

1-1 By: Williams S.B. No. 1395
1-2 (In the Senate - Filed March 7, 2007; March 20, 2007, read
1-3 first time and referred to Committee on Criminal Justice;
1-4 April 19, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 6, Nays 0; April 19, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1395 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. For purposes of this subsection:

1-60 (1) "Honorably discharged" means a license holder who,
1-61 while in good standing and not because of pending or final
1-62 disciplinary actions or a documented performance problem, retired,
1-63 resigned, or separated from employment with or died while employed

2-1 by a law enforcement agency.

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

2-3 (A) was terminated by, retired or resigned from,
 2-4 or died while in the employ of a law enforcement agency and the
 2-5 separation was related to a disciplinary investigation of conduct
 2-6 that is not included in the definition of dishonorably discharged;
 2-7 or

2-8 (B) was terminated by or retired or resigned from
 2-9 a law enforcement agency and the separation was for a documented
 2-10 performance problem and was not because of a reduction in workforce
 2-11 or an at-will employment decision.

2-12 (3) "Dishonorably discharged" means a license holder
 2-13 who:

2-14 (A) was terminated by a law enforcement agency or
 2-15 retired or resigned in lieu of termination by the agency in relation
 2-16 to allegations of criminal misconduct; or

2-17 (B) was terminated by a law enforcement agency or
 2-18 retired or resigned in lieu of termination by the agency for
 2-19 insubordination or untruthfulness.

2-20 (c) The commission by rule may further specify the
 2-21 circumstances that constitute honorably discharged, dishonorably
 2-22 discharged, and generally discharged within the definitions
 2-23 provided by Subsection (b) [+

2-24 ~~[(1) an explanation of the circumstances under which~~
 2-25 ~~the person resigned or was terminated; and~~

2-26 ~~[(2) one of the following designations:~~

2-27 ~~[(A) retired, which applies only to an officer~~
 2-28 ~~who:~~

2-29 ~~[(i) left the agency while in good~~
 2-30 ~~standing; and~~

2-31 ~~[(ii) is eligible to collect a pension;~~

2-32 ~~[(B) honorably discharged, which applies only to~~
 2-33 ~~an officer who:~~

2-34 ~~[(i) left the agency while in good standing~~
 2-35 ~~to pursue other career interests or for personal reasons other than~~
 2-36 ~~retirement; and~~

2-37 ~~[(ii) did not leave the agency while under~~
 2-38 ~~investigation for a criminal violation or while facing disciplinary~~
 2-39 ~~action, including suspension, demotion, or termination;~~

2-40 ~~[(C) dishonorably discharged, which applies only~~
 2-41 ~~to an officer whose employment was terminated for a violation of law~~
 2-42 ~~or department policy or for other substantiated misconduct;~~

2-43 ~~[(D) generally discharged, which applies only to~~
 2-44 ~~an officer who left the agency:~~

2-45 ~~[(i) for less than honorable reasons but~~
 2-46 ~~did not leave the agency because of pending or final disciplinary~~
 2-47 ~~action; or~~

2-48 ~~[(ii) while under investigation for a~~
 2-49 ~~potential criminal violation or in lieu of disciplinary action,~~
 2-50 ~~including suspension, demotion, or termination;~~

2-51 ~~[(E) killed in the line of duty, which applies~~
 2-52 ~~only to an officer who was killed while performing the officer's~~
 2-53 ~~duties as a peace officer in or outside this state;~~

2-54 ~~[(F) died, which applies only to an officer who~~
 2-55 ~~died for a reason that is not described by Paragraph (E); or~~

2-56 ~~[(G) disabled, which applies only to an officer~~
 2-57 ~~who was unable to fulfill the officer's duties as a peace officer~~
 2-58 ~~because of an injury or illness].~~

2-59 (d) [(b)] The head of the law enforcement agency from which
 2-60 a license holder [person] resigns, retires, [or] is terminated, or
 2-61 separates for reasons other than death, or the head's designee,
 2-62 shall provide to the license holder [person] a copy of the report.
 2-63 The report must be provided to the license holder not later than the
 2-64 seventh business day after the date the license holder:

2-65 (1) resigns, retires, or separates from the agency; or

2-66 (2) exhausts all administrative appeals available to
 2-67 the license holder if the license holder was terminated based on an
 2-68 allegation of misconduct.

2-69 (e) If the person who is the subject of the employment

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

3-5 (f) The head of a law enforcement agency or the head's
3-6 designee satisfies the obligation to provide the report required
3-7 under Subsection (d) or (e) by sending by certified mail:

3-8 (1) the report required under Subsection (d) to the
3-9 last known address of the license holder if the license holder is
3-10 not otherwise available; or

3-11 (2) the report required under Subsection (e) to the
3-12 last known address of the next of kin if the next of kin who
3-13 requested the report is not otherwise available.

3-14 (g) [~~e~~] The head of a law enforcement agency or the head's
3-15 designee must submit a report under this section each time a person
3-16 licensed under this chapter resigns, retires, [~~or~~] is terminated,
3-17 or separates for any other reason from the agency. The report is an
3-18 official government document.

3-19 SECTION 3. Subchapter J, Chapter 1701, Occupations Code, is
3-20 amended by adding Section 1701.4521 to read as follows:

3-21 Sec. 1701.4521. LICENSE SUSPENSION FOR OFFICER
3-22 DISHONORABLY DISCHARGED. (a) The commission shall suspend the
3-23 license of an officer licensed under this chapter on notification
3-24 that the officer has been dishonorably discharged if the officer
3-25 has previously been dishonorably discharged from another law
3-26 enforcement agency.

3-27 (b) An officer whose license is suspended under this section
3-28 may appeal the suspension in writing to the commission not later
3-29 than the 30th day after the date the officer is suspended.

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

3-37 (d) The commission's decision does not affect:

3-38 (1) the employment relationship between an officer
3-39 licensed under this chapter and a law enforcement agency; or

3-40 (2) any disciplinary action taken against an officer
3-41 licensed under this chapter by a law enforcement agency.

3-42 SECTION 4. Section 1701.4525, Occupations Code, is amended
3-43 by amending Subsection (e) and adding Subsection (f) to read as
3-44 follows:

3-45 (e) In a proceeding under Subsection (b) to contest the
3-46 commission's order or under Subsection (c) to correct an employment
3-47 termination report for an order or report based on alleged
3-48 misconduct, an administrative law judge shall determine if the
3-49 alleged misconduct occurred by a preponderance of the evidence
3-50 regardless of whether the person who is the subject of the report
3-51 was terminated or the person resigned, retired, or separated in
3-52 lieu of termination. If the alleged misconduct is not supported by
3-53 a preponderance of the evidence, the administrative law judge shall
3-54 order the report to be changed.

3-55 (f) The commission shall adopt rules for the administration
3-56 of this section.

3-57 SECTION 5. Subchapter J, Chapter 1701, Occupations Code, is
3-58 amended by adding Section 1701.458 to read as follows:

3-59 Sec. 1701.458. VENUE. Venue for the prosecution of an
3-60 offense under Section 37.10, Penal Code, that arises from a report
3-61 required under this subchapter lies in the county where the offense
3-62 occurred or in Travis County.

3-63 SECTION 6. The changes in law made by this Act in relation
3-64 to employment termination reports apply only to a report under
3-65 Subchapter J, Chapter 1701, Occupations Code, as amended by this
3-66 Act, regarding a resignation or termination that occurs on or after
3-67 the effective date of this Act. An employment termination report
3-68 regarding a resignation or termination that occurs before the
3-69 effective date of this Act is governed by the law as it existed

4-1 immediately before the effective date of this Act, and that law is
4-2 continued in effect for that purpose.

4-3 SECTION 7. This Act takes effect September 1, 2007.

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