

By: King of Hemphill

H.B. No. 4966

A BILL TO BE ENTITLED

AN ACT

relating to law enforcement agency personnel records and standards of hiring and separating peace officers.

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

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

Sec. 1701.162. RECORDS AND AUDIT REQUIREMENTS. (a) The commission is entitled to access records maintained under Sections 1701.303, 1701.306, ~~and~~ 1701.310, and Subchapter J by an agency hiring a person to be an officer or county jailer, including records that relate to age, education, physical standards, citizenship, experience, and other matters relating to competence and reliability, as evidence of qualification for licensing of an officer or county jailer.

SECTION 2. Section 1701.451, Occupations Code, is amended by amending Subsection (a) to read as follows:

Section 1701.451. PREEMPLOYMENT PROCEDURE. (a) Before a law enforcement agency may hire a person licensed under this chapter, the agency must, on a form and in the manner prescribed by the commission:

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

(2) request from the commission and any other

1 applicable person information required to be reviewed under this
2 section; and

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

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

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

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

15 (ii) employment termination reports and
16 licensee statements on reports maintained by the commission under
17 this subchapter;

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

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

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

26 (vi) criminal history record information;

27 (vii) information on pending warrants as

1 available through the Texas Crime Information Center and National
2 Crime Information Center;

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

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

8 (x) proof of United States citizenship;
9 ~~and~~

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

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

15 Section 1701.4511. PERSONNEL FILE. (a) A law enforcement
16 agency shall maintain a personnel file on each licensee. The
17 personnel file must contain any letter, memorandum, or document
18 relating to:

19 (1) a commendation, congratulation, or honor bestowed
20 on the licensee by a member of the public or by the employing agency
21 for an action, duty, or activity that relates to the person's
22 official duties;

23 (2) any misconduct by the licensee if the letter,
24 memorandum, or document is from the employing agency and if the
25 misconduct resulted in disciplinary action by the employing agency;
26 and

27 (3) the periodic evaluation of the licensee by a

1 supervisor.

2 (b) A letter, memorandum, or document relating to alleged
3 misconduct by the licensee may not be placed in the person's
4 personnel file if the employing agency determines that there is
5 insufficient evidence to sustain the charge of misconduct.

6 (c) A letter, memorandum, or document relating to
7 disciplinary action taken against the licensee or to alleged
8 misconduct by the licensee that is placed in the person's personnel
9 file as provided by Subsection (a)(2) must include a description of
10 the evidence supporting the disciplinary action or charge alleged
11 misconduct and a reference to the law, rule, or agency policy
12 alleged to have been violated. The chief administrator or their
13 designee:

14 (1) shall remove the letter, memorandum, or document
15 relating to disciplinary action or alleged misconduct if other law
16 requires removal; or

17 (2) shall, within 30 days after the date of the
18 inclusion of the letter, memorandum, or document relating to
19 disciplinary action or alleged misconduct, notify the affected
20 licensee. The licensee may, on or before the 15th day after the
21 date of receipt of the notification, file a written response to the
22 negative letter, memorandum, document, or other notation.

23 (d) If a negative letter, memorandum, document, or other
24 notation of negative impact is included in a licensee's personnel
25 file, the chief administrator or their designee shall, within 30
26 days after the date of the inclusion, notify the affected licensee.
27 The licensee may, on or before the 15th day after the date of

1 receipt of the notification, file a written response to the
2 negative letter, memorandum, document, or other notation.

3 (e) The licensee is entitled, on request, to a copy of any
4 letter, memorandum, or document placed in the person's personnel
5 file. The law enforcement agency may charge the licensee a
6 reasonable fee not to exceed actual cost for any copies provided
7 under this subsection.

8 (f) The chief administrator or their designee may not
9 release any information contained in a licensee's personnel file
10 without first obtaining the person's written permission, unless the
11 release of the information is required by law.

12 (g) A law enforcement agency may maintain a confidential
13 personnel file on a licensee employed by the agency for the agency's
14 use. Except as provided by Subsection (h), the agency may not
15 release any information contained in the agency file to any agency
16 or person requesting information relating to a licensee. The
17 agency shall refer to the chief administrator or their designee a
18 person or agency that requests information that is maintained in
19 the licensee's personnel file.

20 (h) With the written consent of a licensee, a law
21 enforcement agency hiring a licensee is entitled to view the
22 contents of the licensee's personnel file maintained under
23 Subsection (g) as provided by Section [1701.451](#).

24 (i) The commission may adopt rules for the administration of
25 this section.

26 SECTION 4. Sections [1701.452](#)(a), (b), (c), (d), and (g),
27 Occupations Code, are amended to read as follows:

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

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

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

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

22 (1) The nature of a license holder's separation
23 indicated in the report may be described as "retired," "resigned,"
24 "terminated," or "deceased." ~~["Honorably discharged" means a~~
25 ~~license holder who, while in good standing and not because of~~
26 ~~pending or final disciplinary actions or a documented performance~~
27 ~~problem, retired, resigned, or separated from employment with or~~

1 ~~died while employed by a law enforcement agency.]~~

2 (2) The circumstances indicated in the report must
3 include whether the license holder's separation [~~"Generally~~
4 ~~discharged" means a license holder who~~]:

5 (A) occurred during a pending investigation into
6 the license holder's conduct [~~was terminated by, retired or~~
7 ~~resigned from, or died while in the employ of a law enforcement~~
8 ~~agency and the separation was related to a disciplinary~~
9 ~~investigation of conduct that is not included in the definition of~~
10 ~~dishonorably discharged~~]; [~~or~~]

11 (B) was the result of a substantiated instance of
12 a violation of the law, other than traffic offenses;

13 (C) was the result of a substantiated instance of
14 a violation of a use of force policy of the law enforcement agency;

15 (D) was the result of a substantiated instance
16 misconduct; or

17 (E) was related to a violation of any other
18 commission rule, regulation, or policy [~~was terminated by or~~
19 ~~retired or resigned from a law enforcement agency and the~~
20 ~~separation was for a documented performance problem and was not~~
21 ~~because of a reduction in workforce or an at-will employment~~
22 ~~decision~~].

23 ~~[(3) "Dishonorably discharged" means a license holder~~
24 ~~who:~~

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

1 ~~[(B) was terminated by a law enforcement agency~~
2 ~~or retired or resigned in lieu of termination by the agency for~~
3 ~~insubordination or untruthfulness].~~

4 (c) The commission by rule may further specify the nature
5 and circumstances that must be included in the report ~~[that~~
6 ~~constitute honorably discharged, dishonorably discharged, and~~
7 ~~generally discharged within the definitions]~~ provided by
8 Subsection (b). If the license holder submits a statement on the
9 report under Section 1701.4525, the commission must indicate on the
10 report that a statement has been filed.

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

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

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

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

26 SECTION 5. Section 1701.4525(a), Occupations Code, is
27 amended to read as follows:

1 Sec. 1701.4525. LICENSEE STATEMENT ON [~~PETITION FOR~~
2 ~~CORRECTION OF~~] REPORT[, ~~HEARING~~]. (a) A person who is the subject
3 of an employment termination report maintained by the commission
4 under this subchapter may contest information contained in the
5 report by submitting to the law enforcement agency and to the
6 commission a written statement [~~petition~~] on a form prescribed by
7 the commission [~~for a correction of the report~~] not later than the
8 30th day after the date the person receives a copy of the report. A
9 person who submits a written statement may file an amendment to the
10 statement after the 30th day after the date the person receives a
11 copy of the report in a manner prescribed by the commission. The
12 statement is confidential and is not subject to disclosure under
13 Chapter 552 unless the person who is the subject of an employment
14 termination report expressly elects to make the information
15 available to the public. [~~On receipt of the petition, the~~
16 ~~commission shall refer the petition to the State Office of~~
17 ~~Administrative Hearings.~~]

18 SECTION 6. Section 1701.454(a), Occupations Code, is
19 amended to read as follows:

20 Sec. 1701.454. CONFIDENTIALITY. (a) Except for the nature
21 of a person's separation under Section 1701.452(b)(1), all [~~All~~]
22 information submitted to the commission under this subchapter is
23 confidential and is not subject to disclosure under Chapter 552,
24 Government Code, unless the person resigned or was terminated due
25 to substantiated incidents of excessive force or violations of the
26 law other than traffic offenses.

27 SECTION 7. The following provisions of the Occupations Code

1 are repealed:

2 (1) Section 1701.4521; and

3 (2) Section 1701.4525(d), (e), and (g).

4 SECTION 8. (a) Not later than December 1, 2023, the Texas
5 Commission on Law Enforcement shall adopt the rules necessary to
6 implement Section 1701.4511, Occupations Code, as added by this Act
7 and Sections 1701.162, 1701.451, 1701.452, and 1701.4525,
8 Occupations Code, as amended by this Act.

9 (b) The changes in law made by this Act apply only to the
10 separation or hiring of a person by a law enforcement agency that
11 occurs on or after January 1, 2024. The separation or hiring of a
12 person by a law enforcement agency that occurs before that date is
13 governed by the law in effect immediately before the effective date
14 of this Act, and the former law is continued in effect for that
15 purpose.

16 SECTION 9. This Act takes effect September 1, 2023.