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Criminal Background Check Required for Workers Who Make Some Types of Home Repairs

Nonprofits in Texas that employ people to conduct home repairs need to be aware of a new law that requires criminal background checks. The requirement applies even if the nonprofit owns the home or rental property, if someone is living in the home.

While there is currently no penalty for the failure to conduct the checks, obtaining a criminal background check offers protection to a nonprofit if it is sued because a repairman it employed committed a criminal act while on the job. If a nonprofit obtains a criminal history record showing that the employee has not been convicted of a *felony offense against a person or family, against property, or for public indecency* in the past *twenty years*, or has not been convicted of a similar *misdemeanor* in the past *ten years*, the nonprofit will have proof that it acted reasonably in hiring the person.

Nonprofits can still hire persons with such criminal convictions. The new law does not change current law. Under current law, a nonprofit could be found responsible for damages caused by a worker who commits a criminal act on the job.

The criminal check must be obtained from the Texas Department of Public Safety or a vendor approved by the Department. The criminal background check is required for any person that the nonprofit hires or contracts with to enter another person's residence and, for a fee, repair:

- an appliance;
- the plumbing;
- the electrical system; or
- the heating, air-conditioning, or ventilation system.

A nonprofit may send employees into a residence without conducting a background check on all of the employees if the nonprofit obtains a background check on one of the employees. This provision applies if the checked employee has an acceptable criminal history record, the checked employee supervises the unchecked employees, and the

nonprofit keeps a record of the identities of the unchecked employees for at least two years.

If a nonprofit contracts with another company to conduct residential repairs, the nonprofit should request, in writing, that the company conduct criminal background checks on its employees before any employee enters a person's home. A sample request and contract is available in the Texas C-BAR Legal Resource Library under Housing and Economic Development/CHDOs.

Criminal history information may not be released to an outside party unless there is a court order, a request during a lawsuit, or the consent of the person who is the subject of the criminal history information. The information should be destroyed two years after the employment ends.