

BILL ANALYSIS

Senate Research Center

S.B. 627
By: Carona
State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2003, the 78th Legislature passed H.B. 705, which created Chapter 145 (Liability for Negligent Hiring by In-Home Service Companies and Residential Delivery Companies) of the Texas Civil Practice and Remedies Code. Chapter 145 requires in-home service companies and residential delivery companies to perform criminal history background checks on any employee whose job duties require the employee to enter another person's home. Chapter 145 also gives an in-home service company or residential delivery company a rebuttable presumption of no-negligence in any action against the company for negligent hiring if the action arises out of an alleged criminal act or omission by an employee of the company on whom the company is required to obtain a criminal history background check. The company is entitled to the presumption if the company performed the background check at the time the employee was hired and the check did not reveal that the employee had been convicted of any felony in the past 20 years or any misdemeanor in the last 10 years for crimes against the person or property. Many in-home service companies and residential delivery companies are required by law to obtain a license, registration, or certification in order to perform their services. Often the licensing, registration, or certification process involves the performance of criminal history background checks by the state agency from which the company is required to obtain the license, registration or certification. When this is the case, criminal history background checks are required to be performed twice; the first in connection with the licensing, registration, or certification process, and the second under the requirements of Chapter 145.

S.B. 627 amends current law relating to the liability of in-home service companies and residential delivery companies for negligent hiring.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 145.001, Civil Practice and Remedies Code, by adding Subdivision (1-a) to define "residence."

SECTION 2. Amends Chapter 145, Civil Practice and Remedies Code, by adding Section 145.0015, as follows:

Sec. 145.0015. SHORT TITLE. Authorizes this chapter to be cited as the Sue Weaver Act.

SECTION 3. Amends Section 145.002, Civil Practice and Remedies Code, as follows:

Sec. 145.002. CRIMINAL HISTORY BACKGROUND CHECK. Requires an in-home service company or residential delivery company, before associating with or hiring an officer, employee, or prospective employee in a position whose duties include entry into another person's residence, to obtain from the Department of Public Safety of the State of Texas (DPS) or a private vendor all criminal history record information relating to an officer, employee, or prospective employee or ascertain that the person holds in good standing an occupational license issued by a licensing authority in this state that has, before issuing or renewing the license, performed a criminal history background check.

Deletes existing text requiring an in-home service company or residential delivery company to obtain from DPS or a private vendor approved by DPS and offering services comparable to the services offered by DPS all criminal history record information relating to an officer, employee, or prospective employee of the company whose job duties require or will require entry into another person's residence.

SECTION 4. Amends Sections 145.003(a) and (b), Civil Practice and Remedies Code, as follows:

(a) Provides that this section applies only to an action against an in-home service company or residential delivery company that arises out of a criminal act or omission by an officer or employee of the company as to whom the company has obtained, rather than is required to obtain, criminal history record information under Section 145.002(1) (relating to ascertaining that certain persons hold in good standing an occupational license). Makes a conforming change.

(b) Provides that in an action to which this section applies, an in-home service company or residential delivery company is rebuttably presumed to have not acted negligently if at the time a person was hired, the company obtained criminal history record information regarding the officer or employee under Section 145.002(1) and the criminal history record information shows that, in the 20 years preceding the date the information was obtained for a felony or in the 10 years preceding the date the information was obtained for a Class A or Class B misdemeanor, the officer or employee had not been convicted of, or placed on deferred adjudication for certain crimes.

SECTION 5. Amends Section 411.1181(b), Government Code, as follows:

(b) Deletes existing text entitling an in-home service company or residential delivery company to obtain from a private vendor approved by DPS and offering services comparable to the services offered by DPS certain criminal history record information maintained by DPS.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2009.