

State of Arizona
House of Representatives
Fifty-third Legislature
Second Regular Session
2018

CHAPTER 137
HOUSE BILL 2311

AN ACT

AMENDING TITLE 12, CHAPTER 5, ARTICLE 3, ARIZONA REVISED STATUTES, BY
ADDING SECTION 12-558.03; RELATING TO THE LIMITATION OF ACTIONS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

1 Be it enacted by the Legislature of the State of Arizona:

2 Section 1. Title 12, chapter 5, article 3, Arizona Revised
3 Statutes, is amended by adding section 12-558.03, to read:

4 12-558.03. Limited liability: employer hiring or contracting
5 with ex-offenders; exclusions; definitions

6 A. AN EMPLOYER IS NOT LIABLE FOR HIRING AN EMPLOYEE OR CONTRACTING
7 WITH AN INDEPENDENT CONTRACTOR WHO HAS PREVIOUSLY BEEN CONVICTED OF A
8 CRIMINAL OFFENSE.

9 B. IN A NEGLIGENT HIRING ACTION THAT IS FILED AGAINST AN EMPLOYER
10 FOR THE ACTS OF AN EMPLOYEE OR INDEPENDENT CONTRACTOR AND THAT IS BASED ON
11 A THEORY OF LIABILITY OTHER THAN AS DESCRIBED IN SUBSECTION A OF THIS
12 SECTION, THE FACT THAT THE EMPLOYEE OR INDEPENDENT CONTRACTOR WAS
13 PREVIOUSLY CONVICTED OF A CRIMINAL OFFENSE BEFORE THE EMPLOYEE'S
14 EMPLOYMENT OR INDEPENDENT CONTRACTOR'S CONTRACTUAL OBLIGATION BEGAN WITH
15 THE EMPLOYER MAY NOT BE INTRODUCED INTO EVIDENCE.

16 C. THIS SECTION DOES NOT PRECLUDE AN EXISTING CAUSE OF ACTION FOR
17 THE FAILURE OF AN EMPLOYER TO PROVIDE ADEQUATE SUPERVISION OF AN EMPLOYEE
18 OR INDEPENDENT CONTRACTOR, EXCEPT THAT THE FACT THAT THE EMPLOYEE OR
19 INDEPENDENT CONTRACTOR HAS PREVIOUSLY BEEN CONVICTED OF A CRIMINAL OFFENSE
20 MAY BE INTRODUCED INTO EVIDENCE IF THE EMPLOYER KNEW OF THE CONVICTION OR
21 WAS GROSSLY NEGLIGENT IN NOT KNOWING OF THE CONVICTION AND THE CONVICTION
22 WAS DIRECTLY RELATED TO THE NATURE OF THE EMPLOYEE'S OR INDEPENDENT
23 CONTRACTOR'S WORK AND THE CONDUCT THAT GAVE RISE TO THE ALLEGED INJURY
24 THAT IS THE BASIS OF THE CAUSE OF ACTION.

25 D. THE PROTECTIONS PROVIDED TO AN EMPLOYER PURSUANT TO THIS SECTION
26 DO NOT APPLY IN A CAUSE OF ACTION BASED ON ANY OF THE FOLLOWING:

27 1. THE MISUSE OF MONIES OR PROPERTY OF A PERSON OTHER THAN THE
28 EMPLOYER BY AN EMPLOYEE OR INDEPENDENT CONTRACTOR IF, ON THE DATE THAT THE
29 EMPLOYEE WAS HIRED OR THE INDEPENDENT CONTRACTOR ENTERED INTO A CONTRACT
30 WITH THE EMPLOYER, THE EMPLOYEE OR INDEPENDENT CONTRACTOR HAD PREVIOUSLY
31 BEEN CONVICTED OF AN OFFENSE THAT INCLUDES FRAUD OR THE MISUSE OF MONIES
32 OR PROPERTY AS AN ELEMENT OF THE OFFENSE, AND IT WAS FORESEEABLE THAT THE
33 POSITION THE EMPLOYEE WAS HIRED OR FOR WHICH THE INDEPENDENT CONTRACTOR
34 ENTERED INTO A CONTRACT WITH THE EMPLOYER WOULD INVOLVE DISCHARGING A
35 FIDUCIARY RESPONSIBILITY IN THE MANAGEMENT OF MONIES OR PROPERTY.

36 2. THE MISAPPROPRIATION OF MONIES BY AN EMPLOYEE OR INDEPENDENT
37 CONTRACTOR IF THE EMPLOYEE WAS HIRED OR THE INDEPENDENT CONTRACTOR ENTERED
38 INTO A CONTRACT WITH THE EMPLOYER AS AN ATTORNEY AND, ON THE DATE THAT THE
39 EMPLOYEE WAS HIRED OR THE INDEPENDENT CONTRACTOR ENTERED INTO A CONTRACT
40 WITH THE EMPLOYER, THE EMPLOYEE OR INDEPENDENT CONTRACTOR HAD PREVIOUSLY
41 BEEN CONVICTED OF AN OFFENSE THAT INCLUDES FRAUD OR THE MISUSE OF MONIES
42 OR PROPERTY AS AN ELEMENT OF THE OFFENSE.

43 3. A VIOLENT OFFENSE OR THE IMPROPER USE OF EXCESSIVE FORCE BY AN
44 EMPLOYEE OR INDEPENDENT CONTRACTOR IF THE EMPLOYEE WAS HIRED OR THE

1 INDEPENDENT CONTRACTOR ENTERED INTO A CONTRACT WITH THE EMPLOYER AS A LAW
2 ENFORCEMENT OFFICER OR SECURITY GUARD.

3 E. THIS SECTION DOES NOT ESTABLISH A CAUSE OF ACTION FOR THE
4 NEGLIGENT HIRING OF OR CONTRACTING WITH AN EX-OFFENDER IN FACTUAL
5 SITUATIONS THAT ARE NOT SPECIFICALLY INCLUDED IN THIS SECTION. IN MAKING
6 A DETERMINATION WHETHER LIABILITY EXISTS IN A CAUSE OF ACTION, THE COURT
7 MAY NOT PRESUME THAT, BECAUSE FACTS ARE NOT SPECIFICALLY INCLUDED IN THIS
8 SECTION, THERE IS A LEGISLATIVE INTENT TO EXTEND LIABILITY IN SUCH CASES
9 WHERE IT IS NOT ALREADY ESTABLISHED.

10 F. FOR THE PURPOSES OF THIS SECTION:

11 1. "CRIMINAL OFFENSE" OR "OFFENSE" MEANS ANY CRIMINAL OFFENSE
12 EXCEPT VIOLENT OFFENSES AND SEXUAL OFFENSES.

13 2. "EMPLOYER" MEANS AN EMPLOYER, GENERAL CONTRACTOR, PREMISES OWNER
14 OR OTHER THIRD PARTY.

APPROVED BY THE GOVERNOR APRIL 5, 2018.

FILED IN THE OFFICE OF THE SECRETARY OF STATE APRIL 5, 2018.