

## **BILL ANALYSIS**

Senate Research Center  
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H.B. 1188  
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State Affairs  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Currently, a person with a criminal record seeking employment will receive less than half as many job offers as a person without a criminal record. Many employers view an applicant with a criminal record as a potential liability in negligent hiring actions and may disregard such individuals as potential employees. In response to this issue, interested parties note that employment protection policies may enhance public safety, raise employment levels, decrease recidivism, and allow job seekers with criminal records to become self-sufficient, law-abiding citizens. In addition, employers could benefit from having more options when hiring, and thus increase the employer's efficiency and profitability.

H.B. 1188 amends the Civil Practice and Remedies Code to prohibit a cause of action from being brought against an employer, general contractor, premises owner, or third party based solely on evidence that an employee has been convicted of an offense.

The bill's provisions do not preclude a cause of action for negligent hiring or the failure of an employer, general contractor, premises owner, or other third party to provide adequate supervision of an employee, if the employer, general contractor, premises owner, or other third party knew or should have known of the conviction and if the employee was convicted of an offense to which judge-ordered community supervision does not apply; a sexually violent offense; or an offense that was committed while performing duties substantially similar to those reasonably expected to be performed in the employment, or under conditions substantially similar to those reasonably expected to be encountered in the employment, taking into consideration certain specified factors.

H.B. 1188 amends current law relating to limiting the liability of persons who employ persons with criminal convictions.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 142, as follows:

#### CHAPTER 142. LIMITATION ON LIABILITY FOR HIRING CERTAIN EMPLOYEES

Sec. 142.002. DEFINITIONS. Defines "employee" and "independent contractor" in this chapter.

Sec. 142.002. LIMITATION ON LIABILITY FOR HIRING EMPLOYEE CONVICTED OF OFFENSE. (a) Prohibits a cause of action from being brought against an employer, general contractor, premises owner, or other third party solely for negligently hiring or failing to adequately supervise an employee, based on evidence that the employee has been convicted of an offense.

(b) Provides that this section does not preclude a cause of action for negligent hiring or the failure of an employer, general contractor, premises owner, or other third party to provide adequate supervision of an employee, if:

(1) the employer, general contractor, premises owner, or other third party knew or should have known of the conviction; and

(2) the employee was convicted of:

(A) an offense that was committed while performing duties substantially similar to those reasonably expected to be performed in the employment, or under conditions substantially similar to those reasonably expected to be encountered in the employment, taking into consideration the factors listed in Sections 53.022 (Factors in Determining Whether Conviction Relates to Occupation) and 53.023(a) (relating to requiring the licensing authority to consider certain factors in determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime), Occupations Code, without regard to whether the occupation requires a license;

(B) an offense listed in Section 3g (Limitation on Judge Ordered Community Supervision), Article 42.12 (Community Supervision), Code of Criminal Procedure; or

(C) a sexually violent offense, as defined by Article 62.001 (Definitions), Code of Criminal Procedure.

(c) Provides that the protections provided to an employer, general contractor, premises owner, or third party under this section do not apply in a suit concerning the misuse of funds or property of a person other than the employer, general contractor, premises owner, or third party by an employee if, on the date the employee was hired, the employee had been convicted of a crime that includes fraud or the misuse of funds or property as an element of the offense, and it was foreseeable that the position for which the employee was hired would involve discharging a fiduciary responsibility in the management of funds or property.

(d) Provides that this section does not create a cause of action or expand an existing cause of action.

SECTION 2. Provides that Chapter 142, Civil Practice and Remedies Code, as added by this Act, applies only to a cause of action that accrues on or after the effective date of this Act. Provides that a cause of action that accrues before the effective date of this Act is governed by the law in effect immediately before that date, and the former law is continued in effect for that purpose.

SECTION 3. Effective date: upon passage or September 1, 2013.