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SB 295 – the Stop Silencing Survivors Act

Chair Smith, Vice Chair Waldstreicher, colleagues on JPR.

SB 295 seeks to address an abusive litigation practice that targets survivors of sexual assault.¹ These survivors are being sued for any number of torts, including defamation and intentional infliction of emotional distress, by those who assault them. This tactic has had the intended effect of not only further victimizing the survivors but also dissuading other survivors from reporting the crime they suffered.

Modeled after our current law protecting employers who provide references for former employees,² SB 295 balances access to the courts with preventing abusive lawsuits. Under SB 295, a “person acting in good faith may not be held liable for disclosing any information about allegations of sexually assaultive behavior to another person.” The bill further allows that the good faith presumption may be overcome by a preponderance of evidence that the person acted with actual malice or recklessly disclosed false information. SB 295 preserves access to the courts and sets a standard that will ensure that those who bring these suits have been harmed and are not using them to further abuse their victim.

For these reasons, I respectfully request your favorable report on SB 295.

¹ See NPR [piece](#), “This lawyer is fighting defamation suits that can silence sexual assault victims”; Harvard [article](#), “How Defamation is Used to Silence Survivors.” It is so prevalent that The Women’s Legal Defense and Education Fund created a [guide](#) for survivors on how to handle these suits.

² Courts & Judic. Proc. §5-423. Immunity - Disclosure of information regarding employee or former employee.

(a) Liability of employer.- An employer acting in good faith may not be held liable for disclosing any information about the job performance or the reason for termination of employment of an employee or former employee of the employer....

(b) Presumption of good faith; exceptions.- An employer who discloses information under subsection (a) of this section shall be presumed to be acting in good faith unless it is shown by clear and convincing evidence that the employer:

(1) Acted with actual malice toward the employee or former employee; or

(2) Intentionally or recklessly disclosed false information about the employee or former employee.