

Senate Amendment to
House File 2397

H-8383

1 Amend House File 2397, as passed by the House, as follows:

2 1. By striking everything after the enacting clause and
3 inserting:

4 <Section 1. NEW SECTION. 671A.1 Limitation on liability
5 for negligently hiring or failing to supervise an employee,
6 agent, or independent contractor convicted of a public offense.

7 1. A cause of action shall not be brought against a private
8 employer, general contractor, or premises owner solely for
9 negligently hiring or failing to adequately supervise an
10 employee, agent, or independent contractor, based on evidence
11 that the employee, agent, or independent contractor has been
12 convicted of a public offense as defined in section 701.2.

13 2. This chapter does not create a cause of action, expand
14 an existing cause of action, or apply to the cause of action of
15 negligent retention.

16 3. This chapter does not apply to employment of prisoners
17 at prisons.

18 4. This chapter does not alter any statutory provision
19 allowing an employer to conduct a criminal history background
20 investigation or consider criminal history records in the
21 employment process for particular types of employment.

22 Sec. 2. NEW SECTION. 671A.2 Liability protection not
23 applicable.

24 1. This chapter does not preclude a cause of action for
25 negligent hiring by or the failure of a private employer,
26 general contractor, or premises owner to provide adequate
27 supervision of an employee, agent, or independent contractor,
28 based on evidence that the employee, agent, or independent
29 contractor has been convicted of a public offense as defined in
30 section 701.2, if all of the following criteria are met:

31 a. The private employer, general contractor, or premises
32 owner knew or should have known of the conviction.

33 b. The employee, agent, or independent contractor was
34 convicted of any of the following:

35 (1) A public offense that was committed while performing

1 acts substantially similar to those reasonably expected to
2 be performed in the employment or under the relationship or
3 contract, or under conditions substantially similar to those
4 reasonably expected to be encountered in the employment or
5 under the relationship or contract, taking into consideration
6 all of the following factors:

7 (a) The nature and seriousness of the public offense.

8 (b) The relationship of the public offense to the ability,
9 capacity, or fitness required to perform the duties and
10 discharge the responsibilities of the employment or the
11 relationship or contract.

12 (c) The extent and nature of the employee, agent, or
13 independent contractor's past criminal activity.

14 (d) The age of the employee, agent, or independent
15 contractor when the public offense was committed.

16 (e) The amount of time that has elapsed since the employee,
17 agent, or independent contractor's last criminal activity.

18 (f) The conduct and work activity of an employee, agent, or
19 independent contractor before and after the criminal activity.

20 (g) Evidence of the employee, agent, or independent
21 contractor's rehabilitation or rehabilitative effort while
22 incarcerated or after release.

23 (h) Other evidence of the employee, agent, or independent
24 contractor's fitness, including letters of recommendation from
25 any of the following:

26 (i) Prosecutors, law enforcement, or correctional officers
27 who prosecuted, arrested, or had custodial responsibility for
28 the employee, agent, or independent contractor.

29 (ii) The sheriff or chief of police in the community where
30 the employee, agent, or independent contractor resides.

31 (iii) Any other person in contact with the convicted
32 employee, agent, or independent contractor.

33 (2) A sexually violent offense as defined in section 229A.2.

34 (3) The offense of murder in the first degree under section
35 707.2.

1 (4) The offense of murder in the second degree under section
2 707.3.

3 (5) The offense of kidnapping in the first degree under
4 section 710.2.

5 (6) The offense of robbery in the first degree under section
6 711.2.

7 (7) An offense committed on certain real property for which
8 an enhanced penalty was received under section 124.401A or
9 124.401B.

10 (8) A felony offense where the employee, agent, or
11 independent contractor used or exhibited a dangerous weapon as
12 defined in section 702.7 during the commission of or during
13 immediate flight from the scene of the felony offense, or
14 where the employee, agent, or independent contractor used or
15 exhibited the dangerous weapon or was a party to the felony
16 offense and knew that a dangerous weapon would be used or
17 exhibited.

18 2. The protections provided to a private employer, general
19 contractor, or premises owner under this chapter do not apply
20 in a suit concerning the misuse of funds or property of a
21 person other than the employer, general contractor, or premises
22 owner, by an employee, agent, or independent contractor if, on
23 the date the employee, agent, or independent contractor was
24 hired, the employee, agent, or independent contractor had been
25 convicted of a public offense that included fraud or the misuse
26 of funds or property as an element of the public offense, and
27 it was foreseeable that the position for which the employee,
28 agent, or independent contractor was hired would involve
29 discharging a fiduciary responsibility in the management of
30 funds or property.>

31 2. Title page, by striking lines 1 and 2 and inserting <An
32 Act relating to the liability of private employers, general
33 contractors, and premises owners for negligently hiring
34 or failing to supervise employees, agents, or independent
35 contractors convicted of a public offense.>