

BILL ANALYSIS

H.B. 2833
By: Driver
Law Enforcement
Committee Report (Amended)

BACKGROUND AND PURPOSE

Currently, the Private Security Act contains several drafting errors from previous amendments and many references to entities that are no longer in existence since the function of administering the Act was transferred to the Department of Public Safety in 2004. In addition, the qualifications for licensing and registration under the Act have not been amended in many years and do not reflect the current legislative attitude toward licensing requirements for occupations regulated by the state.

H.B. 2833 makes numerous non-substantive changes to the Act to reflect the current administering entities and to correct previous drafting errors. Further, the qualifications for applicants under the Act have been updated, including a reduction in the length of time for which different convictions will disqualify an applicant. Various other amendments have been made to the Act to simplify the licensing process for applicants, as well as simplifying the administration and enforcement of the Act.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Private Security Board in SECTION 12 and SECTION 31 of this bill.

ANALYSIS

H.B. 2833 amends Section 1702.004, Occupations Code, to re-designate the Texas Commission on Private Security as the Texas Private Security Board and provides that Occupations Code Chapter 53 does not apply to this chapter or to any certain determinations made under this chapter.

H.B. 2833 also amends Subchapter E, Chapter 1702, Occupations Code, by adding Section 1702.085, which provides that certain records maintained by the Texas Department of Public Safety (DPS) under this chapter are confidential and are not subject to mandatory disclosure under Chapter 552, Government Code.

H.B. 2833 amends Section 1702.102(a), Occupations Code, to prohibit a person from acting as a locksmith company, or private security consultant company unless the person holds a license as a security services contractor.

Section 1702.104, Occupations Code is also amended, to provide that for purposes of Occupations Code Section 1702.104, Subsection (a)(1), obtaining or furnishing information includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public.

H.B. 2833 also amends Section 1702.113, Occupations Code, by renaming the Section heading as "GENERAL QUALIFICATIONS FOR LICENSE, CERTIFICATE OF REGISTRATION, OR SECURITY OFFICER COMMISSION." The bill requires that an applicant for a certificate of registration or security officer commission or the applicant's manager be at least 18 years of age. The bill also amends section 1702.113, Occupations Code to describe certain restrictions related to the application for a license, certificate of registration, or security officer commission, by an applicant or by the applicant's manager and deletes certain existing text authorizing the commission to deny an applicant's or an applicant's manager's application for a license, certificate of registration, or security officer commission, related to the conviction of a Class B misdemeanor and related to habitual drunkenness or narcotics addiction or dependence. H.B.

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2833 also provides the classification of certain offenses under the laws of certain entities for purposes of this section and defines "convicted" for the purposes of this section. The bill also provides that an individual's eligibility under this chapter is not affected by any relationship or lack of relationship between the nature of the criminal charges or conviction and the regulated occupation.

H.B. 2833 Amends Section 1702.119(b), Occupations Code, to prohibit an individual from acting as a manager until the individual has made a satisfactory showing to the Department of Public Safety that the individual has satisfied the requirements of Section 1702.113 and meets all qualification and experience requirements set by rule for a manager of the type of company for which the individual is applying, rather than making a satisfactory showing to the commission under either Section 1702.114 or Section 1702.115.

Sections 1702.124(a), (b), and (e), Occupations Code, are also amended to provide that, in order to be eligible for a license, an applicant must provide certain information as part of the application. The bill deletes existing text relating to prohibiting the commission from issuing a license unless the applicant files certain information, on the prescribed forms, with the Texas Commission on Private Security.

Section 1702.124, Occupations Code is also amended to require the general liability insurance policy held by the applicant be conditioned to pay, on behalf of the license holder, damages that the license holder becomes legally obligated to pay because of certain damage and injuries caused by an event involving certain persons in the conduct of any activity or service for which the license holder is licensed for under this chapter; the bill also removes similar requirements related to the general liability insurance policy of a business licensed under this chapter.

H.B. 2833 amends Section 1702.133(b), Occupations Code, to provide that a private investigator who is working under the direct supervision of a licensed attorney satisfies the requirement of a license holder or an officer, director, partner, or manager of a license holder, to disclose information that the individual obtains relating to a criminal offense by disclosing the information to the supervising attorney.

H.B. 2833 also amends Section 1702.163, Occupations Code, to provide that an applicant employed by a license holder is not eligible for a security officer commission unless the applicant submits, as part of the application, satisfactory evidence that the applicant has met certain criteria. The bill also specifies conditions which disqualify and which do not disqualify individuals from eligibility for a security officer commission. H.B. 2833 deletes existing language stating that the Texas Commission on Private Security is prohibited from issuing a security officer commission to an individual if the individual is under 18 years of age. The bill also states that an individual's eligibility under this section is not affected by a relationship or lack of relationship between the nature of a criminal charge or conviction and the regulated occupation.

H.B. 2833 makes conforming changes to Section 1702.221, Occupations Code, and provides that registration under this chapter does not preclude an individual from performing additional duties or services authorized by the individual's employer that are not regulated by this chapter.

H.B. 2833 transfers Occupations Code Section 1702.226 to Subchapter F and re-designates it as Section 1702.1045 and amends Section 1702.1045, as re-designated, to rename the Section's heading as "PRIVATE SECURITY CONSULTING COMPANY."

The bill also amends Section 1702.229, Occupations Code, to require that an applicant for registration meet the qualifications required under Occupations Code Section 1702.113 for a license applicant. The requirement that an individual be at least 18 years of age to be registered is removed.

H.B. 2833 makes conforming changes to Section 1702.282(b) and (c), Occupations Code and adds Subsection (e) which requires that an applicant for a license, registration, security officer commission, letter of approval, permit, or certification, provide a letter of reference from the county sheriff, prosecuting attorney, or judge of the county in which the applicant was arrested stating that a record of a disposition related to the arrest does not exist, and to the best of the

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county sheriff's, prosecuting attorney's, or judge's knowledge the applicant is free of any disqualifying convictions on receipt of notice that a check of the applicant's criminal record has uncovered an unresolved and potentially disqualifying arrest that occurred before the 10th anniversary of the date the application is filed. This application is considered incomplete and the applicant may not be issued a license, commission, or certificate of registration under this chapter if the applicant fails to provide either the letter of reference or documentary proof of the final disposition of the arrest.

Section 1702.284, Occupations Code, is also amended to provide that information contained in alarm systems records maintained by a governmental body that concerns certain information relating to alarm systems is confidential and is authorized to be disclosed only to the board, to the alarm company to which the confidential records relate or as otherwise required by state law or court order.

The bill also amends Section 1702.323 (d), Occupations Code to provide that this chapter applies to an individual employed in an employee-employer relationship exclusively and regularly by one employer in connection with the affairs of the employer, who in the course of employment wears a badge commonly associated with security personnel or law enforcement or wears a patch or apparel containing the word "security" or a substantially similar word that is intended to or is likely to create the impression that the individual is performing security services. The bill also amends Section 1702.323 (d), Occupations Code to state that this Chapter also applies to individuals who, in the course of employment, perform a duty described by Section 1702.108, Occupations Code.

H.B. 2833 amends Section 1702.324, Occupations Code, as amended by Chapters 518, 728, 1102, and 1155, Acts of the 79th Legislature, Regular Session, 2005, by reenacting and amending Subsection (b) to specify individuals this section does not apply to, and by adding Subsection (c) which provides that the exemptions provided by Occupations Code Section 1702.324, Subsection (b) apply only to a person described in that subsection while the person is performing services directly related to and dependent on the provision of the exempted service that does not otherwise require licensing under this chapter. Occupations Code 1702.324 (c), as added by this Act, provides that the exemptions do not apply to activities or services independent of the service or profession that is the basis for the exemption.

The bill also amends Section 1702.361, Occupations Code, by renaming the heading of Section 1702.361 to "DENIAL AND DISCIPLINARY ACTIONS; GROUNDS." H.B. 2833 authorizes the Department of Public Safety, for conduct described by Subsection (b), to deny an application to renew a license, registration, or security officer commission, subject to the board's final order under the hearing provisions of this subchapter. The bill also deletes an exception to Occupations Code Section 1702.361 under Section 1702.3615, Occupations Code.

The bill also requires the department to take disciplinary action, as described by Subsection (a), on proof that the applicant, license holder, registrant, or commissioned security officer has failed to pay in full an administrative penalty, assessed under Occupations Code Section 1702, Subchapter Q, for which the board has issued a final order to become ineligible for licensure or registration under Occupations Code Section 1702.113; or for a commission under Occupations Code Section 1702.163, if applicable, other than an action for which the department has taken summary action under Occupations Code Section 1702.364. The bill also removes language relating to an applicant, license holder, registrant, or commissioned security officer having been convicted of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of the conviction has occurred.

H.B. 2833 amends Section 1702.3615, Occupations Code by renaming the heading for the Section to: "DIRECT APPEAL IN LIMITED CASES." Occupations Code Section 1702.3615 is also amended to remove language stating that, except for an application approved by the Texas Commission on Private Security under Occupations Code Section 1702.3615 Subsection (b), the Texas Commission on Private Security is required to revoke or refuse to renew the registration, license, or security officer commission if the applicant, license holder, registrant, or commissioned security officer has been convicted of a Class A misdemeanor or equivalent offense or a greater offense or a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of conviction has not occurred. The bill authorizes an applicant to appeal

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the denial of a license, registration, or security officer commission application directly to the Texas Private Security Board if the sole basis of the denial is the applicant's status as a registered sex offender and the applicant's status as a sex offender is not based on a criminal conviction that would make the applicant ineligible under Occupations Code Section 1702.113 or Section 1702.163. The bill removes language that authorizes an applicant to appeal the denial of a license, registration, or security officer commission if the sole basis for the denial is a conviction for a Class A misdemeanor or equivalent or greater offense if the 20th anniversary of the conviction has occurred. H.B. 2833 authorizes the Texas Private Security Board to approve the application if the board determines the circumstances surrounding the applicant's registration as a sex offender warrant approval based on factors previously established by rule, in a proceeding held as provided by Government Code Chapter 2001 Subsection (a); rather than notwithstanding any other provision of this chapter.

The bill also amends Section 1702.364, Government Code, by renaming the heading of Section 1702.364 to read "SUMMARY ACTIONS," and, rather than authorizing the Texas Commission on Private Security, instead requires the Department of Public Safety to, on receiving written notice from a law enforcement agency that a person has been charged with or convicted of an offense that would make the person ineligible for a license, certificate of registration, or security officer commission under (Occupations Code Section 1702.113 or Section 1702.163), summarily deny the person's application for a license, registration, or security officer commission; or in the event of pending charges, summarily suspend the person's license, certificate of registration, or security officer commission; or in the event of a conviction, summarily revoke the person's license, certificate of registration, or security officer commission. The bill also requires that, to initiate a proceeding to take action under Subsection (a), the Department of Public Safety personally serve notice on the person or the person's authorized representative. The bill also provides that at the time the notice is served, the person is required to immediately surrender any certificate of registration, security officer commission, pocket card, or other form of identification issued by the Department of Public Safety, to the Department of Public Safety. The bill makes conforming changes relative to this section and deletes existing text requiring an individual to take certain action if the notice is delivered by mail or in person as well as provides certain requirements of the notice. H.B. 2833 also requires that the person, at a preliminary hearing, show cause why the application should not have been denied, the registration, license, or security officer commission should not have been suspended, or the registration, license, or commission should not have been revoked. The bill also deletes existing text requiring the individual to show cause for certain determinations at the hearing, pending the final hearing on the suspension or denial.

The bill also provides that Chapter 2001, Government Code, does not apply to the department's initial action under this section or to a preliminary hearing, rather than a proceeding, before the department under this section. The bill also deletes existing text relating to the scheduling of a final hearing and existing text providing that Chapter 2001, Government Code, does not apply to a final administrative hearing. The bill further provides that a conviction for the offense giving rise to a summary suspension is automatic grounds for immediate, summary revocation. The bill also authorizes the results of the preliminary hearing to be appealed by requesting, in writing, in a hearing before an administrative law judge of the State Office of Administrative Hearings and requires the Department of Public Safety to set a hearing and give written notice of the hearing to the person on receipt of the request. The administrative law judge is required to make findings of fact and conclusions of law regarding the person's eligibility for a license under this section and to promptly issue to the board a proposal for a decision. The Texas Private Security Board is required to consider the proposal for decision and promptly issue a final order at its earliest possible quarterly meeting. The bill provides that an individual's eligibility under this section is not affected by any relationship or lack of relationship between the nature of the criminal charges or conviction and the regulated occupation.

H.B. 2833 amends Section 1702.371, Occupations Code, by striking language that specifies the type of offense the subchapter refers to and instead states that a person is considered to be convicted of an offense if a court enters a judgment against the person for committing an offense under the laws of this state, another state, or the United States. The bill also amends Occupations Code Section 1702.371 to specify that this chapter also applies to a conviction that has been set aside or dismissed following the completion of probation or for which a person has been pardoned, unless the pardon was granted for reasons relating to a wrongful conviction.

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Section 1702.381, Occupations Code, is amended to raise the maximum civil penalty that a person who is not licensed under this chapter, who does not have a license application pending, and who violates this chapter may be assessed, from \$1,000 to \$10,000. The bill also provides that a person who contracts with or employs a person who is required to hold a license, certificate of registration, or security officer commission under this chapter knowing that the person does not hold the required license, certificate, or commission or who otherwise, at the time of contract or employment, is in violation of this chapter may be assessed a civil penalty to be paid to the state in an amount not to exceed \$10,000 for each violation. Section 1702.381, Occupations code is further amended to provide that a civil penalty may be assessed on proof that the person has received at least 30 days' notice of the requirements of this section.

H.B. 2833 amends Section 1702.382, Occupations Code, to transfer authorization to institute an action against a person to enjoin a violation by the person of this chapter or rule from the Texas Commission on Private Security to the Department of Public Safety, an attorney for the Department of Public Safety, the attorney general's office, or any criminal prosecutor in the state. The bill further provides that an injunction action instituted under this section does not require an allegation or proof that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continuing violation to sustain an action under this section and provides that a bond is not required for an injunction action instituted under this section. Existing text providing that the commission is not required to allege or prove certain determinations is also removed.

H.B. 2833 amends Section 1702.383, Occupations Code to transfer authorization from the Texas Commission on Private Security, to an attorney for the Department of Public Safety, the attorney general's office, or any criminal prosecutor in this state to institute a civil suit in a Travis County district court or in a district court in the county in which the violation occurred for injunctive relief under Occupations Code Section 1702.382 or for assessment and recovery of the civil penalty if a person has violated a provision of this chapter for which a penalty is imposed under Occupations Code Section 1702.381.

Section 1702.401, Occupations Code, is also amended to transfer authorization to impose an administrative penalty on a person licensed, commissioned, or registered under this chapter who violates this chapter or a rule or order adopted under this chapter from the Texas Commission on Private Security to the Department of Public Safety. Occupations Code Section 1702.401 is also amended to state that the Department of Public Safety is authorized to impose this administrative penalty in addition to any other disciplinary action taken by the Department of Public Safety and subject to the Texas private Security Board's final order in a hearing under this subchapter.

H.B. 2833 amends Section 1702.402(a), Occupations Code, to increase the maximum penalty for each day a violation continues or occurs as a separate violation, for purposes of imposing a penalty under this Section, from \$200 to \$500. The bill also amends Section 1702.403, Occupations Code, by renaming the heading to read as "NOTICE OF VIOLATION AND PENALTY" and by requiring the Department of Public Safety, rather than the director of the Texas Commission on Private Security, to give written notice to the person if the Department of Public Safety determines that a violation has occurred. Existing text relating to authorizing the director to issue a report to the commission is also removed.

Section 1702.404, Occupations Code, is also amended to provide that if a person accepts the determination and recommended penalty under Occupations Code Section 1702.404, the person is required to pay the penalty in a timely manner. The Department of Public Safety is authorized to initiate suspension proceedings under Occupations Code Section 1702.361 against a person who, before the 21st day after the day the person receives the notice has either accepted the penalty but fails to pay, or fails to respond to the notice. Section 1702.404, Occupations Code is also amended by removing existing text requiring the commission to approve and impose the determination of the director if the person accepts the determination and recommended penalty.

Occupations Code Section 1702.405 is also amended to require the department to set a hearing and give written notice of the hearing to the person provided that the person requests a hearing. The bill also removes existing text stating that the director of the Commission on Private

Security must set a hearing and give written notice if the person fails to respond in a timely manner to the notice issued under Occupations Code Section 1702.403.

H.B. 2833 amends Section 1702.406, Occupations Code, by renaming the Section heading to read "DECISION BY BOARD" and provides that if the person subject to decision by the Private Security Board, does not file a petition in the appropriate civil court for judicial review of the Private Security Board's order, not later than the 30th day after the date of the order, the board's order is final for purposes of Section 1702.361, Occupations Code.

H.B. 2833 also repeals Occupations Code Sections 1702.2225, 1702.407, 1702.408, 1702.409, 1702.410, 1702.411, and 1702.412.

The bill also provides that the Private Security Board is required to adopt the rules and procedures necessary to implement the changes in law made by this Act to Chapter 1702, Occupations Code, not later than December 1, 2007.

H.B. 2833 provides that the changes in law made by this Act to Chapter 1702, Occupations Code, apply only to an application for a license, commission, or certification of registration submitted on or after January 1, 2008 and provides to the extent of any conflict, this Act prevails over another Act of the 80th Legislature, Regular Session, 2007, relating to non-substantive additions to and corrections in enacted codes.

The bill also makes conforming changes throughout.

EFFECTIVE DATE

September 1, 2007.

EXPLANATION OF AMENDMENTS

Committee Amendment No. 1 changes the bill to amend Section 1702.364, Occupations Code rather than Section 1702.364, Government Code.