

By: Thompson of Harris, Perry, Miles

H.B. No. 1188

A BILL TO BE ENTITLED

AN ACT

relating to limiting the liability of persons who employ persons with criminal convictions.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 142 to read as follows:

CHAPTER 142. LIMITATION ON LIABILITY FOR HIRING

CERTAIN EMPLOYEES

Sec. 142.001. DEFINITIONS. In this chapter:

(1) "Employee" means a person other than an independent contractor who, for compensation, performs services for an employer under a written or oral contract for hire, whether express or implied.

(2) "Independent contractor" has the meaning assigned by Section 91.001, Labor Code.

Sec. 142.002. LIMITATION ON LIABILITY FOR HIRING EMPLOYEE CONVICTED OF OFFENSE. (a) A cause of action may not be 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) 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

1 supervision of an employee, if:

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

5 (2) the employee was convicted of:

6 (A) an offense that was committed while  
7 performing duties substantially similar to those reasonably  
8 expected to be performed in the employment, or under conditions  
9 substantially similar to those reasonably expected to be  
10 encountered in the employment, taking into consideration the  
11 factors listed in Sections 53.022 and 53.023(a), Occupations Code,  
12 without regard to whether the occupation requires a license;

13 (B) an offense listed in Section 3g, Article  
14 42.12, Code of Criminal Procedure; or

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

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

27 (d) This section does not create a cause of action or expand

1 an existing cause of action.

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

8           SECTION 3. This Act takes effect immediately if it receives  
9 a vote of two-thirds of all the members elected to each house, as  
10 provided by Section 39, Article III, Texas Constitution. If this  
11 Act does not receive the vote necessary for immediate effect, this  
12 Act takes effect September 1, 2013.