

SB0095S01 compared with SB0095

~~text~~ shows text that was in SB0095 but was deleted in SB0095S01.

text shows text that was not in SB0095 but was inserted into SB0095S01.

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Senator Derrin R. Owens proposes the following substitute bill:

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;
- ▶ creates a sunset date; and
- ▶ makes technical and conforming changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

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None

Utah Code Sections Affected:

AMENDS:

63I-1-278, as last amended by Laws of Utah 2020, Chapter 154

ENACTS:

78B-4-518, Utah Code Annotated 1953

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

Section 1. Section 63I-1-278 is amended to read:

63I-1-278. Repeal dates, Title 78A and Title 78B.

(1) Section 78B-3-421, regarding medical malpractice arbitration agreements, is repealed July 1, 2029.

(2) Section 78B-4-518, regarding the limitation on employer liability for an employee convicted of an offense, is repealed on July 1, 2025.

~~[(2)]~~ (3) Title 78B, Chapter 6, Part 2, Alternative Dispute Resolution Act, is repealed July 1, 2026.

~~[(3)]~~ (4) Title 78B, Chapter 12, Part 4, Advisory Committee, which creates the Child Support Guidelines Advisory Committee, is repealed July 1, 2026.

Section ~~[(1)]~~ 2. 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.

(1) As used in this section:

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

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

(b) "Employer" means a person, including the state and any political subdivision of the ~~state~~

state, that employs one or more employees ~~and is engaged in an industry or business related to:~~

(i) automotive repair and maintenance;

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(ii) construction;

(iii) culinary arts;

(iv) manufacturing;

(v) oil, gas, or mining; or

(vi) transportation of freight, merchandise, or other property by a commercial vehicle.

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

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

~~—— (a) } the employer knew, or should have known, { of the employee's prior conviction;~~

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

~~—— (c) }, about the employee's prior conviction ~~{is substantially related to the duties that were reasonably expected to be performed or encountered by the employee in the course of employment.~~~~

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

~~—— (a) the extent } and {nature of} due to the employee's ~~{past criminal activity, including:~~~~

~~—— (i) the age} prior conviction;~~

~~—— (a) the employer violated state or federal law by hiring or continuing to employ the employee; or~~

~~—— (b) the employer's hiring or supervision of the employee ~~{when the past criminal activity was committed;~~~~

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

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

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~~— (iv) evidence of the employee's rehabilitation, or rehabilitative effort, after the employee's last criminal activity;~~

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

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

~~— (b) the nature and seriousness of the offense;~~

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

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

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

~~— (5) constitutes willful misconduct or gross negligence.~~

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

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

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

(5) Section 63G-7-301 does not waive immunity provided under this section for an employer that is a governmental entity or an employee of a governmental entity as those terms are defined in Section 63G-7-102.

(6) This section does not:

(a) create a cause of action; or

(b) expand an existing cause of action.