

BILL ANALYSIS

C.S.H.B. 2445
By: Driver
Law Enforcement
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Under House Bill 2677, 79th Legislature, Regular Session, which was enacted into law, hiring law enforcement agencies are required to conduct background investigations to include review of officer's law enforcement employment histories. The bill also required terminating agencies to accurately disclose the reasons behind terminations. Such disclosures were captured on the F-5 form created by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). Since implementation of the law, the termination definitions in the statute as mirrored on the F-5 form have become the subject of reviews through the State Office of Administrative Hearings. Also, the lack of specific mechanisms in the law for identifying and removing officers who have moved from one department to another because of disciplinary or performance problems, labeled "Gypsy Cops," has made it difficult to remove these officers from the job market.

C.S.H.B. 2445 would narrow termination definitions, permit TCLEOSE to capture the specific language on the F-5 form, and clarify the standards and procedures for suspending or revoking the license of an officer.

RULEMAKING AUTHORITY

It is the opinion of the committee that rulemaking authority is expressly granted to the Texas Commission on Law Enforcement Officer Standards and Education in SECTIONS 2 and 3 of this bill.

ANALYSIS

SECTION 1. Amends Section 1701.451, Occupations Code to provide that background checks performed prior to hiring a person licensed under this chapter must be conducted in the manner prescribed by the commission and the person's written consent must be obtained on a form prescribed by the commission. A law enforcement agency that obtains the consent form shall make the records available to a hiring law enforcement agency.

SECTION 2. Amends Section 1701.452, Occupations Code, EMPLOYMENT TERMINATION REPORT

(a) Adds retirement or separation from the law enforcement agency for any other reason to the report required to be submitted by a law enforcement agency to Texas Commission on Law Enforcement Officer Standards and Education and allows the designee of the head of a law enforcement agency to submit the forms. The report must be submitted not later than the seventh business day after the license holder resigns, retires, or separates from the agency or exhausts all administrative appeals if the license holder was terminated based on an allegation of misconduct.

(b) Provides that the head of a law enforcement agency or the designee shall include in the report a statement on whether the license holder was honorably discharged, generally discharged, or dishonorably discharged. Defines for purposes of this subsection, "honorably discharged," "generally discharge," and "dishonorably discharged."

(c) Provides that the commission may further specify by rule the circumstances of the definitions set out in (b). Earlier law regarding the report is deleted.

(d) Requires that the head of a law enforcement agency or the head's designee provide the report to the license holder not later than the seventh business day after the date of the separation from the agency or exhausts all administrative appeals.

(e) Requires that the head of a law enforcement agency or the head's designee provide the report to the license holder or the next of kin not later than the seventh business day after the date of the separation from the agency.

(f) Provides that the obligation of the head of the agency to provide the report is satisfied by sending the report by certified mail to the last known address of the license holder if the license holder is not otherwise available or to the next of kin or the last known address of the next of kin if the next of kin who requested the report is not otherwise available.

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

SECTION 3. Amends Subchapter J, Chapter 1701, Occupations Code, by adding Section 1701.4521, entitled "LICENSE SUSPENSION FOR OFFICER DISHONORABLY DISCHARGED."

(a) Requires the commission to suspend the license of an officer on notification that the officer has been dishonorably discharged if the officer has previously been dishonorably discharged from another law enforcement agency.

(b) Provides that an officer whose license is suspended under this section may appeal the suspension in writing to the commission not later than the 30th day after the date the officer is suspended.

(c) Provides that after a commission determination, the commission may revoke or reinstate the officer's license in accordance with rules or procedures adopted by the commission under this chapter related to revocation or reinstatement of a license. Provides that the commission shall revoke the officer's license if the officer does not appeal the suspension before the 30th day after the date the officer is suspended.

(d) Provides that the commission's decision does not affect the employment relationship between an officer and a law enforcement agency or any disciplinary action taken against an officer by a law enforcement agency.

SECTION 4. Amends Section 1701.4525, Occupations Code. Provides that an administrative law judge shall determine alleged misconduct by a preponderance of the evidence in proceedings under Subsection (b), contesting the commission's order or (c), correcting an employment termination report, regardless of whether the person resigned, retired, or separated in lieu of termination.

SECTION 5. Adds 1701.458, Occupations Code. Provides that the venue for prosecution of offenses under Section 37.10 Penal Code, arising from reports required under this subchapter, lies in the county where the offense occurred or in Travis County.

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

SECTION 7. Effective date is September 1, 2007.

EFFECTIVE DATE

C.S.H.B. 2445 80(R)

September 1, 2007.

COMPARISON OF ORIGINAL TO SUBSTITUTE

The substitute adds language in SECTION 2 requiring the termination report to be submitted to Texas Commission on Law Enforcement Officer Standards and Education not later than the seventh business day after the resignation, retirement, termination, separation, or after all administrative appeals have been exhausted if the termination was based on an allegation of misconduct (the original bill had no deadline). The definitions of “honorably discharged”, “generally discharged” and “dishonorably discharged” were changed in the substitute to a more general definition. The substitute also adds that the commission by rule may further specify the circumstances that constitute honorably, dishonorably, and generally discharged within the definitions provided by subsection (b). The copy of the report required to be provided to the license holder or next of kin must be provided not later than the seventh business day after the resignation, retirement, separation, or after all administrative appeals have been exhausted if the termination was based on an allegation of misconduct (the original bill had no deadline.)

In SECTION 3, the substitute removes language from the original that allows the commission to suspend the license of an officer who has been dishonorably discharged.

SECTION 4 of the substitute adds language regarding the use of preponderance of evidence in proceedings to correct an employment termination report for an order or report based on alleged misconduct. The original bill did not address this point.

SECTION 5 of the substitute adds language regarding venue for the above proceedings. The original bill did not address this point.