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(In the Senate - Received from the House May 2, 2005; May 3, 2005, read first time and referred to Committee on Criminal Justice; May 20, 2005, reported favorably by the following vote: Yeas 4, Nays 0; May 20, 2005, sent to printer.)
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                                     A BILL TO BE ENTITLED
                                              AN ACT
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        relating to certain employment records maintained by the Commission
        on Law Enforcement Officer Standards and Education; providing an
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        administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
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                SECTION 1. Section 1701.451, Occupations Code, is amended
        to read as follows:
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                                   PREEMPLOYMENT
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                Sec. 1701.451.
                                                         REQUEST
                                                                      FOR
                                                                             EMPLOYMENT
        TERMINATION REPORT AND SUBMISSION OF BACKGROUND CHECK CONFIRMATION FORM [INQUIRY]. (a) Before a law enforcement agency may hire a
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        person licensed under this chapter, the agency head or the agency
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        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
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        determine whether the commission has employment history records for
        the person required by] this subchapter; and
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                       (2)
                            submit to the commission on the form prescribed by
        the commission confirmation that the agency:
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                              (A)
conducted
                                                      criminal
                                                  a
                                                                    background
                                                                                    check
        regarding the person;
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                              (B)
                                    obtained the person's written consent for the
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        agency to view the person's employment records;
                                    obtained from the commission any service or
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         <u>educatio</u>n
                      records regarding
                                                      person maintained by the
                                                 the
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        commission; and
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                              (D)
                                   contacted each of the person's previous law
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        enforcement employers.
                     The written request required by Subsection (a)(1) must agency's letterhead and be signed by the agency head or
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                (b)
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           on the
        the agency head's designee.
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                (c) If the commission receives from a law enforcement agency
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         a written request that complies with Subsections (a)(1) and (b),
        the commission employee having the responsibility to maintain any employment termination report regarding the person who is the
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        subject of the request shall release the report to the agency.
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         [This section does not authorize the commission
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                        <del>concerning</del>
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        information
                                         the
                                                records
                                                            other
                                                                     than
                                                                             information
        regarding the existence of the records.
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                [(c) A law enforcement agency may not use information
        obtained under this section to affect a person's eligibility for
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        employment with the agency.
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                SECTION 2. Section 1701.452, Occupations Code, is amended
        to read as follows:
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                Sec. 1701.452. EMPLOYMENT TERMINATION REPORT.
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        head of a law enforcement agency shall submit a report to the commission on a form prescribed by the commission regarding a
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        person licensed under this chapter who resigns from the employment
        of the law enforcement agency or whose appointment with the law enforcement agency is terminated. The agency head shall include in
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        the report:
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                       (1)
                             an explanation of the circumstances under which
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        the person resigned or was terminated; and
                            one of the following designations:
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                             (A) retired, which applies only to an officer
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        who:
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                                    (i) left the agency while in good standing;
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H.B. No. 2677

By: Driver (Senate Sponsor - Seliger)

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and

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is eligible to collect a pension;

2-1 honorably discharged, which applies only to 2-2 (B) 2-3

an officer who:

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

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

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

(D) generally discharged, which applies only to

an officer who left the agency:

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

(ii) while under investigation for a potential criminal violation or in lieu of disciplinary action,

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

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

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

- (b) The head of the law enforcement agency from which a person resigns or is terminated for reasons other than death shall provide to the person a copy of the report. If the person who is the subject of the employment termination report is deceased, the head of the law enforcement agency on request shall provide a copy of the report to the person's next of kin[. The person may submit a written statement to the commission to contest or explain any matter contained in the report].
- (c) The head of a law enforcement agency must submit a report under this section each time a person licensed under this chapter resigns or is terminated from the agency. The report is an official government document.
 SECTION 3. Subchapter J, Chapter 1701, Occupations Code, is

amended by adding Section 1701.4525 to read as follows:

- Sec. 1701.4525. REQUEST FOR CORRECTION OF REPORT; ADMINISTRATIVE PENALTY; HEARING; APPEAL. (a) A person who is the subject of an employment termination report maintained by the commission under this subchapter may contest information contained in the report by submitting to the law enforcement agency and to the commission a written request for a correction of the report and any evidence contesting the information contained in the report not later than the 30th day after the date the person receives a copy of the report. The commission shall allow the head of the law enforcement agency to submit to the commission any evidence rebutting the evidence submitted by the person who is the subject of the report.
- (b) The commission may order the head of a law enforcement agency to correct a person's report in a timely manner based on information submitted to the law enforcement agency and to the commission by the person under Subsection (a). An agency head ordered to correct a person's report shall correct the person's the State Office on may assess hearing conducted by the ngs. The commission report or request a Administrative Hearings. an administrative penalty against an agency head who fails to make a correction or request a hearing under this subsection in a timely manner.
- (c) If the commission refuses to order the head of a law enforcement agency to correct the person's report, the person is entitled to a hearing conducted by the State Office of Administrative Hearings.
 - (d) A proceeding under Subsection (b) to contest the

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commission's order or under Subsection (c) to correct an employment termination report is a contested case under Chapter 2001, Government Code.

(e) The commission shall adopt rules for the administration of this section.

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

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

[(1) the head of a law enforcement agency or the agency head's designee makes a written request on the agency's letterhead for the report or statement accompanied by the agency head's or designee's signature; and

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

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

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

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

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

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