

SUBJECT: Allowing service companies to obtain certain criminal background checks

COMMITTEE: Civil Practices — committee substitute recommended

VOTE: 9 ayes — Nixon, Rose, P. King, Madden, Martinez Fischer, Raymond, Strama, Talton, Woolley

0 nays

WITNESSES: For — Lucia Bone, The Sue Weaver CAUSE (Consumer Awareness of Unsafe Service Employment)

Against — None

BACKGROUND: CSHB 705 by Solomons, enacted by the 78th Legislature in 2003, requires an in-home service company or a residential delivery company to obtain a criminal background check from the Department of Public Safety (DPS) or from a private vendor approved by DPS on each employee or prospective employee whose job duties require entry into residences.

An in-home service company is defined as a person who employs someone to enter another person's home to repair an appliance, a heating, air conditioning, or ventilating system, or a plumbing or electrical system. A residential delivery company is defined as a person who employs someone for a fee to deliver an item to another person's residence and to enter the residence to place, assemble, or install the item.

The bill created a rebuttable presumption, in an action for damages alleging negligent hiring, that an in-home service company or residential delivery company was not negligent for the criminal act or omission of an employee or officer during the course of duty if the company had obtained a criminal background check that showed that the employee had not been convicted of an offense against a person or property or public indecency in the past 10 to 20 years, depending on the offense.

If a company sends two or more employees together into a residence, the company is deemed to have complied with the background check requirement if:

- the company had obtained a background check on at least one of the employees;
- while they were in the residence, the employee that had been checked accompanied and directly supervised the employee who had not been checked; and
- the company maintained a record of the identity of all employees not checked for at least two years.

DPS has not approved any vendors to supply companies with the required criminal background information.

DIGEST:

CSHB 852 would amend ch. 145 to allow an in-home service company or residential delivery company to obtain a criminal background check from a vendor not approved by DPS. It would forbid the release or disclosure of criminal history record information obtained by the company. It would prohibit the company from destroying the criminal history record information for two years after the person's employment ended or after the company decided not to hire the person. It would add that for the rebuttable presumption to apply, the private vendor would have to have supplied the company with the most recent criminal background information available from DPS at the time the check was performed.

The bill would take effect September 1, 2005, and the changes made to the criminal history background information would apply to such information obtained on or after that date.

NOTES:

The bill as introduced would not have forbidden release or disclosure of criminal history record information and would not have required a company to maintain the records for a certain period of time.