

Senate Study Bill 3104 - Introduced

SENATE FILE _____
BY (PROPOSED COMMITTEE
ON JUDICIARY BILL BY
CHAIRPERSON ZAUN)

A BILL FOR

1 An Act relating to the liability of private employers, general
2 contractors, and premises owners for negligently hiring
3 or failing to supervise employees, agents, or independent
4 contractors convicted of a public offense.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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

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

10 2. This chapter does not create a cause of action or expand
11 an existing cause of action.

12 3. This chapter does not apply to employment of prisoners
13 at prisons.

14 Sec. 2. NEW SECTION. 671A.2 Liability protection not
15 applicable.

16 1. This chapter does not preclude a cause of action for
17 negligent hiring by or the failure of a private employer,
18 general contractor, or premises owner to provide adequate
19 supervision of an employee, agent, or independent contractor,
20 based on evidence that the employee, agent, or independent
21 contractor has been convicted of a public offense as defined in
22 section 701.2, if all of the following criteria are met:

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

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

27 (1) A public offense that was committed while performing
28 duties substantially similar to those reasonably expected to
29 be performed in the employment or under the relationship or
30 contract, or under conditions substantially similar to those
31 reasonably expected to be encountered in the employment or
32 under the relationship or contract, taking into consideration
33 all of the following factors:

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

35 (b) The relationship of the public offense to the ability,

1 capacity, or fitness required to perform the duties and
2 discharge the responsibilities of the employment or the
3 relationship or contract.

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

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

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

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

12 (g) Evidence of the employee, agent, or independent
13 contractor's rehabilitation or rehabilitative effort while
14 incarcerated or after release.

15 (h) Other evidence of the employee, agent, or independent
16 contractor's fitness, including letters of recommendation from
17 any of the following:

18 (i) Prosecutors, law enforcement, or correctional officers
19 who prosecuted, arrested, or had custodial responsibility for
20 the employee, agent, or independent contractor.

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

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

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

26 (3) The offense of murder in the first degree under section
27 707.2.

28 (4) The offense of murder in the second degree under section
29 707.3.

30 (5) The offense of kidnapping in the first degree under
31 section 710.2.

32 (6) The offense of robbery in the first degree under section
33 711.2.

34 (7) An offense committed on certain real property for which
35 an enhanced penalty was received under section 124.401A or

1 124.401B.

2 (8) A felony offense where the employee, agent, or
3 independent contractor used or exhibited a dangerous weapon as
4 defined in section 702.7 during the commission of or during
5 immediate flight from the scene of the felony offense, or
6 where the employee, agent, or independent contractor used or
7 exhibited the dangerous weapon or was a party to the felony
8 offense and knew that a dangerous weapon would be used or
9 exhibited.

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

23

EXPLANATION

24 The inclusion of this explanation does not constitute agreement with
25 the explanation's substance by the members of the general assembly.

26 This bill relates to the following causes of actions:
27 negligent hiring and failure to adequately supervise. The bill
28 does not expand or create any causes of action.

29 Under current law, the torts of negligent hiring and
30 supervision allow a person injured by an employee to sue the
31 employee's employer even though the act was committed outside
32 the scope of the employment due to some fault resting with the
33 employer for hiring the employee, or failing to supervise the
34 employee.

35 The bill provides that the causes of action of negligent

1 hiring and negligent supervision shall not be brought against a
2 private employer, general contractor, or premises owner solely
3 based on evidence that the employee, agent, or independent
4 contractor has been convicted of a public offense. However,
5 the bill does not preclude causes of action for negligent
6 hiring or negligent supervision of an employee, agent, or
7 independent contractor, if two criteria are met. First, the
8 private employer, general contractor, or premises owner knew or
9 should have known of the conviction; and second, the employee,
10 agent, or independent contractor was convicted of a public
11 offense enumerated in the bill or a public offense that was
12 committed while performing duties substantially similar to
13 those reasonably expected to be performed in the employment,
14 or under the relationship or contract, or under conditions
15 substantially similar to those reasonably expected to be
16 encountered in the employment or the relationship or contract,
17 taking into consideration enumerated factors set forth in the
18 bill.

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

32 The bill does not apply to the employment of prisoners at
33 prisons.