

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 for a felony or in the 10 years preceding the date the
2 information was obtained for a misdemeanor, the officer or employee
3 had not been convicted of:

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

5 (i) an offense against the person or the
6 family;

7 (ii) an offense against property; or

8 (iii) public indecency; or

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

12 (c) A residential delivery company or an in-home service
13 company that sends two or more employees together into a residence
14 shall be deemed to have complied with the requirement in Section
15 145.002 as long as at least one of those employees has been checked
16 as described in Section 145.002 and, while they are in the
17 residence, that employee accompanies and directly supervises any
18 employee who has not been checked, and the residential delivery
19 company or in-home service company maintains a record of the
20 identity of any such nonchecked employee for at least two years.

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

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

3 (2) the person who contracts with the residential
4 delivery company or in-home service company requests that the
5 company obtain a criminal history background check described by
6 Section 145.002 on any employee of the company being sent to
7 deliver, place, assemble, repair, or install an item and the
8 person's request is in writing and is delivered to the company prior
9 to the company's employee being sent. A copy of any such request
10 shall be maintained for at least two years.

11 SECTION 2. Subchapter F, Chapter 411, Government Code, is
12 amended by adding Section 411.1181 to read as follows:

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

18 (b) An in-home service company or residential delivery
19 company is entitled to obtain from the Department of Public Safety
20 or a private vendor approved by the department and offering
21 services comparable to the services offered by the department
22 criminal history record information maintained by the department
23 that relates to:

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

26 (2) an applicant to whom an offer of employment is made
27 for a position of employment with the company, the job duties of

1 which require entry into another person's residence.

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

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

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

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

President of the Senate

Speaker of the House

I certify that H.B. No. 705 was passed by the House on May 10, 2003, by a non-record vote; and that the House concurred in Senate amendments to H.B. No. 705 on May 30, 2003, by a non-record vote.

Chief Clerk of the House

I certify that H.B. No. 705 was passed by the Senate, with amendments, on May 28, 2003, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor