

CIVIL PRACTICE AND REMEDIES CODE

TITLE 6. MISCELLANEOUS PROVISIONS

CHAPTER 145. LIABILITY FOR NEGLIGENT HIRING BY IN-HOME SERVICE
COMPANIES AND RESIDENTIAL DELIVERY COMPANIES

Sec. 145.001. DEFINITIONS. In this chapter:

(1) "In-home service company" means a person who employs a person to enter another person's residence and for a fee repair:

(A) an appliance;

(B) the residence's heating, air-conditioning, and ventilation system;

(C) the residence's plumbing system; or

(D) the residence's electrical system.

(1-a) "Residence" means a person's principal or ordinary home or dwelling place and includes:

(A) any garage that is attached to the home or dwelling place; and

(B) any construction area that is attached to and accessible from the inhabited area or the attached garage of the home or dwelling place.

(2) "Residential delivery company" means a person who employs a person to, for a fee:

(A) deliver an item to another person's residence; and

(B) enter the residence to place, assemble, or install the item.

Added by Acts 2003, 78th Leg., ch. 228, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 751 (S.B. 627), Sec. 1, eff. September 1, 2009.

Sec. 145.0015. SHORT TITLE. This chapter may be cited as the Sue Weaver Act.

Added by Acts 2009, 81st Leg., R.S., Ch. 751 (S.B. 627), Sec. 2, eff. September 1, 2009.

Sec. 145.002. CRIMINAL HISTORY BACKGROUND CHECK. Before associating with or hiring an officer, employee, or prospective employee in a position whose duties include entry into another person's residence, an in-home service company or residential delivery company shall:

(1) obtain from the Department of Public Safety or a private vendor all criminal history record information relating to an officer, employee, or prospective employee; or

(2) ascertain that the person holds in good standing an occupational license issued by a licensing authority in this state that has, before issuing or renewing the license, performed a criminal history background check.

Added by Acts 2003, 78th Leg., ch. 228, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 751 (S.B. 627), Sec. 3, eff. September 1, 2009.

Sec. 145.003. PRESUMPTION OF NO NEGLIGENCE. (a) This section applies only to an action against an in-home service company or residential delivery company that:

(1) arises out of a criminal act or omission by an officer or employee of the company as to whom the company has obtained criminal history record information under Section 145.002(1);

(2) is brought by or on behalf of a person whose home the officer or employee entered while in the performance of the employee's job duties, without regard to where the criminal act or omission occurred; and

(3) seeks damages from the company for the negligent hiring of the officer or employee.

(b) In an action to which this section applies, an in-home service company or residential delivery company is rebuttably presumed to have not acted negligently if:

(1) at the time a person was hired, the company obtained criminal history record information regarding the officer or employee under Section 145.002(1); and

(2) the criminal history record information shows

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 Class A or Class B misdemeanor, the officer or employee had not been convicted of, or placed on deferred adjudication for:

(A) an offense in this state classified as:

(i) an offense against the person or the family;

(ii) an offense against property; or

(iii) public indecency; or

(B) an offense in another jurisdiction that would be classified in a category described by Paragraph (A) if the offense had occurred in this state.

(c) A residential delivery company or an in-home service company that sends two or more employees together into a residence shall be deemed to have complied with the requirement in Section 145.002 as long as at least one of those employees has been checked as described in Section 145.002 and, while they are in the residence, that employee accompanies and directly supervises any employee who has not been checked, and the residential delivery company or in-home service company maintains a record of the identity of any such nonchecked employee for at least two years.

Added by Acts 2003, 78th Leg., ch. 228, Sec. 1, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 751 (S.B. 627), Sec. 4, eff. September 1, 2009.

Sec. 145.004. PRESUMPTION OF NO NEGLIGENCE FOR PERSONS UTILIZING A RESIDENTIAL DELIVERY COMPANY OR IN-HOME SERVICE COMPANY. A person who contracts with a residential delivery company to deliver an item or who contracts with an in-home service company to place, assemble, repair, or install an item referred to in Section 145.001(1), is rebuttably presumed to have not acted negligently in doing so if:

(1) the residential delivery company or in-home service company is in compliance with Section 145.003(b); or

(2) the person who contracts with the residential

delivery company or in-home service company requests that the company obtain a criminal history background check described by Section 145.002 on any employee of the company being sent to deliver, place, assemble, repair, or install an item and the person's request is in writing and is delivered to the company prior to the company's employee being sent. A copy of any such request shall be maintained for at least two years.

Added by Acts 2003, 78th Leg., ch. 228, Sec. 1, eff. Sept. 1, 2003.