

BILL ANALYSIS

C.S.S.B. 627
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Judiciary & Civil Jurisprudence
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2003, the Legislature passed 78R HB 705 which created Chapter 145 of the Civil Practice and Remedies Code requiring in-home service or residential delivery companies to perform background checks on employees which entered a consumer's home. The employer was granted a presumption of non-negligence if the employee committed a criminal act or omission if the background check on the employee did not show the employee had been convicted of certain crimes within specified times prior to hire.

Since the adoption of HB 705 there have been some concerns from different types of companies as to whether their company must comply with these regulations, where others found the requirements overly burdensome as some employ licensed individuals whose criminal background is checked during their licensing process or that the Department of Public Safety has declined to approve vendors for background checks requiring some companies to request multiple background checks to meet their company policies and their statutory obligations.

The Purpose of C.S.S.B. 627 is to clarify which employers are subject to Chapter 145 and to allow employers the option of confirming the employee has an occupational license issued by a licensing authority which performed a background check during the licensing process instead of doing a background check, while maintaining the presumption of non-negligence for employers who perform background checks at the time of hire.

RULEMAKING AUTHORITY

This bill does not grant any additional rule making authority.

ANALYSIS

SECTION 1. Amends Chapter 145.001 of the Civil Practice and Remedies Code to add a definition of residence.

SECTION 2. Provides for a short title for Chapter 145 of the Civil Practice and Remedies Code.

SECTION 3. 145.002 of the Civil Practice and Remedies Code to require an in-home service company or a residential service company to either perform a background check or to determine that the employee holds an occupational license in good standing where the licensing entity performed a background check during the licensing process.

SECTION 4. Amends Chapter 145.003(a) and (b) to clarify that the presumption of non-negligence provided for under Chapter 145.003 applies only to an in-home service company or a residential service company which performs a background check at the time of hire or prior to the association with the employee. Clarifies the offenses for which the employee must not have been convicted of or placed on deferred adjudication for in order for the employer to receive a presumption of non-negligence.

SECTION 5. Amends Chapter 411.1181(b) of the Texas Government Code to delete the requirement that the Department of Public Safety approve vendors which perform background checks required under Chapter 145 of the Civil Practice and Remedies Code.

SECTION 6. States that Sections 1 and 4 apply to a cause of action that accrues on or after the effective date and that Sections 3 and 6 apply to a background check obtained on or after the effective date.

SECTION 7. Effective Date.

EFFECTIVE DATE

This act takes effect on September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 627 differs from S.B. 627 in that it amends Chapter 145 by providing a short title, adding a definition of residence and providing a short title. C.S.S.B. 627 also differs from S.B. 627 in that it allows an in-home service company or residential delivery company to hire an employee which has received a background check, but not receive the presumption of non-negligence provided under Civil Practice and Remedies Code Section 145.003 unless the business perform a background check under Section 145.002, whereas S.B. 627 would provide a presumption of non-negligence to a business for hiring an employee who had a background check during their state licensing process. C.S.S.B. 627 also differs from S.B. 627 in that it amends Chapter 411 of the Government Code to delete the requirement that the Department of Public Safety approve vendors which perform background checks required under Chapter 145 of the Civil Practice and Remedies Act. Finally, C.S.S.B. 627 differs from S.B. 627 in that the effective date no longer has the potential of being effective immediately upon a two-thirds vote of both chambers.