

1-1 By: Solomons, Allen (Senate Sponsor - Nelson) H.B. No. 705
1-2 (In the Senate - Received from the House May 12, 2003;
1-3 May 13, 2003, read first time and referred to Committee on State
1-4 Affairs; May 23, 2003, reported favorably, as amended, by the
1-5 following vote: Yeas 6, Nays 0; May 23, 2003, sent to printer.)

1-6 COMMITTEE AMENDMENT NO. 1 By: Fraser

1-7 Amend House Bill 705, on page 2, by adding paragraph (c) starting on
1-8 line 31 to read as follows:

1-9 (c) A residential delivery company or an in-home service
1-10 company that sends two or more employees together into a residence
1-11 shall be deemed to have complied with the requirement in Section
1-12 145.002 as long as at least one of those employees has been checked
1-13 as described in Section 145.002 and, while they are in the
1-14 residence, that employee accompanies and directly supervises any
1-15 employee who has not been checked, and the residential delivery
1-16 company or in-home service company maintains a record of the
1-17 identity of any such non-checked employees for at least two years.

1-18 COMMITTEE AMENDMENT NO. 2 By: Fraser

1-19 Amend H.B. 705 as follows:

1-20 On page , line insert "for a felony or in the ten years preceding
1-21 the date of the information was obtained for a misdemeanor,"
1-22 between "obtained" and "the officer".

1-23 A BILL TO BE ENTITLED
1-24 AN ACT

1-25 relating to liability of in-home service companies and residential
1-26 delivery companies for negligent hiring.

1-27 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-28 SECTION 1. Title 6, Civil Practice and Remedies Code, is
1-29 amended by adding Chapter 145 to read as follows:

1-30 CHAPTER 145. LIABILITY FOR NEGLIGENT HIRING BY IN-HOME SERVICE
1-31 COMPANIES AND RESIDENTIAL DELIVERY COMPANIES

1-32 Sec. 145.001. DEFINITIONS. In this chapter:

1-33 (1) "In-home service company" means a person who
1-34 employs a person to enter another person's residence and for a fee
1-35 repair:

1-36 (A) an appliance;

1-37 (B) the residence's heating, air-conditioning,
1-38 and ventilation system;

1-39 (C) the residence's plumbing system; or

1-40 (D) the residence's electrical system.

1-41 (2) "Residential delivery company" means a person who
1-42 employs a person to, for a fee:

1-43 (A) deliver an item to another person's
1-44 residence; and

1-45 (B) enter the residence to place, assemble, or
1-46 install the item.

1-47 Sec. 145.002. CRIMINAL HISTORY BACKGROUND CHECK. An
1-48 in-home service company or residential delivery company shall
1-49 obtain from the Department of Public Safety or a private vendor
1-50 approved by the department and offering services comparable to the
1-51 services offered by the department all criminal history record
1-52 information relating to an officer, employee, or prospective
1-53 employee of the company whose job duties require or will require
1-54 entry into another person's residence.

1-55 Sec. 145.003. PRESUMPTION OF NO NEGLIGENCE. (a) This
1-56 section applies only to an action against an in-home service
1-57 company or residential delivery company that:

1-58 (1) arises out of a criminal act or omission by an
1-59 officer or employee of the company as to whom the company is
1-60 required to obtain criminal history record information under

2-1 Section 145.002;

2-2 (2) is brought by or on behalf of a person whose home
 2-3 the officer or employee entered while in the performance of the
 2-4 employee's job duties, without regard to where the criminal act or
 2-5 omission occurred; and

2-6 (3) seeks damages from the company for the negligent
 2-7 hiring of the officer or employee.

2-8 (b) In an action to which this section applies, an in-home
 2-9 service company or residential delivery company is rebuttably
 2-10 presumed to have not acted negligently if:

2-11 (1) the company obtained criminal history record
 2-12 information regarding the officer or employee; and

2-13 (2) the criminal history record information shows
 2-14 that, in the 20 years preceding the date the information was
 2-15 obtained, the officer or employee had not been convicted of:

2-16 (A) an offense in this state classified as:

2-17 (i) an offense against the person or the
 2-18 family;

2-19 (ii) an offense against property; or

2-20 (iii) public indecency; or

2-21 (B) an offense in another jurisdiction that would
 2-22 be classified in a category described by Paragraph (A) if the
 2-23 offense had occurred in this state.

2-24 Sec. 145.004. PRESUMPTION OF NO NEGLIGENCE FOR PERSONS
 2-25 UTILIZING A RESIDENTIAL DELIVERY COMPANY OR IN-HOME SERVICE
 2-26 COMPANY. A person who contracts with a residential delivery
 2-27 company to deliver an item or who contracts with an in-home service
 2-28 company to place, assemble, repair, or install an item referred to
 2-29 in Section 145.001(1), is rebuttably presumed to have not acted
 2-30 negligently in doing so if:

2-31 (1) the residential delivery company or in-home
 2-32 service company is in compliance with Section 145.003(b); or

2-33 (2) the person who contracts with the residential
 2-34 delivery company or in-home service company requests that the
 2-35 company obtain a criminal history background check described by
 2-36 Section 145.002 on any employee of the company being sent to
 2-37 deliver, place, assemble, repair, or install an item and the
 2-38 person's request is in writing and is delivered to the company prior
 2-39 to the company's employee being sent. A copy of any such request
 2-40 shall be maintained for at least two years.

2-41 SECTION 2. Subchapter F, Chapter 411, Government Code, is
 2-42 amended by adding Section 411.1181 to read as follows:

2-43 Sec. 411.1181. ACCESS TO CRIMINAL HISTORY RECORD
 2-44 INFORMATION; APPLICANTS FOR EMPLOYMENT. (a) In this section,
 2-45 "in-home service company" and "residential delivery company" have
 2-46 the meanings assigned by Section 145.001, Civil Practice and
 2-47 Remedies Code.

2-48 (b) An in-home service company or residential delivery
 2-49 company is entitled to obtain from the Department of Public Safety
 2-50 or a private vendor approved by the department and offering
 2-51 services comparable to the services offered by the department
 2-52 criminal history record information maintained by the department
 2-53 that relates to:

2-54 (1) an officer of or person employed by the company
 2-55 whose job duties require entry into another person's residence; or

2-56 (2) an applicant to whom an offer of employment is made
 2-57 for a position of employment with the company, the job duties of
 2-58 which require entry into another person's residence.

2-59 (c) Criminal history record information obtained by an
 2-60 in-home service company or residential delivery company under
 2-61 Subsection (b) may not be released or disclosed to any person except
 2-62 on court order, upon proper discovery request during litigation or
 2-63 with the consent of the person who is the subject of the criminal
 2-64 history record information.

2-65 (d) The in-home service company or residential delivery
 2-66 company shall destroy criminal history record information that
 2-67 relates to a person no sooner than two years after the person's
 2-68 office or employment with the company ends or the company
 2-69 determines not to employ the person, as applicable.

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

3-7 SECTION 4. This Act takes effect September 1, 2003.

3-8

* * * * *