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A bill to be entitled
 An act relating to in-home service and residential
 delivery companies; providing a popular name; creating s.
 768.097, F.S.; defining terms; requiring in-home service
 and residential delivery companies to perform background
 checks on certain employees and others; providing for
 application; providing a rebuttable presumption that the
 in-home service company or residential delivery company
 had not acted negligently if certain requirements were
 met; providing a rebuttable presumption that certain
 persons who contract with a residential delivery company
 or in-home service company are not negligent if certain
 requirements were met; providing applicability; providing
 an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. This act may be cited as the "Sue Weaver Act."

Section 2. Section 768.097, Florida Statutes, is created
 to read:

768.097 In-home service and residential delivery
 companies; liability for negligent hiring, retention, and
 supervision.--

(1) DEFINITIONS.--For purposes of this section:

(a) "In-home service company" means a company that
 provides, through an employee, agent, subcontractor, or
 independent contractor, service, repair, replacement,

28 maintenance, cleaning, or other work to a customer's residential
 29 dwelling.

30 (b) "Residential delivery company" means a company that
 31 provides, through an employee, agent, subcontractor, or
 32 independent contractor, delivery of an item to a residential
 33 dwelling and enters the dwelling to place, assemble, or install
 34 the item.

35 (c) "Private vendor" means a consumer reporting agency
 36 with the ability to access Department of Law Enforcement
 37 criminal records and whose database contains more than
 38 150,000,000 criminal records, has substantial national coverage,
 39 and receives regularly scheduled updates.

40 (2) BACKGROUND CHECK.--An in-home service company or
 41 residential delivery company shall obtain from the Florida
 42 Department of Law Enforcement or a private vendor the criminal
 43 history record information relating to any employee, agent,
 44 subcontractor, or independent subcontractor whose job duties
 45 require or will require entry into another person's dwelling for
 46 in-home service or residential delivery purposes. This
 47 background check shall be completed prior to the employee,
 48 agent, subcontractor, or independent contractor entering a
 49 dwelling for in-home service or residential delivery purposes.

50 (3) APPLICATION.--This section applies only to an action
 51 against an in-home service company or residential delivery
 52 company that:

53 (a) Arises out of a criminal act or omission by an
 54 employee, agent, subcontractor, or independent contractor of the

55 company as to whom the company is required to obtain criminal
56 history record information under subsection (2).

57 (b) Is brought by or on behalf of a person whose dwelling
58 was entered into by an employee, agent, subcontractor, or
59 independent contractor of the in-home service company or
60 residential delivery company while in the performance of those
61 job duties, without regard to where or when the criminal act or
62 omission occurred.

63 (c) Seeks damages from the company for the negligent
64 hiring, retention, or supervision of the employee, agent,
65 subcontractor, or independent contractor.

66
67 In an action to which this section applies, the provisions of
68 this section supersede those of s. 768.096.

69 (4) PRESUMPTION AGAINST COMPANY NEGLIGENCE.--In an action
70 to which this section applies, an in-home service company or
71 residential delivery company is rebuttably presumed to have not
72 acted negligently if:

73 (a) The company obtained criminal history record
74 information regarding employees, agents, subcontractors, or
75 independent contractors required under subsection (2).

76 (b) The criminal history record information shows that, in
77 the 20 years preceding the date the information was obtained for
78 a felony or in the 10 years preceding the date the information
79 was obtained for a misdemeanor, the employee, agent,
80 subcontractor, or independent contractor had not been found
81 guilty of, regardless of adjudication, or entered a plea of nolo
82 contendere or guilty to any offense listed in s. 435.03(2) or

83 any offense in another jurisdiction that would have been listed
84 in s. 435.03(2) if the offense had occurred in this state.

85 (5) PRESUMPTION AGAINST CUSTOMER NEGLIGENCE.--A person who
86 contracts with a residential delivery company to deliver an item
87 or who contracts with an in-home service company to place,
88 assemble, repair, replace, service, clean, or install an item is
89 rebuttably presumed to have not acted negligently in doing so
90 if:

91 (a) The residential delivery company or in-home service
92 company is in compliance with subsection (4).

93 (b) The residential delivery company or in-home service
94 company is not required to perform background checks on
95 subcontractors and independent contractors if the background
96 check required under subsection (2) has been performed within
97 the preceding year by the subcontractor or independent
98 contractor's employer.

99 Section 3. This act shall take effect July 1, 2005, and
100 applies only to a cause of action that accrues on or after that
101 date.