

By: Solomons, Allen

H.B. No. 705

A BILL TO BE ENTITLED

AN ACT

relating to liability of in-home service companies and residential delivery companies for negligent hiring.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 145 to read as follows:

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

Sec. 145.001. DEFINITIONS. In this chapter:

(1) "In-home service company" means a person who employs a person to enter another person's residence and for a fee repair:

(A) an appliance;

(B) the residence's heating, air-conditioning, and ventilation system;

(C) the residence's plumbing system; or

(D) the residence's electrical system.

(2) "Residential delivery company" means a person who employs a person to, for a fee:

(A) deliver an item to another person's residence; and

(B) enter the residence to place, assemble, or install the item.

Sec. 145.002. CRIMINAL HISTORY BACKGROUND CHECK. An

1 in-home service company or residential delivery company shall  
2 obtain from the Department of Public Safety or a private vendor  
3 approved by the department and offering services comparable to the  
4 services offered by the department all criminal history record  
5 information relating to an officer, employee, or prospective  
6 employee of the company whose job duties require or will require  
7 entry into another person's residence.

8 Sec. 145.003. PRESUMPTION OF NO NEGLIGENCE. (a) This  
9 section applies only to an action against an in-home service  
10 company or residential delivery company that:

11 (1) arises out of a criminal act or omission by an  
12 officer or employee of the company as to whom the company is  
13 required to obtain criminal history record information under  
14 Section 145.002;

15 (2) is brought by or on behalf of a person whose home  
16 the officer or employee entered while in the performance of the  
17 employee's job duties, without regard to where the criminal act or  
18 omission occurred; and

19 (3) seeks damages from the company for the negligent  
20 hiring of the officer or employee.

21 (b) In an action to which this section applies, an in-home  
22 service company or residential delivery company is rebuttably  
23 presumed to have not acted negligently if:

24 (1) the company obtained criminal history record  
25 information regarding the officer or employee; and

26 (2) the criminal history record information shows  
27 that, in the 20 years preceding the date the information was

1 obtained, the officer or employee had not been convicted of:

2 (A) an offense in this state classified as:

3 (i) an offense against the person or the  
4 family;

5 (ii) an offense against property; or

6 (iii) public indecency; or

7 (B) an offense in another jurisdiction that would  
8 be classified in a category described by Paragraph (A) if the  
9 offense had occurred in this state.

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

17 (1) the residential delivery company or in-home  
18 service company is in compliance with Section 145.003(b); or

19 (2) the person who contracts with the residential  
20 delivery company or in-home service company requests that the  
21 company obtain a criminal history background check described by  
22 Section 145.002 on any employee of the company being sent to  
23 deliver, place, assemble, repair, or install an item and the  
24 person's request is in writing and is delivered to the company prior  
25 to the company's employee being sent. A copy of any such request  
26 shall be maintained for at least two years.

27 SECTION 2. Subchapter F, Chapter 411, Government Code, is

1 amended by adding Section 411.1181 to read as follows:

2 Sec. 411.1181. ACCESS TO CRIMINAL HISTORY RECORD  
3 INFORMATION; APPLICANTS FOR EMPLOYMENT. (a) In this section,  
4 "in-home service company" and "residential delivery company" have  
5 the meanings assigned by Section 145.001, Civil Practice and  
6 Remedies Code.

7 (b) An in-home service company or residential delivery  
8 company is entitled to obtain from the Department of Public Safety  
9 or a private vendor approved by the department and offering  
10 services comparable to the services offered by the department  
11 criminal history record information maintained by the department  
12 that relates to:

13 (1) an officer of or person employed by the company  
14 whose job duties require entry into another person's residence; or

15 (2) an applicant to whom an offer of employment is made  
16 for a position of employment with the company, the job duties of  
17 which require entry into another person's residence.

18 (c) Criminal history record information obtained by an  
19 in-home service company or residential delivery company under  
20 Subsection (b) may not be released or disclosed to any person except  
21 on court order, upon proper discovery request during litigation or  
22 with the consent of the person who is the subject of the criminal  
23 history record information.

24 (d) The in-home service company or residential delivery  
25 company shall destroy criminal history record information that  
26 relates to a person no sooner than two years after the person's  
27 office or employment with the company ends or the company

1 determines not to employ the person, as applicable.

2           SECTION 3. Chapter 145, Civil Practice and Remedies Code,  
3 as added by this Act, applies only to a cause of action that accrues  
4 on or after September 1, 2003. A cause of action that accrues  
5 before September 1, 2003, is governed by the law in effect at the  
6 time the cause of action accrued, and the former law is continued in  
7 effect for that purpose.

8           SECTION 4. This Act takes effect September 1, 2003.