

1-1 By: Driver, et al. (Senate Sponsor - Williams) H.B. No. 2445
1-2 (In the Senate - Received from the House April 27, 2007;
1-3 May 1, 2007, read first time and referred to Committee on Criminal
1-4 Justice; May 17, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 6, Nays 0;
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.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Section 1701.451, Occupations Code, is amended
1-15 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 designee must:

1-20 (1) make a written request to the commission for any
1-21 employment termination report regarding the person that is
1-22 maintained by the commission under this subchapter; and

1-23 (2) submit to the commission on the form prescribed by
1-24 the commission confirmation that the agency:

1-25 (A) conducted in the manner prescribed by the
1-26 commission a criminal background check regarding the person;

1-27 (B) obtained the person's written consent on a
1-28 form prescribed by the commission for the agency to view the
1-29 person's employment records;

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 (D) contacted each of the person's previous law
1-34 enforcement employers.

1-35 (a-1) A law enforcement agency that obtains a consent form
1-36 described by Subsection (a)(2)(B) shall make the person's
1-37 employment records available to a hiring law enforcement agency on
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
1-42 head of a law enforcement agency or the head's designee shall submit
1-43 a report to the commission on a form prescribed by the commission
1-44 regarding a person licensed under this chapter who resigns or
1-45 retires from [the] employment with [of] the law enforcement agency,
1-46 [or] whose appointment with the law enforcement agency is
1-47 terminated, or who separates from the law enforcement agency for
1-48 any other reason. The report must be submitted by the head or the
1-49 designee not later than the seventh business day after the date the
1-50 license holder:

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
1-54 allegation of misconduct.

1-55 (b) The [agency] head of a law enforcement agency or the
1-56 head's designee shall include in the report required under
1-57 Subsection (a) a statement on whether the license holder was
1-58 honorably discharged, generally discharged, or dishonorably
1-59 discharged and, as required by the commission, [+]

1-60 [-(1)] an explanation of the circumstances under which
1-61 the person resigned, retired, or was terminated. For purposes of
1-62 this subsection:

1-63 (1) "Honorably discharged" means a license holder who,

2-1 while in good standing and not because of pending or final
 2-2 disciplinary actions or a documented performance problem, retired,
 2-3 resigned, or separated from employment with or died while employed
 2-4 by a law enforcement agency.

2-5 (2) "Generally discharged" means a license holder who:

2-6 (A) was terminated by, retired or resigned from,
 2-7 or died while in the employ of a law enforcement agency and the
 2-8 separation was related to a disciplinary investigation of conduct
 2-9 that is not included in the definition of dishonorably discharged;
 2-10 or

2-11 (B) was terminated by or retired or resigned from
 2-12 a law enforcement agency and the separation was for a documented
 2-13 performance problem and was not because of a reduction in workforce
 2-14 or an at-will employment decision.

2-15 (3) "Dishonorably discharged" means a license holder
 2-16 who:

2-17 (A) was terminated by a law enforcement agency or
 2-18 retired or resigned in lieu of termination by the agency in relation
 2-19 to allegations of criminal misconduct; or

2-20 (B) was terminated by a law enforcement agency or
 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 [~~(2) one of the following designations:~~

2-28 [~~(A) retired, which applies only to an officer~~
 2-29 who:

2-30 [~~(i) left the agency while in good~~
 2-31 standing; and

2-32 [~~(ii) is eligible to collect a pension;~~

2-33 [~~(B) honorably discharged, which applies only to~~
 2-34 an officer who:

2-35 [~~(i) left the agency while in good standing~~
 2-36 to pursue other career interests 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 action, including suspension, demotion, or termination;

2-41 [~~(C) dishonorably discharged, which applies only~~
 2-42 to an officer whose employment was terminated for a violation of law
 2-43 or department policy or for other substantiated misconduct;

2-44 [~~(D) generally discharged, which applies only to~~
 2-45 an officer who left the agency:

2-46 [~~(i) for less than honorable reasons but~~
 2-47 did not leave the agency because of pending or final disciplinary
 2-48 action; or

2-49 [~~(ii) while under investigation for a~~
 2-50 potential criminal violation or in lieu of disciplinary action,
 2-51 including suspension, demotion, or termination;

2-52 [~~(E) killed in the line of duty, which applies~~
 2-53 only to an officer who was killed while performing the officer's
 2-54 duties as a peace officer in or outside this state;

2-55 [~~(F) died, which applies only to an officer who~~
 2-56 died for a reason that is not described by Paragraph (E); or

2-57 [~~(G) disabled, which applies only to an officer~~
 2-58 who was unable to fulfill the officer's duties as a peace officer
 2-59 because of an injury or illness].

2-60 (d) [~~(b)~~] The head of the law enforcement agency from which
 2-61 a license holder [person] resigns, retires, [~~or~~] is terminated, or
 2-62 separates for reasons other than death, or the head's designee,
 2-63 shall provide to the license holder [person] a copy of the report.
 2-64 The report must be provided to the license holder not later than the
 2-65 seventh business day after the date the license holder:

2-66 (1) resigns, retires, or separates from the agency; or

2-67 (2) exhausts all administrative appeals available to
 2-68 the license holder if the license holder was terminated based on an
 2-69 allegation of misconduct.

3-1 (e) If the person who is the subject of the employment
 3-2 termination report is deceased, the head of the law enforcement
 3-3 agency or the head's designee on request shall provide a copy of the
 3-4 report to the person's next of kin not later than the seventh
 3-5 business day after the date of the request.

3-6 (f) The head of a law enforcement agency or the head's
 3-7 designee satisfies the obligation to provide the report required
 3-8 under Subsection (d) or (e) by sending by certified mail:

3-9 (1) the report required under Subsection (d) to the
 3-10 last known address of the license holder if the license holder is
 3-11 not otherwise available; or

3-12 (2) the report required under Subsection (e) to the
 3-13 last known address of the next of kin if the next of kin who
 3-14 requested the report is not otherwise available.

3-15 (g) [~~e~~] The head of a law enforcement agency or the head's
 3-16 designee must submit a report under this section each time a person
 3-17 licensed under this chapter resigns, retires, [~~or~~] is terminated,
 3-18 or separates for any other reason from the agency. The report is an
 3-19 official government document.

3-20 SECTION 3. Subchapter J, Chapter 1701, Occupations Code, is
 3-21 amended by adding Section 1701.4521 to read as follows:

3-22 Sec. 1701.4521. LICENSE SUSPENSION FOR OFFICER
 3-23 DISHONORABLY DISCHARGED. (a) The commission shall suspend the
 3-24 license of an officer licensed under this chapter on notification
 3-25 that the officer has been dishonorably discharged if the officer
 3-26 has previously been dishonorably discharged from another law
 3-27 enforcement agency.

3-28 (b) An officer whose license is suspended under this section
 3-29 may appeal the suspension in writing to the commission not later
 3-30 than the 30th day after the date the officer is suspended.

3-31 (c) After a commission determination, the commission may
 3-32 revoke or reinstate the officer's license in accordance with rules
 3-33 or procedures adopted by the commission under this chapter related
 3-34 to revocation or reinstatement of a license. The commission shall
 3-35 revoke the officer's license if the officer does not appeal the
 3-36 suspension before the 30th day after the date the officer is
 3-37 suspended.

3-38 (d) The commission's decision does not affect:

3-39 (1) the employment relationship between an officer
 3-40 licensed under this chapter and a law enforcement agency; or

3-41 (2) any disciplinary action taken against an officer
 3-42 licensed under this chapter by a law enforcement agency.

3-43 SECTION 4. Section 1701.4525, Occupations Code, is amended
 3-44 by amending Subsection (e) and adding Subsection (f) to read as
 3-45 follows:

3-46 (e) In a proceeding under Subsection (b) to contest the
 3-47 commission's order or under Subsection (c) to correct an employment
 3-48 termination report for an order or report based on alleged
 3-49 misconduct, an administrative law judge shall determine if the
 3-50 alleged misconduct occurred by a preponderance of the evidence
 3-51 regardless of whether the person who is the subject of the report
 3-52 was terminated or the person resigned, retired, or separated in
 3-53 lieu of termination. If the alleged misconduct is not supported by
 3-54 a preponderance of the evidence, the administrative law judge shall
 3-55 order the report to be changed.

3-56 (f) The commission shall adopt rules for the administration
 3-57 of this section.

3-58 SECTION 5. Subchapter J, Chapter 1701, Occupations Code, is
 3-59 amended by adding Section 1701.458 to read as follows:

3-60 Sec. 1701.458. VENUE. Venue for the prosecution of an
 3-61 offense under Section 37.10, Penal Code, that arises from a report
 3-62 required under this subchapter lies in the county where the offense
 3-63 occurred or in Travis County.

3-64 SECTION 6. The changes in law made by this Act in relation
 3-65 to employment termination reports apply only to a report under
 3-66 Subchapter J, Chapter 1701, Occupations Code, as amended by this
 3-67 Act, regarding a resignation or termination that occurs on or after
 3-68 the effective date of this Act. An employment termination report
 3-69 regarding a resignation or termination that occurs before the

4-1 effective date of this Act is governed by the law as it existed
4-2 immediately before the effective date of this Act, and that law is
4-3 continued in effect for that purpose.

4-4 SECTION 7. This Act takes effect September 1, 2007.

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