

By: Solomons

H.B. No. 705

Substitute the following for H.B. No. 705:

By: Gattis

C.S.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 all criminal history
3 record information relating to an officer, employee, or prospective
4 employee of the company whose [regular] job duties require or will
5 require entry into another person's residence.

6 Sec. 145.003. [IMMUNITY FROM LIABILITY] PRESUMPTION OF NO
7 NEGLIGENCE. (a) This section applies only to an action against an
8 in-home service company or residential delivery company that:

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

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

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

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

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

25 (2) the criminal history record information shows
26 that, as of the date the information was obtained, the officer or
27 employee had not been convicted of:

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

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

4 (ii) an offense against property; or

5 (iii) public indecency; or

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

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

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

25 (1) the residential delivery company or in-home
26 service company is in compliance with Sec. 145.003(b); or

27 (2) the person who contracts with the residential

1 delivery company or in-house service company requests that the
2 company obtain a criminal history background check from the
3 Department of Public Safety on any employee of the company being
4 sent to deliver, place, assemble, repair, or install an item and the
5 person's request is in writing and is delivered to the company prior
6 to the company's employee being sent. A copy of any such request
7 shall be maintained for at least two years.

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

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

15 (b) An in-home service company or residential delivery
16 company is entitled to obtain from the Department of Public Safety
17 criminal history record information maintained by the department
18 that relates to:

19 (1) an officer of or person employed by the company
20 whose regular job duties require entry into another person's
21 residence; or

22 (2) an applicant to whom an offer of employment is made
23 for a position of employment with the company, the regular duties of
24 which require entry into another person's residence.

25 (c) Criminal history record information obtained by an
26 in-home service company or residential delivery company under
27 Subsection (b) may not be released or disclosed to any person except

1 on court order, upon proper discovery request during litigation or
2 with the consent of the person who is the subject of the criminal
3 history record information.

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

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

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