

House Bill 620

By: Representatives Hill of the 180th, Burmeister of the 119th, Stephenson of the 92nd, Benfield of the 85th, Henson of the 87th, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 3 of Chapter 6 of Title 10 of the Official Code of Georgia Annotated,
2 relating to rights and liabilities of principals to third persons, so as to provide for criminal
3 record background checks for employees, agents, subcontractors, and independent
4 subcontractors of in-home service companies and residential delivery companies whose job
5 duties require or will require entry into another person's residential dwelling; to provide for
6 civil immunity for employers which perform such criminal record background checks under
7 certain circumstances; to amend Code Section 35-3-34.1 of the Official Code of Georgia
8 Annotated, relating to circumstances when an exonerated first offender's criminal record may
9 be disclosed, so as to provide for such disclosures relative to employees, agents,
10 subcontractors, and independent contractors of in-home service companies and residential
11 delivery companies; to repeal conflicting laws; and for other purposes.

12 **BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:**

13 **SECTION 1.**

14 Article 3 of Chapter 6 of Title 10 of the Official Code of Georgia Annotated, relating to
15 rights and liabilities of principals to third persons, is amended by adding a new Code section
16 to read as follows:

17 "10-6-65.

18 (a) As used in this Code section, the term:

19 (1) 'Conviction' means a finding or verdict of guilty or a plea of guilty regardless of
20 whether an appeal of the conviction has been sought.

21 (2) 'Criminal record' means:

22 (A) Conviction of a crime;

23 (B) Arrest, charge, and sentencing for a crime where:

24 (i) A plea of nolo contendere was entered to the charge;

25 (ii) First offender treatment without adjudication of guilt pursuant to the charge was
26 granted; or

1 (iii) Adjudication or sentence was otherwise withheld or not entered on the charge;

2 or

3 (C) Arrest and being charged for a crime if the charge is pending, unless the time for
4 prosecuting such crime has expired pursuant to Chapter 3 of Title 17.

5 (3) 'GCIC' means the Georgia Crime Information Center established under Article 2 of
6 Chapter 3 of Title 35.

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

10 (5) 'Residential delivery company' means a company that, through an employee, agent,
11 subcontractor, or independent contractor, delivers an item to a residential dwelling and
12 enters the residence to place, assemble, or install the item.

13 (6) 'Private vendor' means a consumer reporting agency whose data base contains more
14 than 150 million criminal records, including criminal history record information
15 maintained by the Georgia Bureau of Investigation, has substantial national coverage, and
16 receives regularly scheduled updates to its data base.

17 (b)(1) Any in-home service company or residential delivery company shall obtain from
18 the GCIC, a law enforcement agency that has access to GCIC information, or a private
19 vendor criminal record information relating to any employee, agent, subcontractor, or
20 independent contractor whose job duties require or will require entry into another
21 person's residential dwelling. Such background check shall be completed prior to the
22 employee, agent, subcontractor, or independent contractor entering a residence on behalf
23 of the in-home service company or residential delivery company. Any fees charged for
24 a criminal record background check may be required by the employer to be paid by the
25 employee, agent, subcontractor, or independent contractor, shall not be refundable, and
26 shall not be greater than the actual cost of processing the request and conducting the
27 criminal record background check.

28 (2) An in-home service company or residential delivery company shall not be required
29 to perform criminal record background checks on a subcontractor or independent
30 contractor if a criminal record background check required under paragraph (1) of this
31 subsection has been performed within the preceding year by the subcontractor or
32 independent contractor's employer.

33 (3) Any in-home service company or residential delivery company that has conducted a
34 criminal history background check or received and reviewed such results on any
35 employee, agent, subcontractor, or independent contractor conducted pursuant to
36 licensing requirements of any such individual under Title 43 shall be considered to have
37 complied in good faith with the requirements of this subsection.

1 (c) Criminal record information obtained by an in-home service company or residential
 2 delivery company under subsection (b) of this Code section shall not be released or
 3 disclosed to any person except on court order, upon proper discovery request during
 4 litigation, or with the consent of the person who is the subject of the criminal record
 5 information.

6 (d) The in-home service company or residential delivery company shall destroy criminal
 7 record information that relates to a person no sooner than six years after the person's office
 8 or employment with the company ends or the company determines not to employ the
 9 person, as applicable.

10 (e)(1) This subsection shall apply to any action against an in-home service company or
 11 residential delivery company that:

12 (A) Arises out of a criminal act or omission by an employee, agent, subcontractor, or
 13 independent contractor of the company as to whom the company is required to obtain
 14 criminal record information under subsection (b) of this Code section;

15 (B) Is brought by or on behalf of a person whose home was entered into by an
 16 employee, agent, subcontractor, or independent contractor of the in-home service
 17 company or residential delivery company while in the performance of those job duties,
 18 without regard to where or when the criminal act or omission occurred; and

19 (C) Seeks damages from the company for the negligent hiring, retention, or supervision
 20 of the employee, agent, subcontractor, or independent contractor.

21 (2) In any action to which this subsection applies, an in-home service company or
 22 residential delivery company shall be rebuttably presumed to have not acted negligently
 23 if:

24 (A) The company obtained criminal record information regarding the employee, agent,
 25 subcontractor, or independent contractor under subsection (b) of this Code section; and

26 (B) The criminal record search showed that, for a minimum of 20 years preceding the
 27 date the information was obtained for a felony or for a minimum of ten years preceding
 28 the date the information was obtained for a misdemeanor, the employee, agent,
 29 subcontractor, or independent contractor had no criminal record of:

30 (i) Any offense in this state under:

31 (I) Chapter 5 of Title 16, crimes against the person;

32 (II) Chapter 6 of Title 16, sexual offenses;

33 (III) Chapter 7 of Title 16, damage to and intrusion upon property; or

34 (IV) Chapter 8 of Title 16, offenses involving theft; or

35 (ii) Any offense in another jurisdiction that would be classified in a category
 36 described by division (i) of this subparagraph if the offense had occurred in this state.

1 (f) Any person who contracts with a residential delivery company to deliver an item or who
2 contracts with an in-home service company to place, assemble, repair, replace, service,
3 clean, or install an item is rebuttably presumed to have not acted negligently in doing so
4 if the residential delivery company or in-home service company is in compliance with
5 subsection (b) of this Code section."

6 **SECTION 2.**

7 Code Section 35-3-34.1 of the Official Code of Georgia Annotated, relating to circumstances
8 when an exonerated first offender's criminal record may be disclosed, is amended by striking
9 "or" at the end of paragraph (3), striking the period and inserting "; or" in lieu thereof at the
10 end of paragraph (4), and adding a new paragraph to read as follows:

11 "(5) The request for information is an inquiry relating to any employee, agent,
12 subcontractor, or independent subcontractor of an in-home service company or residential
13 delivery company as such terms are defined by Code Section 10-6-65 and whose job
14 duties require or will require entry into another person's residential dwelling."

15 **SECTION 3.**

16 All laws and parts of laws in conflict with this Act are repealed.