

By Senator Smith

14-788-05

1 A bill to be entitled
2 An act relating to liability of in-home
3 services companies and residential delivery
4 companies for negligent hiring, retention, or
5 supervision; providing definitions; requiring
6 an in-home service company or residential
7 delivery company to obtain criminal history
8 information concerning certain employees,
9 agents, subcontractors, and independent
10 contractors from the Department of Law
11 Enforcement or private vendor; providing
12 conditions under which a person may file suit
13 against an in-home service company or
14 residential delivery company for negligent
15 hiring; providing rebuttable presumptions;
16 authorizing an in-home service company or
17 residential delivery company to obtain criminal
18 history information concerning certain
19 applicants and employed persons from the
20 Department of Law Enforcement or a private
21 vendor; prohibiting the disclosure of criminal
22 history information except under certain
23 circumstances; requiring an in-home service
24 company or residential delivery company to
25 maintain criminal history information for a
26 specified period; providing an effective date.

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28 Be It Enacted by the Legislature of the State of Florida:
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1 Section 1. Liability for negligent hiring, retention,
2 or supervision by an in-home service company or residential
3 delivery company.--

4 (1) As used in this section, the term:

5 (a) "In-home service company" means a company that
6 provides, through an employee, agent, subcontractor, or
7 independent contractor, a service, repair, replacement,
8 maintenance, cleaning, or other work to a customer's
9 residential dwelling.

10 (b) "Residential delivery company" means a company
11 that provides, through an employee, agent, subcontractor, or
12 independent contractor, the following service:

13 1. Delivers an item to a residential dwelling; and

14 2. Enters the residence to place, assemble, or install
15 the item.

16 (c) "Private vendor" means a consumer-reporting agency
17 whose database contains more than 150 million criminal
18 records, including criminal history information maintained by
19 the Department of Law Enforcement, has substantial national
20 coverage, and receives regularly scheduled updates.

21 (2) An in-home service company or residential delivery
22 company shall obtain from the Department of Law Enforcement or
23 a private vendor criminal history information concerning any
24 employee, agent, subcontractor, or independent subcontractor
25 whose job duties require or will require entry into another
26 person's residential dwelling. This criminal history
27 background check shall be completed before the employee,
28 agent, subcontractor, or independent contractor enters a
29 residence.

30 (3) This section applies only to an action against an
31 in-home service company or residential delivery company

1 seeking damages from the company for the negligent hiring,
2 retention, or supervision of an employee, agent,
3 subcontractor, or independent contractor of the company and
4 which:

5 (a) Arises out of a criminal act or omission by an
6 employee, agent, subcontractor, or independent contractor of
7 the company for whom the company is required to obtain
8 criminal history information under subsection (2); and

9 (b) Is brought by or on behalf of a person whose home
10 was entered into by an employee, agent, subcontractor, or
11 independent contractor of the in-home service company or
12 residential delivery company, regardless of where or when the
13 criminal act or omission occurred.

14 (4) An in-home service company or residential delivery
15 company is rebuttably presumed to have not acted negligently
16 if:

17 (a) The company obtained criminal history information
18 concerning the employee, agent, subcontractor, or independent
19 contractor as required under subsection (2); and

20 (b) The criminal history information shows that, with
21 respect to a felony offense, in the 20 years preceding the
22 date the information was obtained, or, with respect to a
23 misdemeanor offense, in the 10 years preceding the date the
24 information was obtained, the employee, agent, subcontractor,
25 or independent contractor had not been convicted of or
26 imprisoned for:

27 1. An offense in this state classified as:

28 a. An offense against the person or family;

29 b. An offense against property; or

30 c. Public indecency.
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1 2. An offense in another jurisdiction which would be
2 classified in a category described by subparagraph 1. if the
3 offense had occurred in this state.

4 (5)(a) A person who contracts with a residential
5 delivery company to deliver an item or who contracts with an
6 in-home service company to place, assemble, repair, replace,
7 service, clean, or install an item in a residential dwelling
8 is rebuttably presumed to have not acted negligently in doing
9 so if the residential delivery company or in-home service
10 company is in compliance with subsection (2).

11 (b) A residential delivery company or in-home service
12 company is not required to perform a background check on a
13 subcontractor or independent contractor if the background
14 check required under subsection (2) has been performed within
15 the preceding year by the subcontractor or independent
16 contractor's employer.

17 (6) An in-home service company or residential delivery
18 company may obtain from the Department of Law Enforcement or a
19 private vendor criminal history information maintained by the
20 Department of Law Enforcement which relates to:

21 (a) An officer of or person employed by the company
22 whose job duties as an employee, agent, subcontractor, or
23 independent contractor require entry into another person's
24 residence; or

25 (b) An applicant to whom an offer of employment,
26 whether as an employee, agent, subcontractor, or independent
27 contractor, is made for a position of employment with the
28 company, the job duties of which require or may require entry
29 into another person's residence.

30 (7) Criminal history information obtained by an
31 in-home service company or residential delivery company under

1 subsection (2) or subsection (6) may not be released or
2 disclosed to any person except by court order, upon proper
3 discovery request during litigation, or with the consent of
4 the person who is the subject of the criminal history
5 information.

6 (8) The in-home service company or residential
7 delivery company shall maintain criminal history information
8 for 4 years after the date the person's office or employment
9 with the company ends.

10 Section 2. This act shall take effect July 1, 2005.

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13 SENATE SUMMARY

14 Requires an in-home service company or residential
15 delivery company to obtain criminal history information
16 concerning certain employees, agents, subcontractors, and
17 independent contractors from the Department of Law
18 Enforcement or a private vendor. Provides conditions for
19 a person to file suit against an in-home service company
20 or residential delivery company for negligent hiring,
21 retention, or supervision. Provides rebuttable
22 presumptions. Authorizes an in-home service company or
23 residential delivery company to obtain criminal history
24 information from the Department of Law Enforcement or a
25 private vendor. Prohibits the disclosure of criminal
26 history information except under certain circumstances.
27 Requires an in-home service company or residential
28 delivery company to maintain criminal history information
29 for a certain period of time.
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