

BILL ANALYSIS

Senate Research Center
81R13388 TJS-F

C.S.S.B. 627
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State Affairs
3/10/2009
Committee Report (Substituted)

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 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.

C.S.S.B. 627 amends Chapter 145 to make the rebuttable presumption of not having acted negligently applicable to an in-home service company or residential delivery company that is required by state law to be licensed, registered, or certified by a state agency and the initial and renewal licensing, registration, or certification process requires that state agency to obtain criminal history record information. The bill requires that the criminal history record information show that the person has not been convicted of certain criminal offenses within certain time periods.

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 145.003, Civil Practice and Remedies Code, by amending Subsection (b) and adding Subsection (b-1), as follows:

(b) Provides that an in-home service company or residential delivery company, in an action to which this section applies, is rebuttably presumed to have not acted negligently if the officer or employee described by Section 145.002 (Criminal History Background Check), is required by state law to be licensed, registered, or certified by a state agency and the initial licensing, registration, or certification process for that officer or employee, and any renewal requirements for the license, registration, or certification, authorize the state agency to obtain the officer's or employee's criminal history record information; the state agency actually obtained the officer's or employee's criminal history record information; and the state agency and the officer or employee have complied with the initial license, registration, or certification requirements and the license, registration, or

certification; or the company obtained criminal history record information regarding the officer or employee. Makes nonsubstantive changes.

(b-1) Creates this subsection from existing text. Requires the criminal history record information required by Subsection (b) to show 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 misdemeanor, the officer or employee had not been convicted of certain offenses or an offense in another jurisdiction that would be classified in a category described by Subdivision (1), rather than Paragraph (A), if the offense had occurred in this state. Makes conforming and nonsubstantive changes.

SECTION 2. Makes application of this Act prospective.

SECTION 3. Effective date: upon passage or September 1, 2009.