

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 by amending Subsection (a) and adding Subsection (a-1) to read as follows:

(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 this subchapter; and

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

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

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

(C) obtained from the commission any service or education records regarding the person maintained by the 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 and, as required by the commission, [+]

1           ~~[(1)]~~ an explanation of the circumstances under which  
2 the person resigned, retired, or was terminated. For purposes of  
3 this subsection:

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

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

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

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

19           (3) "Dishonorably discharged" means a license holder  
20 who:

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

24           (B) was terminated by a law enforcement agency or  
25 retired or resigned in lieu of termination by the agency for  
26 insubordination or untruthfulness.

27           (c) The commission by rule may further specify the

1 circumstances that constitute honorably discharged, dishonorably  
2 discharged, and generally discharged within the definitions  
3 provided by Subsection (b) [~~and~~

4 [~~(2) one of the following designations:~~

5 [~~(A) retired, which applies only to an officer~~  
6 ~~who:~~

7 [~~(i) left the agency while in good~~  
8 ~~standing; and~~

9 [~~(ii) is eligible to collect a pension;~~

10 [~~(B) honorably discharged, which applies only to~~  
11 ~~an officer who:~~

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

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

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

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

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

26 [~~(ii) while under investigation for a~~  
27 ~~potential criminal violation or in lieu of disciplinary action;~~

1 ~~including suspension, demotion, or termination;~~

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

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

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

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

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

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

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

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

1           (1) the report required under Subsection (d) to the  
2 last known address of the license holder if the license holder is  
3 not otherwise available; or

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

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

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

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

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

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

1 suspension before the 30th day after the date the officer is  
2 suspended.

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

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

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

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

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

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

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

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

1 occurred or in Travis County.

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

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



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President of the Senate

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Speaker of the House

I certify that H.B. No. 2445 was passed by the House on April 26, 2007, by the following vote: Yeas 143, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2445 on May 23, 2007, by the following vote: Yeas 145, Nays 0, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2445 was passed by the Senate, with amendments, on May 21, 2007, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor