

BILL ANALYSIS

H.B. 3327
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Judiciary & Civil Jurisprudence
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A substantial number of Texans have a criminal record. Reports indicate that ex-offenders who are unemployed are more likely to commit another criminal offense than those who are employed, and they are also more likely to have their probation revoked or their parole revoked for technical violations if they lack employment. Employment for persons on parole and probation is crucial because being unemployed and failing to pay fees and restitution can be technical violations of probation and parole.

Every year, Texas spends hundreds of millions of dollars to incarcerate probationers revoked for technical violations while victims of crime collect about half of the restitution they are owed because so many ex-offenders are unemployed. Texas also spends millions of dollars on a program that reintegrates ex-offenders into the workforce, but the program's success depends on employers' willingness to hire ex-offenders. Although it seems from a criminal justice and economic perspective the employment of ex-offenders should be encouraged, there is concern that the state's civil liability system works at cross-purposes with such a goal. H.B. 3327 seeks to mitigate this situation by granting employers, contractors, and premises owners, except in certain exceptional circumstances, limited liability protection for hiring a person who had previously committed a nonviolent criminal offense.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

H.B. 3327 amends the Occupations Code to prohibit a cause of action from being brought against an employer, general contractor, premises owner, or other third party solely for hiring a person who holds a license issued by a licensing authority who has been convicted of an offense to which provisions relating to the consequences of a criminal conviction apply. The bill prohibits from being introduced into evidence, in a negligent hiring action against an employer, general contractor, premises owner, or other third party for the acts of a license holder based on a theory of liability other than the hiring of such a person, the fact that the license holder was convicted of an offense before the license holder's employment or contractual obligation with the employer, general contractor, premises owner, or other third party, as applicable.

H.B. 3327 establishes that its provisions do not preclude any existing cause of action for failure of an employer or other person to provide adequate supervision of a license holder, except that the fact that the license holder has been convicted of a criminal offense may be introduced in the suit only if the employer knew or should have known of the conviction and the conviction was directly related to the nature of the license holder's work and the conduct that gave rise to the alleged injury that is the basis of the suit. The bill provides that the protections provided to an employer, general contractor, premises owner, or third party 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 a license holder if, on the date the license holder was hired, the license holder 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 license holder was hired would involve discharging a fiduciary responsibility in the management of funds or property. The bill provides that its provisions do not create a cause of action or expand any existing cause of action. The bill defines "employee" and "license holder" and provides for the meaning of "independent contractor" by reference to the Labor Code.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.