

BILL ANALYSIS

Senate Research Center

H.B. 705
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State Affairs
5-23-2003
Committee Report (Amended)

DIGEST AND PURPOSE

Currently, there is no incentive in statute for “in-home service” or “residential delivery” companies to perform background checks on their employees. H.B. 705 creates a rebuttable presumption on any criminal act committed by an employee that the company did not act negligently if it performed a criminal background check on the employee with a clear result.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 6, Civil Practice and Remedies Code, by adding Chapter 145, as follows:

CHAPTER 145. LIABILITY FOR NEGLIGENT HIRING BY IN-HOME SERVICE COMPANIES AND RESIDENTIAL DELIVERY COMPANIES

Sec. 145.001. DEFINITIONS. Defines “in-home service company” and “residential delivery company.”

Sec. 145.002. CRIMINAL HISTORY BACKGROUND CHECK. Requires an in-home service company or residential delivery company to obtain from the Department of Public Safety (DPS) or a private vendor approved by DPS and offering services comparable to the services offered by DPS all criminal history record information relating to an officer, employee, or prospective employee of the company whose job duties require or will require entry into another person’s residence.

Sec. 145.003. PRESUMPTION OF NO NEGLIGENCE. (a) Provides that this section applies only to an action against an in-home service company or residential delivery company that has certain characteristics.

(b) Provides that in an action to which this section applies, an in-home service company or residential delivery company is rebuttably presumed to have not acted negligently if certain conditions apply.

Sec. 145.004. PRESUMPTION OF NO NEGLIGENCE FOR PERSONS UTILIZING A RESIDENTIAL DELIVERY COMPANY OR IN-HOME SERVICE COMPANY. Provides that a person who contracts with a residential delivery company to deliver an item or who contracts with an in-home service company to place, assemble, repair, or install an item referred to in Section 145.001(1), is rebuttably presumed to have not acted negligently in doing so if certain conditions apply.

SECTION 2. Amends Subchapter F, Chapter 411, Government Code, by adding Section 411.1181, as follows:

Sec. 411.1181. ACCESS TO CRIMINAL HISTORY RECORD INFORMATION; APPLICANTS FOR EMPLOYMENT. (a) Defines “in-home service company” and “residential delivery company.”

(b) Entitles an in-home service company or residential delivery company to obtain from DPS or a private vendor approved by DPS and offering services comparable to the services offered by DPS criminal history record information maintained by DPS that relates to an officer of or person employed by the company whose job duties require entry into another person’s residence, or an applicant to whom an offer of employment is made for a position of employment with the company, the job duties of which require entry into another person's residence.

(c) Prohibits criminal history record information obtained by an in-home service company or residential delivery company under Subsection (b) from being released or disclosed to any person except on court order, upon proper discovery request during litigation or with the consent of the person who is the subject of the criminal history record information.

(d) Requires the in-home service company or residential delivery company to destroy criminal history record information that relates to a person no sooner than two years after the person’s office or employment with the company ends or the company determines not to employ the person, as applicable.

SECTION 3. Makes application of Chapter 145, Civil Practice and Remedies Code, as added by this Act, prospective to September 1, 2003.

SECTION 4. Effective date: September 1, 2003.

LIST OF COMMITTEE AMENDMENTS

Committee amendment No. 1:

Amend H.B. 705, on page 3, by adding paragraph (c) starting on line 17 to read as follow:

(c) A residential delivery company or an in-home service company that sends two or more employees together into a residence shall be deemed to have complied with the requirement in Section 145.002 as long as at least one of those employees has been checked as described in Section 145.002 and, while they are in the residence, that employee accompanies and directly supervises any employee who have [sic] not been checked, and the residential delivery company or in-home service company maintains a record of the identity of any such non-checked employees for at least two years.

Committee amendment No. 2:

On page 3, line 1 insert “for a felony or in the ten years preceding the date of the information was obtained for a misdemeanor,” between “obtained” and “the officer.”