

Regular Session, 2014

HOUSE BILL NO. 505

BY REPRESENTATIVES DIXON, WESLEY BISHOP, BURRELL, COX, FOIL, GAINES, HARRIS, HOWARD, HUNTER, KATRINA JACKSON, JEFFERSON, MORENO, NORTON, PRICE, THIBAUT, PATRICK WILLIAMS, AND WOODRUFF

EMPLOYMENT: Provides limitation of liability for certain persons when an employee has a criminal conviction

1 AN ACT

2 To enact R.S. 23:291(E), relative to the disclosure of employment related information; to
3 provide with respect to liability; to provide with respect to employers; to provide
4 exceptions; and to provide for related matters.

5 Be it enacted by the Legislature of Louisiana:

6 Section 1. R.S. 23:291(E) is hereby enacted to read as follows:

7 §291. Disclosure of employment related information; liability for hiring certain
8 employees; presumptions; causes of action; definitions

9 * * *

10 E.(1) Any employer, general contractor, premises owner, or other third party
11 shall not be subject to a cause of action for negligent hiring of or failing to
12 adequately supervise an employee or independent contractor due to damages or
13 injury caused by that employee or independent contractor solely because that
14 employee or independent contractor has been previously convicted of a criminal
15 offense.

16 (2) The provisions of Paragraph (1) of this Subsection shall not apply to any
17 of the following:

1 (a) Acts of the employee arising out of the course and scope of his
2 employment that give rise to damages or injury when the act is substantially related
3 to the nature of the crime for which the employee was convicted and the employer,
4 general contractor, premises owner, or other third party knew or should have known
5 of the conviction.

6 (b) Acts of an employee who has been previously convicted of any crime of
7 violence as enumerated in R.S. 14:2(B) or any sex offense as enumerated in R.S.
8 15:541 and the employer, general contractor, premises owner, or other third party
9 knew or should have known of the conviction.

10 (3) Nothing in this Subsection shall be construed to prohibit or create a cause
11 of action for negligent hiring or inadequate supervision in situations not covered by
12 this Subsection. Furthermore, nothing in this Subsection shall be construed to
13 supplant the immunity from civil liability provided for in R.S. 23:1032.

14 (4) Nothing in this Subsection shall affect the employer's vicarious liability
15 pursuant to Civil Code Article 2320.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Dixon

HB No. 505

Abstract: Provides civil immunity in certain instances for an employer who hires an employee who has been convicted of certain offenses.

Present law provides immunity from civil liability for any employer who discloses information to a prospective or current employer of a former employee's job performance if the information provided is not provided in bad faith.

Present law provides immunity from civil liability for negligent hiring, negligent retention, and other hiring-related causes of action for any employer who relies on information disclosed by a former employer, unless further information, such as a criminal background check, is required by law.

Present law provides definitions for "background check", "employer", "employee", "owner", "prospective employer", "prospective employee", and "job performance".

Present law provides immunity from civil liability from suits for failure to hire, wrongful termination, invasion of privacy, negligent hiring, or negligent retention for an employer who conducts a background check of an employee or prospective employee after having obtained written permission to do so by the employee or at the request of the owner or operator of a facility at which the employee is employed.

Proposed law retains present law.

Proposed law prohibits a cause of action from being brought against an employer, general contractor, premises owner, or other third party for negligent hiring or failing to adequately supervise an employee or independent contractor due to damages or injury caused by that employee solely because that employee has been previously convicted of a criminal offense.

Provides that proposed law does not apply to the following:

- (1) Acts committed by the employee arising out of the course and scope of his employment when the act is substantially related to the nature of the crime for which the employee was convicted and the employer, general contractor, premises owner, or other third party knew or should have known about the conviction.
- (2) Acts of an employee who was convicted of a crime of violence as enumerated in R.S. 14:2(B) or a sex offense enumerated in R.S. 15:541 and the employer, general contractor, premises owner, or other third party knew or should have known about the conviction.

Provides that proposed law shall not prohibit or create a cause of action for negligent injuring or failing to adequately supervise in situations not covered by proposed law. Further provides that proposed law shall not be construed to supplant the immunity from civil liability provided for in R.S. 23:1032.

Present law (R.S. 23:1032) provides relative to worker's compensation laws.

Proposed law provides that an employer's vicarious liability pursuant to C.C. Art. 2320 shall not be affected by proposed law.

(Adds R.S. 23:291(E))

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Civil Law and Procedure to the original bill.

1. Prohibited a cause of action from being brought against an employer and other similar parties for negligent hiring or failing to adequately supervise solely for hiring an employee who has been convicted of a criminal offense if the employee commits an act that causes injury or damage while employed.
2. Deleted reference to specific actions exempted from application of proposed law and added language providing that proposed law shall not apply: (a) when the act is substantially related to the crime for which the employee was convicted and such persons knew or should have known of the conviction, or (b) when the act was committed by someone convicted of a crime of violence or sex offense.

House Floor Amendments to the engrossed bill.

1. Specified that an employer, or other similar party, is exempted from application of proposed law when the act was committed by someone convicted of a crime

of violence or sex offense and the employer, or other similar party, knew or should have known of the conviction.

2. Specified that an employer's vicarious liability pursuant to C.C. Art. 2320 is not affected by proposed law.
3. Specified that proposed law shall not affect an employer's immunity under worker's compensation laws.