



RECEIVED

OCT 29 2003

OPINION COMMITTEE

The State of Texas
House of Representatives

BURT R. SOLOMONS

District 65

Capitol Office:
P.O. Box 2910
Austin, TX 78768-2910
512-463-0478
Fax 512-463-2089

District Office:
1029 Rosemeade Pkwy., Suite 108
Carrollton, TX 75007
972-394-3904
Fax 972-394-5638

September 30, 2003

The Honorable Greg Abbott
Attorney General for the State of Texas
P.O. Box 12548
Austin, TX 78711-2548

FILE # ML-43320-0

I.D. # 43320

RQ-0123-GA

Re: Request for Opinion - Applicability of Chapter 145 of the Texas Civil Practice and Remedies Code.

Dear Attorney General Abbott:

I respectfully request an opinion on the applicability of Chapter 145 of the Texas Civil Practice and Remedies Code on motor carriers of personal property as defined and regulated by Title 49 of the United States Code.

Discussion

Chapter 145 of the Texas Civil Practice and Remedies Code was recently added to the statute by 77R HB 705, which I authored. The new Chapter provides additional requirements and protections for "Residential Service and Delivery Companies." A Residential Delivery Company is defined as "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."¹ Specifically , §145.002 requires a Residential Delivery Company to obtain a criminal history record of any employee who, as part of their regular job duties, is required to enter a consumer's residence. There seems to be some question as to this Section's applicability to a motor carrier in light of 49 U.S.C. § 14501(c).

49 U.S.C. §13102 defines a carrier as a person providing motor vehicle transportation for compensation. It also defines household goods, as used in connection with transportation, as "personal effects and property used or to be used in a dwelling, when a part of the equipment or supply of such dwelling, and similar property if the transportation of such effects or property is (A) arranged and paid for by the householder, except such term does not include property moving from a factory or store, other than property that the householder has purchased with the intent to use in his or her dwelling and is transported at the request of, and the transportation charges are paid to the

¹ Texas Civil Practice and Remedies Code, § 145.001(2)

carrier by, the householder; or (B) arranged and paid for by another party.”² On the surface, any motor carrier transporting household goods to a consumer’s residence in Texas and then entering the residence to place the household goods would be subject to Chapter 145 of Texas Civil Practice and Remedies Code.

49 U.S.C. §14501(c) asserts that a State may not enact a law, regulation or other provision having the force of and effect of law related to a price, route, or service of a motor carrier...with the respect of transportation of property. Certain exemptions are found at 49 U.S.C. §14501(c)(2) and (3), including the transportation of household goods.

The Texas Transportation Code does make a distinction between interstate and intrastate motor carriers.³

Questions of Law

- 1) Does the requirement of a background check affect the price, route or service of a motor carrier?
- 2) Does 49 U.S.C. §14501(c) preempt the application of Chapter 145 of the Texas Civil Practice and Remedies Code to interstate motor carriers, including those transporting household goods?
- 3) Does 49 U.S.C. §14501(c) preempt the application of Chapter 145 of the Texas Civil Practice and Remedies Code to intrastate motor carriers, including those transporting household goods?

Thank you for your consideration of this important matter.

Sincerely,



Burt Solomons
Chairman
House Committee on Financial Institutions

² U.S.C. 49 §13102(10)

³ Texas Transportation Code §643.002