

By: Driver

H.B. No. 2677

A BILL TO BE ENTITLED

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AN ACT

relating to certain employment records maintained by the Commission on Law Enforcement Officer Standards and Education; providing an administrative penalty.

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

SECTION 1. Section 1701.451, Occupations Code, is amended to read as follows:

Sec. 1701.451. PREEMPLOYMENT REQUEST FOR EMPLOYMENT TERMINATION REPORT AND SUBMISSION OF BACKGROUND CHECK CONFIRMATION

FORM [INQUIRY]. (a) Before a law enforcement agency may hire a person licensed under this chapter, the agency head or the agency head's designee must:

(1) make a written request to the commission for any employment termination report regarding the person that is maintained by the commission under [contact the commission to determine whether the commission has employment history records for the person required by] this subchapter; and

(2) submit to the commission on the form prescribed by the commission confirmation that the agency:

(A) conducted a criminal background check regarding the person;

(B) obtained the person's written consent for the agency to view the person's employment records;

(C) obtained from the commission any service or

1 education records regarding the person maintained by the  
2 commission; and

3 (D) contacted each of the person's previous  
4 employers.

5 (b) The written request required by Subsection (a)(1) must  
6 be on the agency's letterhead and be signed by the agency head or  
7 the agency head's designee.

8 (c) If the commission receives from a law enforcement agency  
9 a written request that complies with Subsections (a)(1) and (b),  
10 the commission employee having the responsibility to maintain any  
11 employment termination report regarding the person who is the  
12 subject of the request shall release the report to the agency.

13 ~~[This section does not authorize the commission to release~~  
14 ~~information concerning the records other than information~~  
15 ~~regarding the existence of the records.~~

16 ~~[(c) A law enforcement agency may not use information~~  
17 ~~obtained under this section to affect a person's eligibility for~~  
18 ~~employment with the agency.]~~

19 SECTION 2. Section 1701.452, Occupations Code, is amended  
20 to read as follows:

21 Sec. 1701.452. EMPLOYMENT TERMINATION REPORT. (a) The  
22 head of a law enforcement agency shall submit a report to the  
23 commission on a form prescribed by the commission regarding a  
24 person licensed under this chapter who resigns from the employment  
25 of the law enforcement agency or whose appointment with the law  
26 enforcement agency is terminated. The agency head shall include in  
27 the report:

1           (1) an explanation of the circumstances under which  
2 the person resigned or was terminated; and

3           (2) one of the following designations:

4                   (A) retired, which applies only to an officer  
5 who:

6                                   (i) left the agency while in good standing;  
7 and

8                                   (ii) is eligible to collect a pension;

9                   (B) honorably discharged, which applies only to  
10 an officer who:

11                                   (i) left the agency while in good standing  
12 to pursue other career interests or for personal reasons other than  
13 retirement; and

14                                   (ii) did not leave the agency while under  
15 investigation for a criminal violation or while facing disciplinary  
16 action, including suspension, demotion, or termination;

17                   (C) dishonorably discharged, which applies only  
18 to an officer whose employment was terminated for a violation of law  
19 or department policy or for other substantiated misconduct;

20                   (D) generally discharged, which applies only to  
21 an officer who left the agency:

22                                   (i) for less than honorable reasons but did  
23 not leave the agency because of pending or final disciplinary  
24 action; or

25                                   (ii) while under investigation for a  
26 potential criminal violation or in lieu of disciplinary action,  
27 including suspension, demotion, or termination;

1           (E) killed in the line of duty, which applies  
2 only to an officer who was killed while performing the officer's  
3 duties as a peace officer in or outside this state;

4           (F) died, which applies only to an officer who  
5 died for a reason that is not described by Paragraph (E); or

6           (G) disabled, which applies only to an officer  
7 who was unable to fulfill the officer's duties as a peace officer  
8 because of an injury or illness.

9           (b) The head of the law enforcement agency from which a  
10 person resigns or is terminated for reasons other than death shall  
11 provide to the person a copy of the report. If the person who is the  
12 subject of the employment termination report is deceased, the head  
13 of the law enforcement agency on request shall provide a copy of the  
14 report to the person's next of kin[. The person may submit a  
15 written statement to the commission to contest or explain any  
16 matter contained in the report].

17           (c) The head of a law enforcement agency must submit a  
18 report under this section each time a person licensed under this  
19 chapter resigns or is terminated from the agency. The report is an  
20 official government document.

21           SECTION 3. Subchapter J, Chapter 1701, Occupations Code, is  
22 amended by adding Section 1701.4525 to read as follows:

23           Sec. 1701.4525. REQUEST FOR CORRECTION OF REPORT;  
24 ADMINISTRATIVE PENALTY; HEARING; APPEAL. (a) A person who is the  
25 subject of an employment termination report maintained by the  
26 commission under this subchapter may contest information contained  
27 in the report by submitting to the law enforcement agency and to the

1 commission a written request for a correction of the report and any  
2 evidence contesting the information contained in the report. The  
3 commission shall allow the head of the law enforcement agency to  
4 submit to the commission any evidence rebutting the evidence  
5 submitted by the person who is the subject of the report.

6 (b) The commission may order the head of a law enforcement  
7 agency to correct a person's report in a timely manner based on  
8 information submitted to the law enforcement agency and to the  
9 commission by the person under Subsection (a). The commission may  
10 assess an administrative penalty against an agency head who fails  
11 to make a correction under this subsection in a timely manner.

12 (c) If the commission refuses to order the head of a law  
13 enforcement agency to correct the person's report, the person is  
14 entitled to a hearing conducted by the State Office of  
15 Administrative Hearings. A proceeding under this subsection to  
16 correct an employment termination report is a contested case under  
17 Chapter 2001, Government Code.

18 (d) The commission shall adopt rules for the administration  
19 of this section.

20 SECTION 4. Section 1701.454(b), Occupations Code, is  
21 amended to read as follows:

22 (b) Except as provided by this subchapter [~~subsection~~], a  
23 commission member or other person may not release the contents of a  
24 report or statement submitted under this subchapter. [~~The report~~  
25 ~~or statement may be released only by the commission employee having~~  
26 ~~the responsibility to maintain the report or statement and only if:~~

27 [~~(1) the head of a law enforcement agency or the agency~~

1 ~~head's designee makes a written request on the agency's letterhead~~  
2 ~~for the report or statement accompanied by the agency head's or~~  
3 ~~designee's signature, and~~

4 ~~[(2) the person who is the subject of the report or~~  
5 ~~statement authorizes the release by providing a sworn statement on~~  
6 ~~a form supplied by the commission that includes the person's waiver~~  
7 ~~of liability regarding an agency head who is responsible for or who~~  
8 ~~takes action based on the report or statement.]~~

9 SECTION 5. Section 1701.456(a), Occupations Code, is  
10 amended to read as follows:

11 (a) The commission is not liable for civil damages for  
12 providing information contained in a report or statement maintained  
13 by the commission under this subchapter if the commission released  
14 the information as provided by this subchapter [~~Section~~  
15 ~~1701.454(b)~~].

16 SECTION 6. The changes in law made by this Act apply only to  
17 an employment termination report under Subchapter J, Chapter 1701,  
18 Occupations Code, regarding a resignation or termination that  
19 occurs on or after the effective date of this Act. An employment  
20 termination report regarding a resignation or termination that  
21 occurs before the effective date of this Act is governed by the law  
22 as it existed immediately before the effective date, and that law is  
23 continued in effect for that purpose.

24 SECTION 7. This Act takes effect September 1, 2005.