

**Department of Legislative Services**  
Maryland General Assembly  
2020 Session

**FISCAL AND POLICY NOTE**  
**First Reader**

Senate Bill 157

(Senator Cassilly)

Judicial Proceedings

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**Employers of Ex-Offenders - Liability - Immunity**

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This bill establishes that an “employer” may not be held liable for negligently hiring or failing to adequately supervise an “employee” based on evidence that the employee has received probation before judgment for an offense or has been convicted of an offense if the employee meets specified criteria and performs specified types of work for the employer. The bill defines “employer” as a person engaged in a business, industry, profession, trade, or other enterprise in the State. “Employer” does not include the State, a county, or a municipality in the State.

The bill applies prospectively to causes of action arising on or after the bill’s October 1, 2020 effective date.

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**Fiscal Summary**

**State Effect:** The bill is not expected to materially affect State finances, as discussed below.

**Local Effect:** The bill is not expected to materially affect local finances, as discussed below.

**Small Business Effect:** Potential meaningful.

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## Analysis

**Bill Summary:** An “employee” is an individual other than an independent contractor who performs services for compensation for an employer under an oral contract for hire, whether express or implied, or a written contract. “Employee” does not include a person who contracts to perform work or provide a service for the benefit of another and who is (1) paid by the job, rather than by the hour or some other time-measured basis; (2) free to hire as many helpers as the person desires and to determine what each helper will be paid; and (3) free to work for other contractors, or to send helpers to work for other contractors, while under contract to the hiring employee.

An employer may not be held liable for negligently hiring or failing to adequately supervise an employee based on evidence that the employee has received probation before judgment for an offense or has been convicted of an offense if (1) the employee has completed the term of imprisonment or probation for the offense or has been released on parole for the offense and (2) the employee performs work for the employer in the manufacturing industry, in the shipping and receiving industry (excluding work requiring the operation of a motor vehicle on a public highway or street), in the warehousing industry, on the construction of new structures, or on the rehabilitation or demolition of unoccupied structures.

The bill’s provisions do not limit or abrogate any immunity from civil liability or defense available to a person under any other provision of the Maryland Code or at common law.

**Current Law:** Employers may be held liable for the actions of their employees under a variety of legal principles, including negligent hiring. Negligent hiring is a cause of action in tort in which an employer may be held liable for damages to an injured party as a result of the actions of an employee if (1) the employer owed a duty of care to the injured party (*e.g.*, providing a safe working environment for employees or a duty of care to a member of the public who could reasonably come into contact with the employee); (2) the employer breached this duty by failing to conduct a reasonable investigation into the employee’s fitness for the position or duties; (3) the employer’s failure to conduct this reasonable investigation resulted in the hiring of the employee; and (4) there is a causal relationship between the hiring of the employee and the plaintiff’s injuries, resulting in damages to the plaintiff. Negligent hiring actions are not limited to actions regarding an employee with a criminal record.

Factors a court considers when evaluating a negligent hiring claim include the availability of or access to employee background information, whether a reasonable investigation

would have revealed information needed to evaluate an employee's potential danger or harm to others, and the nature of the employee's position and/or duties.

Maryland courts have held that an employer is ordinarily not required to investigate the criminal record of a potential employee. *Evans v. Morsell*, 284 Md. 160, 167 (1978). Maryland courts have also recognized that "...there is a rebuttable presumption that an employer uses due care in hiring an employee...." *Evans* at 165, citing *Norfolk and Western Railroad Co. v. Hoover*, 79 Md. 253, 263 (1894). With respect to intentional torts committed by an employee, the critical inquiry is "...whether the employer knew or should have known that the individual was potentially dangerous." *Evans* at 165.

Negligent supervision actions are typically centered on the inadequate supervision of an employee, resulting in injury to the plaintiff, rather than the process the employer used when hiring the employee.

**State Expenditures:** The Treasurer's Office has advised for a previous version of this bill that, while the bill specifically excludes the State from the definition of "employer," the State provides some liability coverage for subcontractors hired by the State for the types of claims affected by the bill. If this information regarding liability coverage is still valid, expenditures for the State Insurance Trust Fund may decrease if subcontractors hired by the State are able to avoid civil judgments as a result of the bill's immunity provisions. The magnitude of any such potential decrease is not known. Nevertheless, since the Treasurer's Office did not respond to a request for information regarding the impact of this bill, it is assumed that any potential effect on State expenditures is minimal.

**Local Expenditures:** Assuming that local governments do not extend liability coverage to contractors or subcontractors for the types of claims affected by the bill, the bill is not expected to materially affect local finances. The bill's definition of "employer" specifically excludes a county or a municipality in the State. Many local governments obtain insurance coverage through the Local Government Insurance Trust (LGIT). LGIT has historically advised that the bill's provisions have no effect on local governments.

**Small Business:** The bill may have a meaningful impact on small businesses that avoid lawsuits and/or civil judgments as a result of the bill's immunity provisions.

## **Additional Information**

**Prior Introductions:** SB 219 of 2019 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 503, received an unfavorable report from the House Economic Matters Committee. SB 55 of 2017 received an unfavorable report from the Senate Judicial Proceedings Committee. Its cross file, HB 440, received an unfavorable report from the House Economic Matters Committee.

**Designated Cross File:** None.

**Information Source(s):** Anne Arundel, Charles, Frederick, Montgomery, and Somerset counties; cities of Frederick and Havre de Grace; Maryland State Treasurer's Office; Local Government Insurance Trust; Judiciary (Administrative Office of the Courts); Maryland Department of Labor; Department of Public Safety and Correctional Services; Department of Legislative Services

**Fiscal Note History:** First Reader - January 24, 2020  
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