

The logo for Astrachan Gunst Thomas features a stylized, swirling blue graphic to the left of the firm's name. The name is written in a clean, sans-serif font, with 'astrachan' and 'thomas' in a dark blue color and 'gunst' in a lighter blue color.

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I've Got a Beef

By: Julie R. Rubin

Bison, buffalo, call it what you will. It's a great alternative to beef. It has less fat and cholesterol than chicken, and quite a bit more protein than its mooing cousin. Buffalo isn't gamy like venison can be and it's got a sweet edge that pairs well with a big slab of red onion, tomato and cheddar. Buffalo burgers for everyone! Tenderloin, rib eyes. The stuff is good.

Buffalo meat is as close as I've come to the wide open plains of Montana. Until now. On February 4, 2009, Maryland Senate Bill 466 was introduced. Sponsored by Senator Norman Stone, Bill 466 seeks to radically change employers' rights by "prohibiting an employer from discharging an employee in bad faith or without good cause." In short, the Bill vitiates at-will employment and exposes Maryland employers to liability where none has ever before existed. The only other state that has such a statute? You guessed it, Montana. Montana is the only state that has statutorily negated at-will employment. Even California supports employment at will. Next, we'll all be buying up assault rifles and running down to Sunny's Surplus to gear up for the militia.

As an at-will employment state, Maryland law states that, absent a contract to the contrary, the employer or the employee may terminate the employment relationship at any time, with or without notice, for any reason or no reason at all – provided the basis of termination does not violate the well-known darlings of public policy like gender, race, religion, etc. At-will employment is commercial freedom for the employer and the employee. Absent a contract with a stated duration of employment, there is no expectation of continued employment. I'll be good to you if you'll be good to me. You can go at anytime and I can show you the door at any time. Bill 466 proposes to change all of that. I can't tell you if "bad faith" purports to impose some obligation above and beyond that currently imposed by law – that is, that the reasons for termination not violate public policy – because the proposed law is silent. Bill 466 offers no definition of the term "bad faith." Likewise, the Bill includes no definition of "good cause."

Looking to other legal sources, "bad faith" can mean "vexacious," "with the intent to mislead" or "to defraud." What amounts to a "for cause" termination, however, is customarily defined by the parties' written employment contract (or collective bargaining agreement). Despite the fact that terminating an employee "in bad faith or without good cause" is illegal

under the proposed law, Bill 466 offers zero guidance to assist employers and, instead, leaves it to the courts to develop definitions of these terms through litigation battleground. It would be years before any appreciable body of law would develop on these definitions. Until then, put up your dukes.

Montana's statute makes it unlawful to terminate an employee "not for good cause" (it doesn't say anything about bad faith) and expressly defines "good cause" to include "reasonable job-related grounds" like not doing a good job or some other "legitimate business reason." In the absence of other guidance, Maryland courts may well look to Montana's statute and its body of related common law to develop the definition of "good faith." If so, Maryland employers will be exposed to liability if they are unable to establish that employment was based on legitimate job-related grounds. So, for example, if you discover that your employee has a habit of beating the pulp out of his wife and you don't condone it, you may be liable for terminating that employee on reasons not related to the job.

I predict Bill 466, if enacted into law, will have no appreciable impact on employees' job security or workplace fairness, and, instead, will only provide incentive for employers to be less than candid about the reasons for termination. Under advice of counsel, employers will take care that their personnel files substantiate termination reasons in satisfaction of the statute's "for cause" requirement. The only people that stand to benefit from Bill 466 are the lawyers who will draft the employment contracts and litigate the cases.

On its face, Bill 466 does not appear to impose a heavy burden on Maryland employers. Act in good faith and stick to what's job-related. Sounds easy enough. But in practice, this law would be toxic to Maryland's already sickly economy and Maryland's private employers. (Bill 466 "does not apply to local, State or federal government employees." The government gets a green light to fire its employees in bad faith or for no reason, I guess.) Maryland's legislative inhospitality to employers and business growth is often the subject of criticism (including mine – see my November 2008 column) and this Bill will surely heap some more on the pile. What private employer in his right mind would open an office here, start a company here, or move its offices to our fair State instead of Pennsylvania, Virginia or Delaware absent some particular reason that Maryland has to be the place? Commercial freedom is the hallmark of at-will employment. Bill 466 threatens to crush that freedom, giving business owners one more reason to say "No" to Maryland.

Characters and stories are fictional and similarities to actual events are coincidental; or, where necessary, names and identifying information has been changed to protect the privacy of those involved.
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