qualified Immunity from Tort
2 Liability to Employers Giving
3 Recommendations about Current or Past
4 Employees.
5

6 Be it enacted by the People of the State of Maine as
7 follows:

8 14 MRSA §153-A is enacted to read:

9 §153-A. Liability for defamation by present or
10 former employer

11 In an action brought against a present or former
12 employer of the plaintiff for a libelous or
13 slandorous statement made to a prospective employer
14 concerning the plaintiff's employment performance,
15 the defendant shall not be liable for damages unless

1 the plaintiff proves by clear and convincing evidence
2 that the statement, whether of opinion or fact, was
3 made with the knowledge that it was not true or with
4 reckless disregard of its truth.

5 STATEMENT OF FACT

6 In True v. Ladner, 513 A.2d 257 (Me. 1986), the
7 Supreme Judicial Court sustained a jury verdict find-
8 ing a school superintendent personally liable for
9 damages for statements made about a former employee
10 to a prospective employer. Neither the jury nor the
11 Supreme Judicial Court made any determination that
12 the superintendent had acted maliciously or for any
13 other improper purpose. Nonetheless, the superin-
14 tendent was found liable for his statements.

15 This decision has had a chilling effect on the
16 willingness of employers in Maine to give their honest
17 appraisal of the performance of present or former
18 employees to prospective employers. This bill is intended
19 to rectify this situation by making it clear
20 that in order to recover damages the employee in such
21 situations must prove by clear and convincing evidence
22 that the employer made a defamatory statement
23 with the knowledge that it was false or with reckless
24 disregard for its truth, a standard of liability currently
25 applicable to public officials under the
26 United States Supreme Court decision in New York
27 Times v. Sullivan, 376 U.S. 254 (1964). By according
28 this limited privilege to employers, the bill seeks
29 to promote the public interest in encouraging the
30 provision of honest assessments of the performance of
31 past employees to all prospective employers.

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