

SUBJECT: Negligent hiring liability for in-home and residential delivery companies

COMMITTEE: Judiciary and Civil Jurisprudence — committee substitute recommended

VOTE: 10 ayes — Hunter, Hughes, Alonzo, Branch, Hartnett, Jackson, Leibowitz,  
Lewis, Madden, Martinez

0 nays

1 absent — Woolley

SENATE VOTE: On final passage, March 19 — 31-0, on Local and Uncontested Calendar

WITNESSES: None

BACKGROUND: Civil Practice and Remedies Code, ch. 145 requires an in-home service company and a residential delivery company to obtain a criminal background check from the Department of Public Safety (DPS) or from a DPS-approved private vendor that offers comparable services on each officer, employee, or prospective employee whose job duties require entry into residences. Sec. 145.001(1) defines an in-home service company as a person who employs someone to enter another person's home to repair an appliance, a heating, air conditioning, and ventilating system, or a plumbing or electrical system. A residential delivery company includes persons who employ another person for a fee to enter another's residence for the delivery, placing, assembly, or installation of an item.

In a legal action alleging negligent hiring and seeking damages caused by a criminal act or omission of an officer or employee for whom a criminal background check was required, a company is rebuttably presumed to have not acted negligently if the company had obtained from DPS or a DPS-approved vendor a criminal history record of the officer or employee and the record showed that the officer or employee had not been convicted of certain crimes within specified times (20 years for a felony, 10 years for certain misdemeanors) before the officer or employee was hired.

DIGEST: CSSB 627 would allow an in-home service company or residential delivery company to satisfy the criminal background check required for

the company's officers and employees under Civil Practice and Remedies Code, ch. 145 by ascertaining that an officer, employee, or prospective employee held in good standing an occupational license issued by a licensing authority in Texas that had performed a criminal history background check of the employee before issuing or renewing the license. This requirement would apply only to employees whose duties would include entry into another person's residence.

**Background check required before hiring.** CSSB 627 would require that a company obtain a person's criminal history record information from DPS or other authorized vendor or ascertain that the person held a license in good standing before the company associated with or hired the person.

**DPS background check still required for presumption of non-negligence to apply.** A company would had to have obtained an employee's criminal history record information directly from DPS or a DPS-approved vendor at the time the person was hired in order for the presumption of non-negligence to apply in the event of a legal action alleging negligent hiring by the company.

**Deferred adjudication for certain offenses treated as a conviction for background check purposes.** CSSB 627 would add that a company could not receive the rebuttable presumption of non-negligence if the company hired a person who had been placed on deferred adjudication for certain felonies within the 20 years preceding the date the company obtained the criminal background information or within the 10 years preceding the same date for certain Class A or Class B misdemeanors. The offenses would include:

- an offense against the person or the family;
- an offense against property;
- public indecency; or
- an offense in another jurisdiction that would be classified as one of the three foregoing categories of offenses if the offense had occurred in this state.

The bill would provide that a company would be entitled to obtain criminal history record information only from DPS.

CSSB 627 would define "residence" to mean a person's principal or ordinary home or dwelling place, including any attached garage and any

construction area attached to and accessible from the inhabited area or the attached garage.

The bill would provide that Civil Practice and Remedies Code, ch. 145 could be cited as the Sue Weaver Act.

The bill would apply only to causes of action and criminal history background checks that accrued or were obtained after its September 1, 2009, effective date.

**SUPPORTERS  
SAY:**

CSSB 627 would help protect the public by requiring in-home service companies and residential delivery companies to acquire criminal history background information from DPS or an authorized private vendor about their employees or, alternatively, to ascertain whether an employee held in a good standing an occupational license issued or renewed by a Texas licensing authority that had performed a criminal history background check on the employee. A person who hires a company to perform work within the home trusts that company to send a worker who will not harm the person or the person's property. The bill would give in-home service and residential delivery companies another method to determine whether prospective employees had criminal backgrounds, which in turn would enable these companies to make better-informed decisions about which employees to send out to homes.

Some companies have argued that they should receive the presumption of non-negligence if they hired employees that held an occupational license in good standing, even if a company did not obtain a criminal background check from DPS or another authorized vendor. The rationale is that a licensing process that includes a criminal background check provides adequate protection against the risk of hiring a person with a criminal background and that a company should not be required to obtain a "redundant" background check from DPS. Unfortunately, this argument is problematic for two reasons.

First, the Occupations Code permits, but does not require, a licensing authority to deny or revoke a person's license if the person was convicted of a felony or other crime. Second, because many licensing authorities run only periodic criminal background checks, there is no guarantee that a person who held a license in good standing had not subsequently been convicted of or received deferred adjudication for a crime. As such, an employer that hired a licensed person but did not check with DPS for the

person's most recently updated criminal history information would not have adequate knowledge about the person's recent criminal history. By requiring an employer to check with DPS in order to receive the presumption of non-negligence, CSSB 627 would encourage employers to acquire the most up-to-date information about their employees' backgrounds.

CSSB 627 represents a compromise effort that would allow a company to hire an employee who held a license in good standing and had received a criminal background check from the licensing authority, but would not extend the presumption of non-negligence to that company if they did so. The presumption of non-negligence would continue to apply only to companies that made the additional effort to obtain a person's most recent criminal history information from DPS or other authorized vendors.

Finally, CSSB 627 would resolve an unintended legal issue that arose when private vendors of criminal background information requested approval from DPS to provide comparable services to employers. Because current law requires DPS to approve only private companies that can provide "comparable services," DPS has refused to approve any private vendors on the grounds that DPS would have to provide vendors with information for which current law forbids release to the general public, such as juvenile records. The bill would address this problem by removing language in the present statute that entitles an in-house service company or residential delivery company to obtain criminal background information from a private vendor approved by DPS.

**OPPONENTS  
SAY:**

CSSB 627 should extend the presumption of non-negligence to in-home service companies and residential delivery companies that hired employees who held occupational licenses in good standing and who received criminal background checks during their licensing process. The criminal background check required of certain occupational licensees currently provides prospective employers with adequate knowledge of the liability risk that the employer would assume by sending a licensed employee to a person's residence. Requiring a company to obtain a person's criminal history record from DPS at the time of hiring would be unnecessary and redundant if the company knew that the person had received a criminal background check during the licensing process.

**NOTES:**

The House committee substitute differs from the Senate-passed version of SB 627 in that it would allow an in-home service company or residential

delivery company to hire an employee who held an occupational license in good standing and who had received a criminal background check from a Texas licensing authority, but not receive the presumption of non-negligence unless the company had obtained criminal background information from DPS or a DPS approved vendor. The original Senate bill would have allowed a company to receive the presumption of non-negligence if the licensing authority had performed a background check during the state licensing process, and it would not have required the company take the additional step of obtaining criminal history record information from DPS.