

SENATE SUBSTITUTE FOR
HOUSE BILL NO. 5217

A bill to amend 1961 PA 236, entitled
"Revised judicature act of 1961,"
(MCL 600.101 to 600.9947) by adding section 2956a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 2956A. (1) IN AN ACTION BASED ON TORT OR ANOTHER LEGAL
2 THEORY SEEKING DAMAGES FOR PERSONAL INJURY, PROPERTY DAMAGE, OR
3 WRONGFUL DEATH, A CERTIFICATE OF EMPLOYABILITY ISSUED TO AN
4 INDIVIDUAL UNDER SECTION 34D OF THE CORRECTIONS CODE OF 1953, 1953
5 PA 232, MCL 791.234D, MAY BE INTRODUCED AS EVIDENCE OF A PERSON'S
6 DUE CARE IN HIRING, RETAINING, LICENSING, LEASING TO, ADMITTING TO
7 A SCHOOL OR PROGRAM, OR OTHERWISE TRANSACTING BUSINESS OR ENGAGING
8 IN ACTIVITY WITH THE INDIVIDUAL TO WHOM THE CERTIFICATE OF
9 EMPLOYABILITY WAS ISSUED, IF THE PERSON KNEW OF THE CERTIFICATE AT

House Bill No. 5217 as amended November 13, 2014

1 THE TIME OF HIRING, RETAINING, LICENSING, LEASING TO, ADMITTING TO
2 A SCHOOL OR PROGRAM, OR OTHERWISE TRANSACTING BUSINESS OR ENGAGING
3 IN ACTIVITY WITH THE INDIVIDUAL.

4 (2) EXCEPT AS OTHERWISE PROVIDED IN THIS SUBSECTION, IN AN
5 ACTION BASED ON TORT OR ANOTHER LEGAL THEORY SEEKING DAMAGES FOR
6 PERSONAL INJURY, PROPERTY DAMAGE, OR WRONGFUL DEATH, IF A CLAIM
7 AGAINST AN EMPLOYER REQUIRES PROOF THAT THE EMPLOYER WAS NEGLIGENT
8 IN HIRING AN INDIVIDUAL BY DISREGARDING A PRIOR CRIMINAL
9 CONVICTION, A CERTIFICATE OF EMPLOYABILITY ISSUED TO AN INDIVIDUAL
10 UNDER SECTION 34D OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL
11 791.234D, CONCLUSIVELY ESTABLISHES THAT THE EMPLOYER DID NOT ACT
12 NEGLIGENTLY IN HIRING THE INDIVIDUAL <<

13 >>, IF THE EMPLOYER KNEW OF THE CERTIFICATE AT THE
14 TIME OF HIRE.

15 (3) IF AN INDIVIDUAL WHO HAS BEEN ISSUED A CERTIFICATE OF
16 EMPLOYABILITY UNDER SECTION 34D OF THE CORRECTIONS CODE OF 1953,
17 1953 PA 232, MCL 791.234D, IS HIRED AND SUBSEQUENTLY DEMONSTRATES
18 THAT HE OR SHE IS A DANGER TO INDIVIDUALS OR PROPERTY OR IS
19 CONVICTED OF OR PLEADS GUILTY TO A FELONY, AN EMPLOYER WHO RETAINS
20 THE INDIVIDUAL AS AN EMPLOYEE IS NOT LIABLE IN A CIVIL ACTION THAT
21 REQUIRES PROOF THAT THE EMPLOYER WAS NEGLIGENT IN RETAINING THE
22 INDIVIDUAL AS AN EMPLOYEE UNLESS A PREPONDERANCE OF THE EVIDENCE
23 ESTABLISHES THAT THE PERSON HAVING HIRING AND FIRING RESPONSIBILITY
24 FOR THE EMPLOYER HAD ACTUAL KNOWLEDGE THAT THE INDIVIDUAL WAS
25 DANGEROUS OR THAT THE INDIVIDUAL HAD BEEN CONVICTED OF OR PLEADED
26 GUILTY TO THE SUBSEQUENT FELONY, AND THE PERSON WAS WILLFUL IN
27 RETAINING THE INDIVIDUAL AS AN EMPLOYEE.

1 (4) THIS SECTION DOES NOT RELIEVE AN EMPLOYER FROM A DUTY OR
2 REQUIREMENT ESTABLISHED IN ANOTHER LAW CONCERNING A BACKGROUND
3 CHECK OR VERIFICATION THAT AN INDIVIDUAL IS QUALIFIED FOR A
4 POSITION, AND DOES NOT RELIEVE THE EMPLOYER OF LIABILITY ARISING
5 FROM FAILURE TO COMPLY WITH ANY SUCH LAW.

6 (5) THIS SECTION DOES NOT CREATE ANY AFFIRMATIVE DUTY OR
7 OTHERWISE ALTER AN EMPLOYER'S OBLIGATION TO OR REGARDING AN
8 EMPLOYEE WITH A CERTIFICATE OF EMPLOYABILITY ISSUED UNDER SECTION
9 34D OF THE CORRECTIONS CODE OF 1953, 1953 PA 232, MCL 791.234D.

10 Enacting section 1. This amendatory act takes effect January
11 1, 2015.

12 Enacting section 2. This amendatory act does not take effect
13 unless House Bill No. 5216 of the 97th Legislature is enacted into
14 law.