

BILL ANALYSIS

Senate Research Center

S.B. 568
By: Deuell
Health & Human Services
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Enrolled

AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Regulation of personal emergency response services, previously regulated by the Texas Commission on Private Security, was transferred during the 78th Legislature, 3rd Called Session, 2003, to the Department of State Health Services. Following the implementation of the transfer, the state agency and the industry worked to implement the transfer and adopt rules.

S.B. 568 seeks to eliminate statutory provisions that are no longer relevant and to update the terms and nomenclature to reflect current use and best practice.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Private Security Board in SECTION 7 (Section 1702.288, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 9 (Section 781.051, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Department of State Health Services in SECTION 9 (Sections 781.155 and 781.254, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 214.194, Local Government Code, as follows:

Sec. 214.194. New heading: MUNICIPAL PERMIT FEE GENERALLY. (a) Creates this subsection from existing text. Requires the fee, if a municipality adopts an ordinance that requires a person to pay an annual fee to obtain a permit from the municipality before the person may use an alarm system in the municipality, to be used for the general administration of this subchapter, including the provision of responses generally required to implement this subchapter other than specific responses to false alarms.

(b) Prohibits a municipal permit fee imposed under this section from exceeding the rate of \$50 a year for a residential location.

SECTION 2. Amends the heading to Section 214.195, Local Government Code, to read as follows:

Sec. 214.195. NONRENEWAL OR REVOCATION OF PERMIT AND TERMINATION OF MUNICIPAL RESPONSE; DISCRIMINATION PROHIBITED.

SECTION 3. Amends Sections 214.195(a) and (d), Local Government Code, as follows:

(a) Prohibits a municipality, except as provided by Subsection (d), from terminating its law enforcement response to a residential permit holder because of excess false alarms if the false alarm fees are paid in full.

(d) Authorizes a municipality to revoke or refuse to renew the permit of an alarm system that has had eight or more false alarms during the preceding 12-month period. Deletes

existing text authorizing a municipality to set standards for systems and to refuse to permit particular systems which have a history of unreliability.

SECTION 4. Amends Subchapter F, Chapter 214, Local Government Code, by adding Section 214.1955, as follows:

Sec. 214.1955. MULTIUNIT HOUSING FACILITIES. (a) Prohibits a municipality from refusing to issue an alarm system permit for a residential location solely because the residential location is an individual residential unit located in a multiunit housing facility.

(b) Requires the municipality, in issuing an alarm system permit for an alarm installed in an individual residential unit of a multiunit housing facility, to issue the permit to the person occupying the individual residential unit.

(c) Authorizes a municipality to impose a penalty under Section 214.197 for the signaling of a false alarm on the premises of a multiunit housing facility for a facility other than an individual residential unit only if the permit holder is given certain notification.

SECTION 5. Amends Section 214.197, Local Government Code, as follows:

Sec. 214.197. New heading: PENALTIES FOR FALSE ALARMS. Authorizes a municipality to impose a penalty for the signaling of a false alarm by a burglar alarm system, if at least three false alarms have occurred during the preceding 12-month period, rather than prohibiting said penalty unless five false alarms have occurred. Prohibits the amount of the penalty for the signaling of a false alarm as described by Section 214.196 from exceeding a certain amount. Deletes existing text of Subsection (b).

SECTION 6. Amends Subchapter F, Chapter 214, Local Government Code, by adding Sections 214.198, 214.199, and 214.200, as follows:

Sec. 214.198. VERIFICATION. Authorizes a municipality to require an alarm systems monitor to attempt to contact the occupant of the alarm system location twice before the municipality responds to the alarm signal.

Sec. 214.199. EXCEPTION OF MUNICIPALITY FROM ALARM SYSTEM RESPONSE. Prohibits the governing body of a municipality from adopting an ordinance providing that law enforcement personnel of the municipality will not respond to any alarm signal indicated by an alarm system in the municipality unless, before adopting the ordinance, the governing body of the municipality takes certain actions. Prohibits a municipality that adopts an ordinance under this section from imposing or collecting any fine, fee, or penalty otherwise authorized by this subchapter.

Sec. 214.200. PRIORITY OR LEVEL OF RESPONSE NOT AFFECTED; LIABILITY OF MUNICIPALITY FOR NONRESPONSE. Provides that nothing in this subchapter affects the priority or level of response provided by a municipality to a permitted location or waives the governmental immunity provided by law for a municipality. Provides that a municipality that does not respond to an alarm signal is not liable for damages that may occur relating to the cause of the alarm signal.

SECTION 7. Amends Subchapter L, Chapter 1702, Occupations Code, by adding Sections 1702.286, 1702.287, and 1702.288, as follows:

Sec. 1702.286. DUTIES OF ALARM SYSTEMS COMPANY. (a) Requires an alarm systems company, on the installation or activation of an alarm system, to distribute specific information to the occupant of the alarm system location.

(b) Requires an alarm systems company to notify the municipality in which the alarm system is located of an installation or activation of an alarm system not later than the 30th day after the date of the installation or activation. Requires the alarm systems company to provide specific information to the municipality.

(c) Provides that information provided to a governmental body under this section is confidential and subject to disclosure only as provided under Section 1702.284 (Alarms Systems Records Confidential).

(d) Provides that an alarm systems company commits a Class C misdemeanor if the company violates Subsection (a) or (b).

(e) Provides that the duties imposed by this section on an alarm systems company do not apply to the installation or activation of a personal emergency response system, as defined under Section 1702.331.

Sec. 1702.287. DETECTION DEVICE CONTROL PANELS; MINIMUM STANDARDS. Prohibits an alarm systems company from installing any alarm system on or after January 1, 2007, that includes a detection device control panel unless the control panel meets or exceeds the standards of the American National Standards Institute for false alarm reduction.

Sec. 1702.288. NOTICE OF CERTAIN INFORMATION TO RECIPIENT OF ALARM SYSTEM SERVICES. (a) Requires the Texas Private Security Board (board) to adopt rules in accordance with this section that require a license holder acting as an alarm systems company under this chapter to inform each of the license holder's clients that the client is entitled to receive a written contract for alarm system services that contains the client's fee arrangement and other relevant information about services to be rendered.

(b) Requires the rules to require that a written contract for alarm system services shall be furnished to a client in accordance with Subsection (a) not later than the seventh day after the date the client requests the written contract.

(c) Requires the rules to require that the written contract for services be dated and signed by the owner or manager of an alarm systems company or a person expressly authorized by the owner or manager to sign written contracts on behalf of the company.

(d) Requires the rules to require that, not later than the seventh day after the date of entering into a contract for services regulated by the board with another alarm systems company or alarm systems monitor and sets forth requirements for an alarm systems company regarding certain notifications.

(e) Sets forth distribution requirements for the rules to require that notice be provided to a recipient of services.

SECTION 8. Amends Subchapter N, Chapter 1702, Occupations Code, by adding Section 1702.331, as follows:

Sec. 1702.331. PERSONAL EMERGENCY RESPONSE SYSTEMS. Defines "personal emergency response system." Provides that this chapter does not apply to certain individuals or entities.

SECTION 9. Amends Subtitle B, Title 9, Health and Safety Code, by adding Chapter 781, as follows:

CHAPTER 781. PERSONAL EMERGENCY RESPONSE SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 781.001. DEFINITIONS. Defines "alarm system," "branch office," "commissioner," "department," "manager," and "personal emergency response system."

[Reserves Sections 781.002-781.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 781.051. GENERAL POWERS AND DUTIES. Sets forth the general powers and duties of the Department of State Health Services (department) and the executive commissioner of the Health and Human Services Commission (commissioner) under this chapter.

[Reserves Sections 781.052-781.100 for expansion.]

SUBCHAPTER C. LICENSING

Sec. 781.101. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDER LICENSE REQUIRED. Prohibits a person, unless that person holds a license issued under this chapter, from acting as or offering to perform the services of a personal emergency response system provider.

Sec. 781.102. PERSONAL EMERGENCY RESPONSE SYSTEM PROVIDER. Provides that a person acts a personal emergency response system provider for the purposes of this chapter if that person sells, installs, services, monitors, or responds to a personal emergency response system.

Sec. 781.103. APPLICATION FOR LICENSE. Requires an application for a license under this chapter to be on a form prescribed by the commissioner and sets forth requirements for an application for a license under this chapter.

Sec. 781.104. ISSUANCE OF BRANCH OFFICE LICENSE. Requires a license holder to notify the department in writing of the establishment of a branch office and file in writing with the department the address of the branch office. Requires the department, on application by a license holder, to issue a branch office license.

Sec. 781.105. FORM OF LICENSE. Requires the commissioner to prescribe the form of a license, including a branch office license and provides specific information which must be included in the license.

Sec. 781.106. GENERAL QUALIFICATIONS FOR LICENSE. Sets forth the general qualifications for an application for a license under this chapter and authorizes the department to deny certain applications for specific reasons.

Sec. 781.107. MANAGER REQUIRED. Requires a license holder's business to be operated under the direction and control of one manager and prohibits a license holder from applying to designate more than one individual to serve as manager of the license holder's business. Prohibits an individual from acting as manager until the individual has made a satisfactory showing to the department that the individual meets certain requirements.

Sec. 781.108. INSURANCE. (a) Requires a license holder to maintain on file with the department at all times the certificate of insurance required by this chapter.

(b) Requires the department to immediately suspend the license of a license holder who violates Subsection (a).

(c) Authorizes the department to rescind the license suspension if the license holder provides proof to the department that the insurance coverage is still in effect and requires said proof to be provided in a form satisfactory to the department not later than the 10th day after the license is suspended.

(d) Prohibits the department, after suspension of the license, from reinstating the license until an application, in the form prescribed by the commissioner, is filed accompanied by a proper insurance certificate. Authorizes the department to deny the application notwithstanding the applicant's compliance with this section for certain reasons.

Sec. 781.109. INSURANCE REQUIREMENT. Prohibits the department from issuing a license unless the applicant files with the department certain information regarding the applicant's insurance coverage showing said coverage satisfies specific minimum requirements. Provides that an insurance certificate executed and filed with the department under this chapter remains in effect until the insurer terminates future liability by providing to the department at least 10 days' notice of the intent to terminate liability.

Sec. 781.110. LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL REGULATIONS. Provides that a license holder or employee of a license holder is exempt from certain local regulations, with exceptions.

[Reserves Sections 781.111-781.150 for expansion.]

SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 781.151. REGISTRATION REQUIRED. Provides that certain individuals must register with the department.

Sec. 781.152. ALARM SYSTEMS INSTALLER. Provides that, for the purposes of this chapter, an individual acts as an alarm systems installer if the individual installs, maintains, or repairs a personal emergency response system.

Sec. 781.153. ALARM SYSTEMS MONITOR. Provides that, for the purposes of this chapter, an individual acts as an alarm systems monitor if the individual monitors a personal emergency response system and that this section does not apply to certain individuals.

Sec. 781.154. SECURITY SALESPERSON. Provides that, for the purposes of this chapter, an individual acts as a security salesperson if the individual is employed by a security services contractor to sell services offered by the contractor and enters a clients residence at any time during the person's employment.

Sec. 781.155. QUALIFICATIONS FOR REGISTRATION. Sets forth qualifications for registration under this subchapter and authorizes the department to adopt additional qualifications by rule.

Sec. 781.156. APPLICATION FOR REGISTRATION. Sets forth requirements for an application for registration and requires the employer of the applicant to make a reasonable attempt to verify the application information.

[Reserves Sections 781.157-781.200 for expansion.]

SUBCHAPTER E. GENERAL PROVISIONS APPLICABLE TO REGULATED PERSONS

Sec. 781.201. CRIMINAL HISTORY CHECK. Requires the department to conduct a specific criminal history check on each applicant for a license or registration. Provides that an applicant is ineligible for a license or registration if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license or registration. Provides that a license of registration issued by the department is conditional on receipt of criminal history information.

Sec. 781.202. ALARM SYSTEMS RECORDS CONFIDENTIAL. Provides that certain alarm systems records and information are confidential and may be disclosed only to the department or as otherwise required by state law or court order.

Sec. 781.203. FALSE REPRESENTATION. Prohibits a person from falsely representing that the person is employed by a license holder, or is licensed or registered under this chapter.

Sec. 781.204. PROHIBITION AGAINST CERTAIN POLITICAL SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY. Prohibits a political subdivision, with certain exceptions, from offering alarm system sales, service, installation, or monitoring unless it was providing monitoring services to residents within the boundaries of the political subdivision on September 1, 1999. Prohibits any fee charged by the political subdivision from exceeding the cost of the monitoring. Provides that the limitations of this section do not apply to a political subdivision in a county with a population of less than 80,000 or to a political subdivision where monitoring is not otherwise provided or available.

[Reserves Sections 781.205-781.250 for expansion.]

SUBCHAPTER F. EXPIRATION; RENEWAL

Sec. 781.251. EXPIRATION. Provides a timeline for the expiration of a license or registration under this chapter.

Sec. 781.252. LICENSE RENEWAL. Provides guidelines for an eligible person to renew a license under this chapter based on the date the license will expire or the length of time the license has been expired and requirements for the department in notifying a license holder of the impending expiration of the license.

Sec. 781.253. RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER. Provides specific license renewal guidelines for a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for two years preceding the date the person applies for renewal, including that the person is required to pay to the department a fee that is equal to two times the normally required renewal fee for the license.

Sec. 781.254. STAGGERED RENEWAL; PRORATION OF LICENSE FEE. Authorizes the department, by rule, to adopt a system under which licenses expire on various dates during the year and requires the department to, for the year in which the expiration date of a license is changed, to prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. Provides that, on renewal of the license on the new expiration date, the total renewal fee is payable.

Sec. 781.255. EFFECT OF LICENSE RENEWAL ON DISCIPLINARY ACTION. Provides that renewal of a license does not prohibit the bringing of a disciplinary proceeding for an act committed before the effective date of the renewal.

Sec. 781.256. EFFECT OF SUSPENSION ON LICENSE RENEWAL REQUIREMENTS. Provides that a suspended license expires on the license's expiration date, may not be renewed as provided by this chapter, and that a renewal does not entitle the license holder, while the license remains suspended and until the license is reinstated, to engage in the licensed activity or in conduct in violation of the order of judgment by which the license was suspended.

Sec. 781.257. REGISTRATION RENEWAL. Provides guidelines for eligible persons to renew a registration under this chapter based on the date the registration will expire or the length of time the registration has been expired and for a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for two years preceding the date the person applies for renewal. Sets forth requirements for the department in notifying a registered individual of the impending expiration of the registration.

Sec. 781.258. CONTINUING EDUCATION. Sets forth requirements for the department in recognizing, preparing, or administering continuing education programs for license holders and registrants and requirements for license holders and registrants in

participating in such programs and submitting evidence of compliance with the department's requirements regarding such programs.

[Reserves Sections 781.259-781.300 for expansion.]

SUBCHAPTER G. EXCEPTIONS

Sec. 781.301. GOVERNMENT EMPLOYEES. Provides that this chapter does not apply to an officer or employee of the United States, this state, or a political subdivision of this state while that person is performing official duties.

Sec. 781.302. LAW ENFORCEMENT PERSONNEL. Provides that this chapter does not apply to specific law enforcement personnel.

Sec. 781.303. MEDICAL ALERT SERVICES. Provides that this chapter does not apply to an entity that is a hospital or a wholly owned subsidiaries or affiliates of hospitals licensed under Chapter 241, Health and Safety Code.

[Reserves Sections 781.304-781.350 for expansion.]

SUBCHAPTER H. DISCIPLINARY PROCEDURES

Sec. 781.351. GROUNDS FOR DISCIPLINARY ACTION. Authorizes the department, for a violation of this chapter or a rule adopted under this chapter, to take certain disciplinary actions. Sets forth specific actions which would require disciplinary action.

Sec. 781.352. HEARING. Entitles a person, if the department proposes to revoke or suspend the license or registration, to a hearing before a hearings officer appointed by the State Office of Administrative Hearings and requires the commissioner to prescribe procedures for appealing to the department a decision to revoke or suspend a license or registration.

Sec. 781.353. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this chapter to suspend or revoke a license or registration is governed by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 781.354. PROBATION. Authorizes the department to require a person whose license or registration suspension is probated to meet certain requirements established by the department.

Sec. 781.355. EFFECT OF SUSPENSION; MONITORING OF EXISTING ALARM CONTRACTS. Authorizes a license holder, subject to expiration of the license under Section 781.251, to continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

[Reserves Sections 781.356-781.400 for expansion.]

SUBCHAPTER I. ENFORCEMENT

Sec. 781.401. INJUNCTION. Requires the department to prosecute or file suit to enjoin a violation of this chapter or a rule adopted under this chapter.

Sec. 781.402. CIVIL PENALTY. Provides for a civil penalty for violation of this chapter or a rule adopted under this chapter, requires the attorney general, at the request of the department, to bring an action to recover a civil penalty authorized under this section, and authorizes the attorney general to recover reasonable expenses incurred in obtaining a civil penalty under this section, including court costs, reasonable attorney's fees, investigative costs, witness fees, and deposition expenses.

Sec. 781.403. OFFENSE. Provides that a person commits an offense if the person knowingly falsifies fingerprints or photographs submitted to the department, contracts with or employs a person who is required to hold a license or registration under this chapter knowing that the person does not hold the required license or registration or who otherwise, at the time of contract or employment, is in violation of this chapter, or violates a provision of this chapter. Provides that an offense under Subsection (a)(1) is a felony of the third degree, an offense under Subsection (a)(2) is a Class A misdemeanor, and an offense under Subsection (a)(3) is a Class A misdemeanor, except that the offense is a felony of the third degree if the person has previously been convicted under this chapter for failing to hold a license or registration that the person is required to hold under this chapter.

Sec. 781.404. VENUE. Authorizes an offense under this chapter to be prosecuted in Travis County or in the county in which the offense occurred.

[Reserves Sections 781.405-781.450 for expansion.]

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 781.451. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the department to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 781.452. AMOUNT OF ADMINISTRATIVE PENALTY. Sets forth guidelines for the amount of the administrative penalty, based on certain criteria.

Sec. 781.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the commissioner or the commissioner's designee, upon determining that a violation occurred, to issue to the department a report containing specific information relating to that determination and requires the commissioner or commissioner's designee, within 14 days of issuing the report, to give written notice, which includes specific information, of the report to the person.

Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within 10 days of receiving the notice and in writing, to accept the determination and penalty or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both. Requires the department, by order and if the person accepts the determination and penalty, to approve the determination and impose the penalty.

Sec. 781.455. HEARING. Sets forth requirements for providing notice of, scheduling, and holding a hearing under this section, including that the administrative law judge required to hold the hearing is required to make findings of fact and conclusions of law and promptly issue to the department a proposal for a decision about the occurrence of the violation and the amount of the proposed administrative penalty.

Sec. 781.456. DECISION BY DEPARTMENT. Authorizes the department, based on the findings of fact, conclusions of law, and proposal for a decision by the administrative law judge, to determine, by order, that a violation occurred and impose an administrative penalty or that a violation did not occur. Requires the notice of the department's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 781.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Provides options for the person in response to the department's decision and guidelines for carrying out such options. Authorizes the commissioner or the commissioner's designee, if the person chooses to request the court to stay enforcement of the penalty by filing the required affidavit with the court, to file with the court, within five days of receiving a copy of the sworn affidavit, a contest to the affidavit. Requires the court to hold a hearing on the alleged facts in the affidavit as soon as practicable and to take certain actions based on the findings of said hearing.

Sec. 781.458. COLLECTION OF PENALTY. Authorizes the penalty, if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, to be collected and authorizes the attorney general to sue to collect the penalty.

Sec. 781.459. DETERMINATION BY COURT. Authorizes the court, upon sustaining the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 781.460. REMITTANCE OF PENALTY AND INTEREST. Sets forth requirements for remittance of the penalty paid and interest accrued if the person paid the administrative penalty and the amount of the penalty is reduced or not upheld by the court.

Sec. 781.461. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 10. Repealer: Section 1702.006 (Texas Department of Health), Occupations Code.

SECTION 11. Makes application of Section 1702.286, Occupations Code, as added by this Act, prospective to January 1, 2006.

SECTION 12. (a) Provides that a license or registration issued under Chapter 1702, Occupations Code, immediately before the effective date of this Act to a person listed in Subsection (b) shall remain valid under Chapter 781, Health and Safety Code, as added by this Act.

(b) Sets forth the persons and entities to which Subsection (a) applies.

(c) Makes application of the change in law made by this Act to disciplinary action regarding a personal emergency response system pending under Chapter 1702, Occupations Code, prospective.

(d) Makes application of the change in law made by this Act to an action involving the prosecution of an offense or any other enforcement action under Subchapter P or Q, Chapter 1702, Occupations Code, prospective.

SECTION 13. Effective date: September 1, 2005.