

By: King of Hemphill

H.B. No. 4966

A BILL TO BE ENTITLED

AN ACT

1
2 relating to law enforcement agency personnel records and the
3 reporting of separations of license holders to the Texas Commission
4 on Law Enforcement.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

6 SECTION 1. Section 1701.162(a), Occupations Code, is
7 amended to read as follows:

8 (a) The commission is entitled to access records maintained
9 under Subchapter J and Sections 1701.303, 1701.306, and 1701.310 by
10 an agency hiring a person to be an officer or county jailer,
11 including records that relate to age, education, physical
12 standards, citizenship, experience, and other matters relating to
13 competence and reliability, as evidence of qualification for
14 licensing of an officer or county jailer.

15 SECTION 2. Section 1701.451(a), Occupations Code, is
16 amended to read as follows:

17 (a) Before a law enforcement agency may hire a person
18 licensed under this chapter, the agency must, on a form and in the
19 manner prescribed by the commission:

20 (1) obtain the person's written consent for the agency
21 to review the information required to be reviewed under this
22 section;

23 (2) request from the commission and any other
24 applicable person information required to be reviewed under this

1 section; and

2 (3) submit to the commission confirmation that the
3 agency, to the best of the agency's ability before hiring the
4 person:

5 (A) contacted each entity or individual
6 necessary to obtain the information required to be reviewed under
7 this section; and

8 (B) except as provided by Subsection (b),
9 obtained and reviewed as related to the person, as applicable:

10 (i) personnel files and other employee
11 records from each previous law enforcement agency employer,
12 including the employment application submitted to the previous
13 employer;

14 (ii) employment termination reports and any
15 statement by the license holder submitted under Section 1701.4525
16 maintained by the commission under this subchapter;

17 (iii) service records maintained by the
18 commission;

19 (iv) proof that the person meets the
20 minimum qualifications for enrollment in a training program under
21 Section 1701.251(a);

22 (v) a military veteran's United States
23 Department of Defense Form DD-214 or other military discharge
24 record;

25 (vi) criminal history record information;

26 (vii) information on pending warrants as
27 available through the Texas Crime Information Center and National

1 Crime Information Center;

2 (viii) evidence of financial
3 responsibility as required by Section 601.051, Transportation
4 Code;

5 (ix) a driving record from the Department
6 of Public Safety;

7 (x) proof of United States citizenship; and

8 (xi) information on the person's background
9 from at least three personal references and at least two
10 professional references.

11 SECTION 3. Subchapter J, Chapter 1701, Occupations Code, is
12 amended by adding Section 1701.4511 to read as follows:

13 Sec. 1701.4511. POLICY REGARDING PERSONNEL FILES. (a) The
14 commission shall adopt a model policy applicable to the maintenance
15 of personnel files by a law enforcement agency. The policy must:

16 (1) identify the types of documents that must be
17 placed in a license holder's personnel file;

18 (2) specify the purposes for which information in the
19 file may be disclosed; and

20 (3) comply with laws applicable to employment records.

21 (b) A law enforcement agency shall adopt the model policy
22 described by Subsection (a) or a substantively similar policy.

23 SECTION 4. Section 1701.452, Occupations Code, is amended
24 by amending Subsections (a), (b), (c), (d), and (g) and adding
25 Subsection (c-1) to read as follows:

26 (a) The head of a law enforcement agency or the head's
27 designee shall submit a report to the commission on a form

1 prescribed by the commission regarding a person licensed under this
2 chapter ~~[who resigns or retires from employment with the law~~
3 ~~enforcement agency, whose appointment with the law enforcement~~
4 ~~agency is terminated, or]~~ who separates from the law enforcement
5 agency for any ~~[other]~~ reason. The report must be submitted by the
6 head or the designee not later than the seventh business day after
7 the date the license holder:

8 (1) ~~[resigns, retires, is terminated, or]~~ separates
9 from the agency; and

10 (2) exhausts all administrative appeals available to
11 the license holder, if applicable.

12 (b) The head of a law enforcement agency or the head's
13 designee shall indicate ~~[include]~~ in the report required under
14 Subsection (a) ~~[a statement on whether the license holder was~~
15 ~~honorably discharged, generally discharged, or dishonorably~~
16 ~~discharged and, as required by the commission, an explanation of]~~
17 the circumstances under which the license holder separated and
18 indicate the nature of the separation as "retired," "resigned,"
19 "terminated," or "deceased." The indication of the circumstances
20 must include whether the separation:

21 (1) occurred during a pending investigation into the
22 license holder's conduct;

23 (2) resulted from a substantiated instance of:

24 (A) a violation of law, other than a traffic
25 offense;

26 (B) a violation of the agency's use of force
27 policy; or

1 (C) misconduct; or

2 (3) related to a violation of any other commission
3 rule [person resigned, retired, or was terminated]. [For purposes
4 of this subsection:

5 [~~(1) "Honorably discharged" means a license holder~~
6 ~~who, while in good standing and not because of pending or final~~
7 ~~disciplinary actions or a documented performance problem, retired,~~
8 ~~resigned, or separated from employment with or died while employed~~
9 ~~by a law enforcement agency.~~

10 [~~(2) "Generally discharged" means a license holder~~
11 ~~who:~~

12 [~~(A) was terminated by, retired or resigned from,~~
13 ~~or died while in the employ of a law enforcement agency and the~~
14 ~~separation was related to a disciplinary investigation of conduct~~
15 ~~that is not included in the definition of dishonorably discharged,~~
16 ~~or~~

17 [~~(B) was terminated by or retired or resigned~~
18 ~~from a law enforcement agency and the separation was for a~~
19 ~~documented performance problem and was not because of a reduction~~
20 ~~in workforce or an at-will employment decision.~~

21 [~~(3) "Dishonorably discharged" means a license holder~~
22 ~~who:~~

23 [~~(A) was terminated by a law enforcement agency~~
24 ~~or retired or resigned in lieu of termination by the agency in~~
25 ~~relation to allegations of criminal misconduct; or~~

26 [~~(B) was terminated by a law enforcement agency~~
27 ~~or retired or resigned in lieu of termination by the agency for~~

1 ~~insubordination or untruthfulness.]~~

2 (c) The commission by rule may further specify the
3 circumstances and nature of a separation that must be included in
4 the report as [~~constitute honorably discharged, dishonorably~~
5 ~~discharged, and generally discharged within the definitions]~~
6 provided by Subsection (b).

7 (c-1) The commission must indicate on any report received
8 under Subsection (a) whether the license holder submitted a
9 statement under Section 1701.4525.

10 (d) The head of the law enforcement agency from which a
11 license holder [~~resigns, retires, is terminated, or~~] separates for
12 reasons other than death, or the head's designee, shall provide to
13 the license holder a copy of the report. The report must be
14 provided to the license holder not later than the seventh business
15 day after the date the license holder:

16 (1) [~~resigns, retires, is terminated, or~~] separates
17 from the agency; and

18 (2) exhausts all administrative appeals available to
19 the license holder, if applicable.

20 (g) The head of a law enforcement agency or the head's
21 designee must submit a report under this section each time a person
22 licensed under this chapter [~~resigns, retires, is terminated, or~~]
23 separates for any [~~other~~] reason from the agency. The report is an
24 official government document.

25 SECTION 5. Section 1701.4525, Occupations Code, is amended
26 to read as follows:

27 Sec. 1701.4525. LICENSE HOLDER STATEMENT REGARDING

1 ~~[PETITION FOR CORRECTION OF]~~ REPORT~~[, HEARING]~~. (a) A person who
2 is the subject of an employment termination report maintained by
3 the commission under this subchapter may contest information
4 contained in the report by submitting to the law enforcement agency
5 and to the commission a written statement ~~[petition]~~ on a form
6 prescribed by the commission ~~[for a correction of the report]~~ not
7 later than the 30th day after the date the person receives a copy of
8 the report. The commission shall adopt rules prescribing the
9 manner in which a license holder may file an amended statement based
10 on new information.

11 (b) A statement submitted by a license holder under
12 Subsection (a) is confidential and not subject to disclosure under
13 Chapter 552, Government Code, unless the license holder expressly
14 elects to make the information available to the public ~~[On receipt~~
15 ~~of the petition, the commission shall refer the petition to the~~
16 ~~State Office of Administrative Hearings]~~.

17 (c) ~~[(d) A proceeding to contest information in an~~
18 ~~employment termination report is a contested case under Chapter~~
19 ~~2001, Government Code.~~

20 ~~[(e) In a proceeding to contest information in an employment~~
21 ~~termination report for a report based on alleged misconduct, an~~
22 ~~administrative law judge shall determine if the alleged misconduct~~
23 ~~occurred by a preponderance of the evidence regardless of whether~~
24 ~~the person who is the subject of the report was terminated or the~~
25 ~~person resigned, retired, or separated in lieu of termination. If~~
26 ~~the alleged misconduct is not supported by a preponderance of the~~
27 ~~evidence, the administrative law judge shall order the commission~~

1 ~~to change the report. The commission shall send the changed report~~
2 ~~to the law enforcement agency that prepared the original employment~~
3 ~~termination report. The law enforcement agency shall replace the~~
4 ~~original employment termination report with the changed report.~~

5 ~~[(f)]~~ The commission shall adopt rules for the
6 administration of this section.

7 ~~[(g) The commission is not considered a party in a~~
8 ~~proceeding conducted by the State Office of Administrative Hearings~~
9 ~~under this section.]~~

10 SECTION 6. Section [1701.454\(a\)](#), Occupations Code, is
11 amended to read as follows:

12 (a) Except as otherwise provided by this subchapter, all
13 ~~[All]~~ information submitted to the commission under this
14 subchapter, other than the nature of a license holder's separation
15 as described by Section [1701.452\(b\)](#), is confidential and is not
16 subject to disclosure under Chapter [552](#), Government Code, unless
17 the person resigned or was terminated due to substantiated
18 incidents of excessive force or violations of the law other than
19 traffic offenses.

20 SECTION 7. Section [1701.4521](#), Occupations Code, is
21 repealed.

22 SECTION 8. Not later than December 1, 2023, the Texas
23 Commission on Law Enforcement shall:

24 (1) adopt rules necessary to implement the changes in
25 law made by this Act; and

26 (2) adopt the model policy required by Section
27 [1701.4511](#), Occupations Code, as added by this Act.

1 SECTION 9. Not later than January 1, 2024, each law
2 enforcement agency in this state shall adopt the policy required by
3 Section 1701.4511, Occupations Code, as added by this Act.

4 SECTION 10. The changes in law made by this Act apply only
5 to the separation or hiring of a license holder that occurs on or
6 after January 1, 2024. A separation or hiring that occurs before
7 January 1, 2024, is governed by the law in effect immediately before
8 the effective date of this Act, and the former law is continued in
9 effect for that purpose.

10 SECTION 11. This Act takes effect September 1, 2023.