

LIMITATIONS ON EMPLOYER LIABILITY

2022 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derrin R. Owens

House Sponsor: _____

LONG TITLE

General Description:

This bill addresses liability of an employer.

Highlighted Provisions:

This bill:

- ▶ defines terms;
- ▶ addresses liability of an employer for negligently hiring, or failing to adequately supervise, an employee that has been previously convicted of an offense; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

ENACTS:

78B-4-518, Utah Code Annotated 1953

Be it enacted by the Legislature of the state of Utah:

Section 1. Section **78B-4-518** is enacted to read:

Part 5. Particular Limitations on Liability

78B-4-518. Limitation on liability of employer for employee convicted of offense.



28 (1) As used in this section:

29 (a) (i) Except as provided in Subsection (1)(a)(ii), "employee" means an individual
30 whom an employer hired for compensation to perform services under an oral or written
31 contract regardless of whether that contract is express or implied.

32 (ii) "Employee" does not include an independent contractor as defined in Subsection
33 34A-2-103(2)(b).

34 (b) "Employer" means a person, including the state and any political subdivision of the
35 state, that employs one or more employees.

36 (2) Notwithstanding any waiver of immunity in Section 63G-7-301, a cause of action
37 may not be brought against an employer for negligently hiring, or for failing to adequately
38 supervise, an employee based on evidence that the employee has been previously convicted in
39 this state or in another jurisdiction of an offense.

40 (3) Subsection (2) does not preclude a cause of action for negligent hiring, or the
41 failure of an employer to provide adequate supervision, of an employee if:

42 (a) the employer knew or should have known of the employee's prior conviction;

43 (b) the employee is convicted of an offense that was committed while the employee
44 was performing duties that were reasonably expected to be performed or encountered by the
45 employee in the course of employment; and

46 (c) the employee's prior conviction is substantially related to the duties that were
47 reasonably expected to be performed or encountered by the employee in the course of
48 employment.

49 (4) In determining whether an employee was previously convicted of an offense that is
50 substantially related to the duties that were reasonably expected to be performed or encountered
51 by the employee in the course of employment under Subsection (3)(c), the following factors
52 shall be considered:

53 (a) the extent and nature of the employee's past criminal activity, including:

54 (i) the age of the employee when the past criminal activity was committed;

55 (ii) the amount of time that has elapsed since the employee's last criminal activity;

56 (iii) the conduct and employment history of the employee before and after the
57 employee's past criminal activity;

58 (iv) evidence of the employee's rehabilitation, or rehabilitative effort, after the

59 employee's last criminal activity;

60 (v) evidence of the employee's compliance with any conditions of community
61 supervision, including parole or probation; and

62 (vi) any other evidence of the employee's fitness for the duties that were reasonably
63 expected to be encountered or performed by the employee in the course of employment;

64 (b) the nature and seriousness of the offense;

65 (c) the extent to which the duties offered the employee an opportunity to engage in
66 further criminal activity similar to criminal activity to which the individual previously had been
67 convicted;

68 (d) the relationship of the offense to the ability or capacity required to perform the
69 duties of employment; and

70 (e) any correlation between the elements of the offense and the duties that were
71 reasonably expected to be encountered or performed by the employee in the course of
72 employment.

73 (5) The protections provided to an employer under this section do not apply in a cause
74 of action concerning the misuse of funds or property of a person other than the employer if:

75 (a) on the date that the employee was hired by the employer, the employee had been
76 previously convicted of an offense that includes fraud or the misuse of funds as an element of
77 the offense; and

78 (b) it was foreseeable that the position for which the employee was hired would
79 involve duties in managing funds or property.

80 (6) This section does not:

81 (a) create a cause of action; or

82 (b) expand an existing cause of action.