

## **BILL ANALYSIS**

S.B. 568  
By: Deuell  
Public Health  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Regulation of personal emergency response services, previously regulated by the Texas Commission on Private Security (CPS), was transferred during the 78th Legislature, 3rd Called Session, 2003, to the Department of State Health Services (DSHS). 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**

It is the committee's opinion that rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Department of State Health Services in SECTION 2 of this bill.

### **ANALYSIS**

The bill adds a section to the Occupations Code that defines personal emergency response systems (PERS) and states that the chapter does not apply to certain individuals or entities. It also adds to the Health and Safety Code definitions for "alarm system," "branch office," "commissioner," "department," "manager," and "personal emergency response system." The bill sets out general powers and duties of DSHS relating to PERS. The bill sets out general powers and duties to the executive commissioner of the Health and Human Services Commission, as well as the adoption of rules and establishing of fees to administer this chapter, and the prescribing of forms as required by this chapter.

The bill sets forth licensure requirements to perform the services of an alarm systems company that sells, installs, services, monitors, or responds to a PERS. The bill requires certain information on an application for a license that is in the form prescribed by the commissioner, as well as the issuance of a branch office license and the information required on the license form. The application must include full name, social security number, and address of applicant; name under which the applicant intends to do business; type of business that the applicant will engage in; name and address of each partner, officer, director of the applicant, and manager; and two sets of finger prints of the applicant; or, if applicable, each partner and shareholders that owns twenty five percent interest in the applicant; statement of applicant's experience qualification; record of applicants convictions for any offense that is a Class B misdemeanor or greater; and, finally, any other information, evidence, or statements or documents required by the department.

The bill contains general qualifications for a license, which require a license applicant or the applicant's manager to be at least 18 years of age. The applicant or applicant's manager must not have been convicted of a Class A misdemeanor or greater offense in any jurisdiction, nor a Class B misdemeanor or equivalent offense for which the fifth anniversary of the conviction has not occurred before the date of the application. It also would not allow an applicant to have been found by a court to be incompetent due to a mental disease or defect, or be suffering from habitual drunkenness or narcotic addiction or dependence. Applicants may not have been discharged for reasons other than honorable conditions. The bill allows the department to deny license applications for Class B misdemeanor or equivalent offense convictions if the fifth anniversary of the conviction occurred before the date of the application, notwithstanding the granting of a full pardon for the conviction.

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The bill states that a license holder's business must be operated under the direction and control of one manager. It also specifies that the individual to serve as manager may not act as manager until that individual has made a satisfactory showing that he or she has satisfied the general license requirements and not engaged in any conduct that is grounds for a disciplinary action as set forth by the bill.

The bill requires a license holder to maintain on file with DSHS a certificate of insurance, and DSHS may not issue a license unless the applicant files certain insurance requirements. The insurance policy must meet minimum requirements to cover bodily injury and property damage; personal injury; and an aggregate amount for all occurrences. An insurance certificate filed with DSHS remains in effect until the insurer terminates the future liability and provides at least 10 days notice of intent to terminate. The bill also lists certain exemptions from local regulations as well as certain registration requirements, such as requiring those individuals employed as alarm systems companies, alarm systems installers, managers or branch managers, or security salesmen who enter a client's residence while performing his or her responsibilities to register with the department. Owners, officers, partners, or shareholders of license holders also must register with the department. The bill describes the duties of an alarm systems installer, alarm systems monitor, and security salesperson.

The bill also requires certain qualifications for registration and the information to be included in the application for registration. The application must include the applicant's full name; residence address and telephone number; date and place of birth; and social security number; a statement that lists each name used by the applicant, other than the name by which the applicant is known at the time of application, and an explanation stating each place where each name was used, the date of each use, and a full explanation of the reasons the name was used, as well as a statement that the applicant has never used a name other than the name by which the applicant is known at the time of application; the name and address of the applicant's employer; the date employment commenced; a letter from the license holder requesting that the applicant be registered, the title of the position of the applicant with a description of duties; and finally, any other information, evidence, statement, or document required by the department.

The bill sets forth general provisions that are applicable to regulated persons, to include: criminal history check, the confidentiality of alarm systems records, false representation, a prohibition against certain political subdivisions acting as alarm systems company.

The bill also sets forth the expiration and renewal procedures for licenses by in-state and out-of-state practitioners, as well as allowing for staggered renewal and the proration of license fee. The effect of license renewal on disciplinary action as well as the effect of a suspension on license renewal requirements is provided. The procedure for registration renewal is provided, as is continuing education requirements.

The bill contains a provision that allows the chapter to not apply to an officer or employee of the United States, this state, or a political subdivision of this state while they are performing official duties, law enforcement personnel, or an entity that is a hospital or a wholly owned subsidiary or an affiliate of a licensed hospital.

The bill sets forth disciplinary procedures, including grounds for disciplinary action. It also states that if DSHS proposes to revoke or suspend a person's license or registration, that person is entitled to a hearing before a hearing officer appointed by the State Office of Administrative Hearings and procedures for appealing to DSHS a decision to revoke or suspend a license or registration. A proceeding under this bill to suspend or revoke a license or registration is governed by Chapter 2001, Government Code. The bill sets forth probation measures and the effect of suspension and the monitoring of existing alarm contracts.

The bill includes enforcement measures of injunction, civil penalty, certain transgressions for which a person commits an offense and venues of prosecution. The bill sets forth the imposition and amount of an administrative penalty, the reporting and notice of a violation and penalty, as well as the option to pay the penalty or request a hearing. The bill also sets forth hearing procedures and decisions by the department regarding whether a violation occurred, gives options following a decision to either pay or appeal, states procedures for the collection of a penalty, and determinations by the court to either uphold or reduce the amount, order the person

to pay the full or reduced amount of the penalty, or order that a penalty is not owed. It also allows for the remittance of penalty and interest, and clarifies a contested proceeding under Subchapter J, is a contested case under Chapter 2001, Government Code.

The bill repeals Section 1702.006 of the Occupations Code. The bill specifies applicability of the Health and Safety Code chapter only to PERS, and that any changes under the Act would not affect any actions brought prior to the effective date of the Act.

**EFFECTIVE DATE**

September 1, 2005.