

By: Driver, et al.

H.B. No. 2445

A BILL TO BE ENTITLED

AN ACT

1
2 relating to certain employment records maintained by the Commission
3 on Law Enforcement Officer Standards and Education; providing an
4 administrative penalty.

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

6 SECTION 1. Section 1701.451, Occupations Code, is amended
7 by amending Subsection (a) and adding Subsection (a-1) to read as
8 follows:

9 (a) Before a law enforcement agency may hire a person
10 licensed under this chapter, the agency head or the agency head's
11 designee must:

12 (1) make a written request to the commission for any
13 employment termination report regarding the person that is
14 maintained by the commission under this subchapter; and

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

17 (A) conducted in the manner prescribed by the
18 commission a criminal background check regarding the person;

19 (B) obtained the person's written consent on a
20 form prescribed by the commission for the agency to view the
21 person's employment records;

22 (C) obtained from the commission any service or
23 education records regarding the person maintained by the
24 commission; and

1 (D) contacted each of the person's previous law
2 enforcement employers.

3 (a-1) A law enforcement agency that obtains a consent form
4 described by Subsection (a)(2)(B) shall make the person's
5 employment records available to a hiring law enforcement agency on
6 request.

7 SECTION 2. Section 1701.452, Occupations Code, is amended
8 to read as follows:

9 Sec. 1701.452. EMPLOYMENT TERMINATION REPORT. (a) The
10 head of a law enforcement agency or the head's designee shall submit
11 a report to the commission on a form prescribed by the commission
12 regarding a person licensed under this chapter who resigns or
13 retires from ~~[the]~~ employment with ~~[of]~~ the law enforcement agency,
14 ~~[or]~~ whose appointment with the law enforcement agency is
15 terminated, or who separates from the law enforcement agency for
16 any other reason. The report must be submitted by the head or the
17 designee not later than the seventh business day after the date the
18 license holder:

19 (1) resigns, retires, or separates from the agency; or
20 (2) exhausts all administrative appeals available to
21 the license holder if the license holder was terminated based on an
22 allegation of misconduct.

23 (b) The [agency] head of a law enforcement agency or the
24 head's designee shall include in the report required under
25 Subsection (a) a statement on whether the license holder was
26 honorably discharged, generally discharged, or dishonorably
27 discharged. For purposes of this subsection:

1 (1) "Honorably discharged" means a license holder who,
2 while in good standing and not because of pending or final
3 disciplinary actions or a documented performance problem, retired,
4 resigned, or separated from employment with or died while employed
5 by a law enforcement agency.

6 (2) "Generally discharged" means a license holder who:

7 (A) was terminated by, retired or resigned from,
8 or died while in the employ of a law enforcement agency and the
9 separation was related to a disciplinary investigation of conduct
10 that is not included in the definition of dishonorably discharged;
11 or

12 (B) was terminated by or retired or resigned from
13 a law enforcement agency and the separation was for a documented
14 performance problem and was not because of a reduction in workforce
15 or an at-will employment decision.

16 (3) "Dishonorably discharged" means a license holder
17 who:

18 (A) was terminated by a law enforcement agency or
19 retired or resigned in lieu of termination by the agency in relation
20 to allegations of criminal misconduct; or

21 (B) was terminated by a law enforcement agency or
22 retired or resigned in lieu of termination by the agency for
23 insubordination or untruthfulness.

24 (c) The commission by rule may further specify the
25 circumstances that constitute honorably discharged, dishonorably
26 discharged, and generally discharged within the definitions
27 provided by Subsection (b) [+

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~~
7 ~~standing, 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~~
23 ~~did 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 (d) [(b)] The head of the law enforcement agency from which
10 a license holder ~~[person]~~ resigns, retires, ~~[or]~~ is terminated, or
11 separates for reasons other than death, or the head's designee,
12 shall provide to the license holder ~~[person]~~ a copy of the report.
13 The report must be provided to the license holder not later than the
14 seventh business day after the date the license holder:

15 (1) resigns, retires, or separates from the agency; or

16 (2) exhausts all administrative appeals available to
17 the license holder if the license holder was terminated based on an
18 allegation of misconduct.

19 (e) If the person who is the subject of the employment
20 termination report is deceased, the head of the law enforcement
21 agency or the head's designee on request shall provide a copy of the
22 report to the person's next of kin not later than the seventh
23 business day after the date of the request.

24 (f) The head of a law enforcement agency or the head's
25 designee satisfies the obligation to provide the report required
26 under Subsection (d) or (e) by sending by certified mail:

27 (1) the report required under Subsection (d) to the

1 last known address of the license holder if the license holder is
2 not otherwise available; or

3 (2) the report required under Subsection (e) to the
4 last known address of the next of kin if the next of kin who
5 requested the report is not otherwise available.

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

11 SECTION 3. Subchapter J, Chapter 1701, Occupations Code, is
12 amended by adding Section 1701.4521 to read as follows:

13 Sec. 1701.4521. LICENSE SUSPENSION FOR OFFICER
14 DISHONORABLY DISCHARGED. (a) The commission shall suspend the
15 license of an officer licensed under this chapter on notification
16 that the officer has been dishonorably discharged if the officer
17 has previously been dishonorably discharged from another law
18 enforcement agency.

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

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

1 suspended.

2 (d) The commission's decision does not affect:

3 (1) the employment relationship between an officer
4 licensed under this chapter and a law enforcement agency; or

5 (2) any disciplinary action taken against an officer
6 licensed under this chapter by a law enforcement agency.

7 SECTION 4. Section 1701.4525, Occupations Code, is amended
8 by amending Subsection (e) and adding Subsection (f) to read as
9 follows:

10 (e) In a proceeding under Subsection (b) to contest the
11 commission's order or under Subsection (c) to correct an employment
12 termination report for an order or report based on alleged
13 misconduct, an administrative law judge shall determine if the
14 alleged misconduct occurred by a preponderance of the evidence
15 regardless of whether the person who is the subject of the report
16 was terminated or the person resigned, retired, or separated in
17 lieu of termination. If the alleged misconduct is not supported by
18 a preponderance of the evidence, the administrative law judge shall
19 order the report to be changed.

20 (f) The commission shall adopt rules for the administration
21 of this section.

22 SECTION 5. Subchapter J, Chapter 1701, Occupations Code, is
23 amended by adding Section 1701.458 to read as follows:

24 Sec. 1701.458. VENUE. Venue for the prosecution of an
25 offense under Section 37.10, Penal Code, that arises from a report
26 required under this subchapter lies in the county where the offense
27 occurred or in Travis County.

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

10 SECTION 7. This Act takes effect September 1, 2007.