

By: Carona

S.B. No. 627

Substitute the following for S.B. No. 627:

By: Branch

C.S.S.B. No. 627

A BILL TO BE ENTITLED

AN ACT

relating to the 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. Section 145.001, Civil Practice and Remedies Code, is amended by adding Subdivision (1-a) to read as follows:

(1-a) "Residence" means a person's principal or ordinary home or dwelling place and includes:

(A) any garage that is attached to the home or dwelling place; and

(B) any construction area that is attached to and accessible from the inhabited area or the attached garage of the home or dwelling place.

SECTION 2. Chapter 145, Civil Practice and Remedies Code, is amended by adding Section 145.0015 to read as follows:

Sec. 145.0015. SHORT TITLE. This chapter may be cited as the Sue Weaver Act.

SECTION 3. Section 145.002, Civil Practice and Remedies Code, is amended to read as follows:

Sec. 145.002. CRIMINAL HISTORY BACKGROUND CHECK. Before associating with or hiring an officer, employee, or prospective employee in a position whose duties include entry into another person's residence an [An] in-home service company or residential delivery company shall:

1 (1) obtain from the Department of Public Safety or a
2 private vendor approved by the department and offering services
3 comparable to the services offered by the department all criminal
4 history record information relating to the ~~[an]~~ officer, employee,
5 or prospective employee; or

6 (2) ascertain that the person holds in good standing
7 an occupational license issued by a licensing authority in this
8 state that has, before issuing or renewing the license, performed a
9 criminal history background check ~~[of the company whose job duties~~
10 ~~require or will require entry into another person's residence]~~.

11 SECTION 4. Sections 145.003(a) and (b), Civil Practice and
12 Remedies Code, are amended to read as follows:

13 (a) This section applies only to an action against an
14 in-home service company or residential delivery company that:

15 (1) arises out of a criminal act or omission by an
16 officer or employee of the company as to whom the company has
17 obtained ~~[is required to obtain]~~ criminal history record
18 information under Section 145.002(1) ~~[145.002]~~;

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

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

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

1 (1) at the time a person was hired, the company
2 obtained criminal history record information regarding the officer
3 or employee under Section 145.002(1); and

4 (2) the criminal history record information shows
5 that, in the 20 years preceding the date the information was
6 obtained for a felony or in the 10 years preceding the date the
7 information was obtained for a Class A or Class B misdemeanor, the
8 officer or employee had not been convicted of, or placed on deferred
9 adjudication for:

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

11 (i) an offense against the person or the
12 family;

13 (ii) an offense against property; or

14 (iii) public indecency; or

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

18 SECTION 5. Section 411.1181(b), Government Code, is amended
19 to read as follows:

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

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

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

4 SECTION 6. (a) The changes in law made by Sections 1 and 4
5 of this Act to Sections 145.001 and 145.003, Civil Practice and
6 Remedies Code, apply only to a cause of action that accrues on or
7 after the effective date of this Act. A cause of action that
8 accrues before the effective date of this Act is governed by the law
9 in effect immediately before that date, and that law is continued in
10 effect for that purpose.

11 (b) Sections 3 and 5 of this Act apply only to criminal
12 history background check information obtained by an in-home service
13 company or residential delivery company on or after the effective
14 date of this Act. Criminal history background check information
15 obtained before the effective date of this Act is governed by the
16 law in effect immediately before that date, and that law is
17 continued in effect for that purpose.

18 SECTION 7. This Act takes effect September 1, 2009.