

HOUSE BILL 705 – LIABILITY FOR NEGLIGENT HIRING BY IN-HOME SERVICE COMPANIES AND RESIDENTIAL DELIVERY COMPANIES (TEXAS EMPLOYERS ONLY)

HB 705 requires in-home service companies and residential delivery companies to obtain criminal history record information on officers, employees, or prospective employees whose job duties require entry into another person's home. The bill went into effect 9/1/03.

The bill defines an in-home service company as a person who employs a person to enter a consumer's home to repair an appliance, HVAC system, plumbing system or electrical system. The bill also defines a residential delivery company as a person that employs a person to enter a consumer's home to deliver and install, place, or assemble a product.

The purpose of the law is to protect consumers from potential criminals and employers from liability in criminal cases. As an example, if the employer conducts a criminal background check on an employee in accordance with the law and later that employee is accused of assaulting a customer and the employer is sued, the employer will be presumed non-negligent in hiring by the court.

Criminal records can be searched through the TX Dept. of Public Safety Crime Records Service website <http://records.txdps.state.tx.us>. Employers will be able to apply for access to the website and purchase credits that will allow them to search the website for criminal history record information. The cost is \$1.00 per credit (one credit is good for one search). As of now, this is the only avenue for employers to obtain the criminal history record to comply with the law. The TX DPS has not approved outside vendors for this service.

What the Bill Does Say

1. Requires criminal background checks on employees performing repair on plumbing, electrical, or HVAC systems, or an appliance in a residence.
2. Requires background checks on employees who deliver and install, place, or assemble a product in a residence.
3. These background checks must come from either the TX DPS or a vendor approved by the TX DPS. At this time, the DPS has not approved any private vendors.
4. Allows companies to contract directly with the TX DPS to receive criminal background and arrest records of current and prospective employees for a \$1.00 fee, plus a small convenience fee for each check.
5. Grants a presumption that a company is not negligent for sending an employee into a customer's home if the employee's background check shows no felony convictions in the last 20 years or any misdemeanor convictions in the last 10 years for a crime against a person, property or for public indecency. (MHBT would like to point out that this law has not yet been tested in the courts and the possibility exists that a judge or jury may choose to ignore the law and award liability damages).
6. Allows companies to hire a subcontractor to perform these job duties and still receive the presumption if they ask their subcontractor in writing to obtain criminal history background checks in accordance with this bill prior to sending the employee into the customer's home.
7. Allows companies to send multiple employees into a residence provided that at least one of those employees has been checked in accordance with the law and while they are in the residence, that employee accompanies and directly supervises any employee who has not been checked.

What the Bill Does Not Say

1. There is no expressed penalty for failing to comply with this law. The bill provides incentives to hire individuals without criminal records, but provides no penalty for hiring those with criminal records.
2. There is no specification on how often the criminal background checks should be conducted.
3. The bill does not prevent a company from hiring or keeping someone employed who has a criminal record.

MHBT Risk Management Additional Thoughts

House Bill 705 is one of several hundred new laws that went into effect in Texas on September 1, 2003. Our agency has, by far, received more questions regarding this law than any of the others. Therefore, we felt a strong need to provide our clients with information to help answer their questions.

It is common practice to conduct criminal background checks on employees who fall into job categories described earlier. These checks are generally based on the employee's state and county of residence for the previous 5-10 years. It may be advisable to expand the time period to 20 years to align with the new legal requirements. Expanding the search to other states where the employee has lived and the time period to 20 years can provide an extra level of liability protection.

As with any new law, there are a lot of unanswered questions about how to comply. The purpose of this document is to provide additional information to our clients on this law. It is not intended to be a substitute for legal counsel. Please consult your attorney if you need interpretation or have additional questions regarding this law.