

BILL ANALYSIS

C.S.H.B. 705
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Civil Practices
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently there is no incentive in statute for “in-home service” or “residential delivery” companies to perform background checks on their employees.

CSHB 705 would create a rebuttable presumption on any criminal act committed by an employee that the company did not act negligently if it performed and received a clear criminal background check on the employee.

RULEMAKING AUTHORITY

It is the committee’s opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

CSHB 705 defines an “in-home service company” as a person that employs another to enter a consumer’s home to repair plumbing, electrical or heating/cooling systems, or an appliance, for a fee and a “residential delivery company” as a person that employs another to enter a consumer’s home to deliver and install, place, or assemble a product, for a fee. CSHB 705 requires these companies to obtain criminal background checks on employees and creates a rebuttable presumption that the company was not negligent if it obtained a background check in which the employee had not been convicted of certain criminal offenses. The bill allows companies to send a group of employees into a client’s home if at least one of the employees has had a background check and accompanies and directly supervises the other employees. Records on the identity of non-checked employees must be maintained for two years.

Companies that hire an in-home service company or a residential delivery company can receive the rebuttable presumption of negligence if the in-home service company or the residential delivery company is in compliance with this section or the hiring company requests in writing that the in-house service company or residential delivery company performs these background checks. Such a request by a hiring company must be kept for two years.

In-home service companies and residential delivery companies are granted the right to obtain a criminal background from the Department of Public Safety for a current or prospective employee whose job duties would include entering a consumer’s home. The company may not release this information to anyone without a court order, during discovery or on the permission of the employee.

EFFECTIVE DATE

September 1, 2003.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 705 differs from the original in that the presumption provided is rebuttable. This would prevent a company from using a clear background check on an employee as a defense if the company had knowledge of dangerous behavior by the employee. CSHB 705 allows companies to send a group of employees into a client’s home if at least one of the employees has had a background check and accompanies and directly supervises the other employees. CSHB 705 allows companies that hire an in-home service company or a residential delivery company to receive the rebuttable presumption of negligence if the in-home service company or the residential delivery company is in compliance with this section or the hiring company requests in writing that the in-house service company or residential delivery company performs these background

checks. CSHB 705 also allows the disclosure of background information during discovery periods of litigation.