



## SECOND CHANCE HIRING: 2017 LEGISLATIVE SESSION

In 2017, cross-filed legislation was introduced by Senator Robert Cassilly and Delegate Andrew Cassilly ([SB 55/HB 440 - “Employers of Ex-Offenders - Liability for Negligent Hiring or Inadequate Supervision - Immunity”](#)) which would have offered employers of ex-offenders immunity for liability from negligent hiring or inadequate supervision.<sup>1</sup>

The specific bill sought to exempt employers in five sectors of negligent hiring or inadequate supervision based on former conviction or probation. The sectors are:

- Manufacturing
- Shipping and receiving industry
  - Excluding work requiring the operation of a motor vehicle on a public highway or street
- Warehouse industry
- Construction of new structures
- Rehabilitation or demolition of unoccupied structure

*Note: “Employer” refers solely to those engaged in the traditional employer-employee role, therefore one-time contractor or those paid per job are not included.*

Both the Senate and House bills were voted unfavorably in their respective original committees.

The Maryland Chamber of Commerce lobbied in support of these bills.

## THE NEED FOR LEGISLATION

### Maryland Case Law:

Opponents to this legislation had questioned the necessity of employer immunity and negligent hiring laws as they relate to second chance programs. Proponents have countered that precedent has shown that an employee’s previous criminal history in and of itself can encourage this form of litigation against an employer.

Example:

*Mark W. Grimes v. Patrick Dunnigan, et al.* (case number: 1:2013cv00935) – suit filed Sept. 2012 – U.S. District Court of Maryland.

In this case, an employee (plaintiff) filed suit against his employer (defendant) and another employee (defendant) alleging assault and battery against the employee and respondent superior and negligence against the employer. The plaintiff argued that the employer knew about an alleged past incident involving the defendant and that he was an ex-convict on parole as two reasons why the employer should be held liable for negligent

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<sup>1</sup> SB 55/HB 440 - Employers of Ex-Offenders – Liability for Negligent Hiring or Inadequate Supervision – Immunity <http://mgaleg.maryland.gov/webmga/frmMain.aspx?pid=billpage&tab=subject3&id=sb0055&stab=01&ys=2017RS>



hiring. Ultimately the Court ruled against the employer's motion to dismiss because she "knew or should have known about [the defendant's] propensity for violent conduct."

Concerning negligent hiring, supervision or retention, the precedent of the Court is as follows: as of now, the existence of a criminal background can be used against employers for the purpose of negligent hiring, supervision and retention.

In order to prove a cause of action for either negligent hiring, supervision or retention, the plaintiff must establish that her injury was caused by the tortious conduct of a coworker, that the employer knew or should have known by the exercise of diligence and reasonable care that the coworker was capable of inflicting harm of some type, that the employer failed to use proper care in selecting, supervising or retaining that employee, and that the employer's breach of its duty was the proximate cause of the Plaintiff's injuries. *See Evans*, 284 Md. at 165, 395 A.2d at 483 (quoting *Hoover*, 79 Md. at 262, 29 A. at 995); *see also McCall's Ferry Power Co. v. Price*, 108 Md. 96, 103, 69 A. 832, 834 (1908).

*Bryant v. Better Bus. Bureau of Greater Maryland* (923 F. Supp. 720 (1996))

## POSITIVES AND NEGATIVES OF LEGISLATION

### In Support

- We should remove the obstacle for employers wanting to hire ex-offenders, not punish them for wanting to do so
- There are an incredible number of social interests for having ex-offenders employed, but we discourage people to hire them—why?
- Less risk for recidivism to have ex-offenders engaged in productive jobs
- Can protect public safety by allowing individuals who are frustrated at not gaining employment to be employed
- Gives ex-offenders a fair chance for employment
- A previous crime for which an ex-offender paid the appropriate penalty for should not dictate the rest of an ex-offender
- Jobs are the best deterrent to reoffending
- Studies have shown that as a general rule, ex-offenders tend to be more reliable and committed the average employee population.

### In Opposition

- Brings up the issue of businesses being punished for NOT hiring ex-offenders, make employers feel as if they have to favor ex-offenders in hiring process just to avoid violating the law
- Other employees may not be supportive of hire
- Skills may not be useful



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- Various bills could be seen as hurting those innocent victims ex-offenders might injure while on the job because it makes it more difficult to receive justice for any injuries suffered
- Propose tax incentives as an alternative for businesses