

S-5242

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 or expand
14 an existing cause of action.

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

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

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

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

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

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

34 (1) A public offense that was committed while performing
35 duties substantially similar to those reasonably expected to

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

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

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

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

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

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

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

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

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

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

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

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

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

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

35 (4) The offense of murder in the second degree under section

1 707.3.

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

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

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

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

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

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

DAN DAWSON