By: Driver, et al. (Senate Sponsor - Williams) H.B. No. 2445 (In the Senate - Received from the House April 27, 2007; May 1, 2007, read first time and referred to Committee on Criminal 1-1 1-2 1-3 Justice; May 17, 2007, reported adversely, with favorable Committee Substitute by the following vote: Yeas 6, Nays 0; 1-4 1-5 1-6 May 17, 2007, sent to printer.) 1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 2445 By: Seliger 1-8 A BILL TO BE ENTITLED 1-9 AN ACT 1-10 relating to certain employment records maintained by the Commission 1-11 on Law Enforcement Officer Standards and Education; providing an 1-12 administrative penalty. BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS: 1-13 1**-**14 1**-**15 SECTION 1. Section 1701.451, Occupations Code, is amended by amending Subsection (a) and adding Subsection (a-1) to read as 1-16 follows: 1-17 (a) Before a law enforcement agency may hire a person 1-18 licensed under this chapter, the agency head or the agency head's 1-19 1-20 designee must: make a written request to the commission for any (1)1-21 termination report regarding the person that employment is 1-22 maintained by the commission under this subchapter; and (2) 1-23 submit to the commission on the form prescribed by the commission confirmation that the agency: (A) conducted <u>in the manner prescribed by</u> 1-24 1-25 the commission a criminal background check regarding the person; 1-26 1-27 (B) obtained the person's written consent on а 1-28 form prescribed by the commission for the agency to view the person's employment records; 1-29 1-30 (C) obtained from the commission any service or 1-31 education records regarding the person maintained by the 1-32 commission; and 1-33 contacted each of the person's previous law (D) 1-34 enforcement employers. (a-1) A law enforcement agency that obtains a consent form described by Subsection (a)(2)(B) shall make the person's 1-35 1-36 employment records available to a hiring law enforcement agency on 1-37 1-38 request. 1-39 SECTION 2. Section 1701.452, Occupations Code, is amended 1-40 to read as follows: 1-41 Sec. 1701.452. EMPLOYMENT TERMINATION REPORT. (a) The head of a law enforcement agency or the head's designee shall submit 1-42 a report to the commission on a form prescribed by the commission 1-43 regarding a person licensed under this chapter who resigns or retires from [the] employment with [of] the law enforcement agency, 1-44 1-45 [or] whose appointment with the law enforcement agency is 1-46 1-47 terminated, or who separates from the law enforcement agency for any other reason. The report must be submitted by the head or the designee not later than the seventh business day after the date the 1-48 1-49 license holder: 1-50 1-51 (1)resigns, retires, or separates from the agency; or 1-52 (2) exhausts all administrative appeals available to 1-53 the license holder if the license holder was terminated based on an <u>allegation of misconduct.</u> (b) The [agency] head of a law enforcement agency or the <u>include</u> in the report required <u>under</u> 1-54 1-55 head's designee shall include in the report required under Subsection (a) a statement on whether the license holder was 1-56 1-57 honorably discharged, generally discharged, or dishonorably 1-58 discharged and, as required by the commission, [+ [(1)] an explanation of the circumstances under which 1-59 1-60 1-61 the person resigned, retired, or was terminated. For purposes of (1) "Honorably discharged" means a license holder who, 1-62 1-63

C.S.H.B. No. 2445 disciplinary actions or a documented performance problem, retired, respined, or separated from employment with or disciplinary actions or a documented performance problem, retired, by a law enforcement agency. (2) "Generally discharged" means a license holder who: (A) was terminated by, retired or resigned from, or died while in the employ of a law enforcement agency and the separation was related to a disciplinary investigation of conduct that is not included in the definition of dishnonably discharged; (B) was terminated by or retired or resigned from (A) was terminated by or retired or resigned from (A) was terminated by or retired or resigned from (A) was terminated by a law enforcement agency or retired or resigned in law of termination by the agency in relation (B) was terminated by a law enforcement agency or retired or resigned in law of termination by the agency for retired or resigned in law of termination by the agency for (C) the commission by rule may further specify the cloallegations of criminal misconduct; or (C) the commission by rule may further specify the cloallegation and the first the agency for (A) was terminated by a law enforcement agency or retired or resigned in lieu of termination by the agency for (A) the company discharged, which applies only to an officer wher (A) rule the full with applies only to an officer (A) the company discharged, which applies only to discharged, and generally discharged, which applies only to an officer whor (A) the full left the agency while in good transform, (A) therease the agency while in good channed (A) the discharged, which applies only to an officer whor (A) therease the agency while agency while agency by the discharged, and gencerally discharged, which applies only to an officer whor (A) the discharged, which applies only to an officer whor a climately discharged, which applies only to an officer whor a climately discharged, which applies only to an officer whor a climately discharged, whi		
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<pre>2-21 retired or resigned in lieu of termination by the agency for 2-22 insubordination or untruthfulness. 2-23 (c) The commission by rule may further specify the 2-24 circumstances that constitute honorably discharged, dishonorably 2-25 discharged, and generally discharged within the definitions 2-26 provided by Subsection (b)[- and 2-27 (d) one of the following designations. 2-28 (d) retired, which applies only to an officer 2-29 whot 2-30 (d) retired, which applies only to an officer 2-31 (d) new of the following designations. 2-32 (d) honorably discharged, which applies only to 2-33 (d) (d) retired, which applies only to an officer 2-34 (i) left the agency while in good standing 2-35 (ii) left the agency while in good standing 2-36 to purcue other career intersets or for personal reasons other than 2-37 retirement, and 2-38 (ii) did not leave the agency while under 2-39 investigation for a criminal violation or while facing disciplinary 2-40 arofficer whose employment was terminated for a violation of law 2-39 investigation for a criminal violation or termination? 2-41 (c) dischoreably discharged, which applies only 2-42 to an officer whose employment was terminated for a violation of law 2-44 or department policy or for other oubstantiated miscenduct; 2-45 an officer whose employment was terminated for a violation of law 2-46 (d) not leave the agency because of pending or final disciplinary 2-47 action, or (di) while under investigation for a 2-50 potential criminal violation or in lieu of disciplinary action; 2-51 (d) killed in the line of duty, which applies 2-53 only to an officer who was killed which applies only to 2-55 diver sender who was killed which applies only to an officer's 2-56 died for a reasons ther than lieu of disciplinary action; 2-57 (d) diad, which applies only to an officer's 2-58 dividing cuspension, demotion; retrinsion; 2-59 heraace of an injury or illness]. 2-50 (d) (d+h) The head of the law enforcement agency from which 3 licenss for reasons other than death, or the head's de</pre>		
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2-23 (c) The commission by Tule may further specify the 2-24 circumstances that constitute honorably discharged, dishonorably 2-25 discharged, and generally discharged within the definitions 2-26 (2) one of the following designations: 2-27 (4) retired, which applies only to an efficer 2-28 (4) retired, which applies only to an efficer 2-29 whor [4) left the agency while in good 2-30 standing; and [4] left the agency while in good standing 2-33 an efficer who: [4] left the agency while in good standing 2-34 an officer who: [4] left the agency while in good standing 2-35 [4] left the agency while in good standing retirement; and 2-34 an efficer who: [4] left the agency while in good standing 2-35 [4] left the agency while in good standing retirement; and 2-34 an efficer who: [4] left the agency while in good standing 2-35 [4] left the agency while in good standing 2-34 an efficer who: [4] left the agency while and 2-35 [2] left the agency while facing disciplinary 2-44		insubordination or untruthfulness.
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C.S.H.B. No. 2445 (e) If the person who is the subject of the employment termination report is deceased, the head of the law enforcement agency or the head's designee on request shall provide a copy of the report to the person's next of kin <u>not later than the seventh</u> <u>business day after the date of the request</u>. (f) The head of a law enforcement agency or the head's <u>designee satisfies the obligation to provide the report required</u> under Subsection (d) or (e) by sending by certified mail: (1) the report required under Subsection (d) to the last known address of the license holder if the license holder is not otherwise available; or (2) the report required under Subsection (e) to the last known address of the next of kin if the next of kin who requested the report is not otherwise available. (g) [(c)] 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, [or] is terminated, or separates for any other reason from the agency. The report is an official government document. SECTION 3. Subchapter J, Chapter 1701, Occupations Code, is amended by adding Section 1701.4521 to read as follows: OFFICER Sec. 1701.4521. LICENSE SUSPENSION FOR DISHONORABLY DISCHARGED. (a) The commission shall suspend the license of an officer licensed under this chapter on notification that the officer has been dishonorably discharged if the officer has previously been dishonorably discharged from another law enforcement agency. (b) 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) After a commission determination, the commission may 3-29 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. 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) The commission's decision does not affect: (1) the employment relationship between an officer licensed under this chapter and a law enforcement agency; or (2) any disciplinary action taken against an officer 3-39 3-41 <u>licensed under this chapter by a law enforcement agency.</u> SECTION 4. Section 1701.4525, Occupations Code, is amended by amending Subsection (e) and adding Subsection (f) to read as 3-43 3-44 follows: In a proceeding under Subsection (b) to contest (e) the commission's order or under Subsection (c) to correct an employment termination report for an order or report based on alleged misconduct, an administrative law judge shall determine if the alleged misconduct occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated or the person resigned, retired, or separated in lieu of termination. If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall <u>order the report to be changed.</u> (f) The commission shall adopt rules for the administration of this section. SECTION 5. Subchapter J, Chapter 1701, Occupations Code, is amended by adding Section 1701.458 to read as follows: Sec. 1701.458. VENUE. Venue for the prosecution of an offense under Section 37.10, Penal Code, that arises from a report required under this subchapter lies in the county where the offense of occurred or in Travis County. SECTION 6. The 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. An employment termination report 3-69 regarding a resignation or termination that occurs before the

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C.S.H.B. No. 2445 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. This Act takes effect September 1, 2007. 4-1 4-2 4-3 4-4

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