

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Introduced

House Bill 4006

BY DELEGATES KUMP, HIGGINBOTHAM, MANDT, WAXMAN,

ESPINOSA AND HOUSEHOLDER

[Introduced January 08, 2020; Referred to the

Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §55-7L-1, §55-7L-2, and §55-7L-3, all related to limiting civil liability for
 3 employers hiring an employee or independent contractor who has been convicted of a
 4 nonviolent, nonsexual offense; prohibiting a civil action against a general contractor,
 5 premises owner, or other third party solely for hiring an employee or independent
 6 contractor who has been convicted of a nonviolent, nonsexual offense; prohibiting the
 7 introduction of evidence of an employee or independent contractor's prior criminal record
 8 in a negligent hiring civil action; clarifying that this section does not preclude a cause of
 9 action for adequate supervision of an employee; providing an exception for admission of
 10 evidence that the employee or independent contractor has been convicted of a nonviolent,
 11 nonsexual criminal offense where the employer knew of the conviction or was grossly
 12 negligent in not knowing of the conviction, the conviction was directly related to the
 13 nature of the employee's or independent contractor's work, and the conduct that gave rise
 14 to the alleged injury that is the basis of the suit; establishing that protections provided to
 15 an employer, general contractor, premises owner, or third party under certain conditions
 16 do not apply in a suit concerning discharging a fiduciary responsibility in the management
 17 of funds or property; establishing that protections provided to an employer, general
 18 contractor, premises owner, or third party under certain conditions do not apply in a suit
 19 concerning misappropriation of funds or a violent offense; and providing there is no
 20 implication of liability in situations not covered by this article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7L. CIVIL LIABILITY FOR EMPLOYERS HIRING EX-OFFENDERS.

§55-7L-1. Title.

1 This Act may be cited as the "Civil Liability for Employers Hiring Ex-Offenders Act."

**§ 55-7L-2. Limitations on liability for hiring employee or independent contractor convicted
 of a nonviolent, nonsexual offense.**

1 (a) A cause of action may not be brought against an employer, general contractor,
2 premises owner, or other third party solely for hiring an employee or independent contractor who
3 has been convicted of a nonviolent, nonsexual offense.

4 (b) In a negligent hiring action against an employer, general contractor, premises owner,
5 or other third party for the acts of an employee or independent contractor that is based on a theory
6 of liability other than that described by subsection (a), the fact that the employee or independent
7 contractor was convicted of a nonviolent, nonsexual offense before the employee or independent
8 contractor's employment or contractual obligation with the employer, general contractor, premises
9 owner, or other third party, as applicable, may not be introduced into evidence.

10 (c) This section does not preclude any cause of action for failure of an employer or other
11 person to provide adequate supervision of an employee or independent contractor, except that
12 the fact that the employee or independent contractor has been convicted of a nonviolent,
13 nonsexual criminal offense may be introduced into evidence in the suit only if the employer:

14 (1) Knew of the conviction or was grossly negligent in not knowing of the conviction; and,

15 (2) The conviction was directly related to the nature of the employee's or independent
16 contractor's work and the conduct that gave rise to the alleged injury that is the basis of the suit.

17 (d) The protections provided to an employer, general contractor, premises owner, or third
18 party under this section do not apply in a suit concerning:

19 (1) The misuse of funds or property of a person other than the employer, general
20 contractor, premises owner, or third party, by an employee or independent contractor, if, on the
21 date the employee or independent contractor was hired, the employee or independent contractor
22 had been convicted of a crime that includes fraud or the misuse of funds or property as an
23 element of the offense, and it was foreseeable that the position for which the employee or
24 independent contractor was hired would involve discharging a fiduciary responsibility in the
25 management of funds or property; or

26 (2) The misappropriation of funds by an employee or independent contractor, if the

27 employee or independent contractor was hired as an attorney and, on the date the employee
28 or independent contractor was hired, the employee or independent contractor had been convicted
29 of a crime that includes fraud or the misuse of funds or property as an element of the offense; or
30 (3) A violent offense or an improper use of excessive force by an employee or
31 independent contractor, if the employee or independent contractor was hired to serve as a law
32 enforcement officer or security guard.

§55-7L-3. No implication of liability in situations not covered by this legislation.

1 This statute shall not be interpreted as implying a cause of action exists for negligent hiring
2 of an ex-offender in factual situations not covered by this statute. In deciding whether liability
3 exists in such cases, courts shall not presume that, because they are not covered in the protection
4 herein, there is a legislative intent expressed through the passage of this enactment to extend
5 liability in such cases where it is not already established.

NOTE: The purpose of the bill is to limit civil liability for employers hiring an employee or independent contractor who has been convicted of a nonviolent, nonsexual offense; to preclude admission of evidence in certain circumstances; and to identify civil actions where these protections do not apply.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.