

**House Bill 2445**  
Senate Amendments  
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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Same as House version.

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

Sec. 1701.452. **EMPLOYMENT TERMINATION REPORT.** (a) The head of a law enforcement agency or the head's designee shall submit a report to the commission on a form prescribed by the commission regarding a person licensed under this chapter who resigns or retires from [the] employment with [øf] the law enforcement agency, [øf] whose appointment with the law enforcement agency is 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 license holder:

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

(b) The [agency] head of a law enforcement agency or the head's designee shall include in the report required under Subsection (a) a statement on whether the license holder was honorably discharged, generally discharged, or dishonorably discharged.

For purposes of this subsection:

(1) "Honorably discharged" means a license holder who, while in good standing and not because of pending or final disciplinary actions or a documented performance

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

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

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

(1) "Honorably discharged" means a license holder who, while in good standing and not because of pending or final disciplinary actions or a documented performance

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problem, retired, resigned, or separated from employment with or died while employed 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 dishonorably discharged; or

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

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

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

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

(c) The commission by rule may further specify the circumstances that constitute honorably discharged, dishonorably discharged, and generally discharged within the definitions provided by Subsection (b)]:

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

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

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

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problem, retired, resigned, or separated from employment with or died while employed 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 dishonorably discharged; or

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

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

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

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

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

]; and

[(2) one of the following designations:

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

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~~[(i) left the agency while in good standing; and  
[(ii) is eligible to collect a pension;  
[(B) honorably discharged, which applies only to an officer who:  
[(i) left the agency while in good standing to pursue other career interests or for personal reasons other than retirement; and  
[(ii) did not leave the agency while under investigation for a criminal violation or while facing disciplinary action, including suspension, demotion, or termination;  
[(C) dishonorably discharged, which applies only to an officer whose employment was terminated for a violation of law or department policy or for other substantiated misconduct;  
[(D) generally discharged, which applies only to an officer who left the agency:  
[(i) for less than honorable reasons but did not leave the agency because of pending or final disciplinary action; or  
[(ii) while under investigation for a potential criminal violation or in lieu of disciplinary action, including suspension, demotion, or termination;  
[(E) killed in the line of duty, which applies only to an officer who was killed while performing the officer's duties as a peace officer in or outside this state;  
[(F) died, which applies only to an officer who died for a reason that is not described by Paragraph (E); or  
[(G) disabled, which applies only to an officer who was unable to fulfill the officer's duties as a peace officer because of an injury or illness].  
(d) ~~[(b)]~~ The head of the law enforcement agency from~~

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~~[(i) left the agency while in good standing; and  
[(ii) is eligible to collect a pension;  
[(B) honorably discharged, which applies only to an officer who:  
[(i) left the agency while in good standing to pursue other career interests or for personal reasons other than retirement; and  
[(ii) did not leave the agency while under investigation for a criminal violation or while facing disciplinary action, including suspension, demotion, or termination;  
[(C) dishonorably discharged, which applies only to an officer whose employment was terminated for a violation of law or department policy or for other substantiated misconduct;  
[(D) generally discharged, which applies only to an officer who left the agency:  
[(i) for less than honorable reasons but did not leave the agency because of pending or final disciplinary action; or  
[(ii) while under investigation for a potential criminal violation or in lieu of disciplinary action, including suspension, demotion, or termination;  
[(E) killed in the line of duty, which applies only to an officer who was killed while performing the officer's duties as a peace officer in or outside this state;  
[(F) died, which applies only to an officer who died for a reason that is not described by Paragraph (E); or  
[(G) disabled, which applies only to an officer who was unable to fulfill the officer's duties as a peace officer because of an injury or illness].  
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which a license holder ~~[person]~~ resigns, retires, ~~[or]~~ is terminated, or separates for reasons other than death, or the head's designee, shall provide to the license holder ~~[person]~~ a copy of the report. The report must be provided to the license holder not later than the seventh business day after the date the license holder:

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

(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 not later than the seventh business day after the date of the request.

(f) The head of a law enforcement agency or the head's designee satisfies the obligation to provide the report required 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) ~~[(e)]~~ 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

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which a license holder ~~[person]~~ resigns, retires, ~~[or]~~ is terminated, or separates for reasons other than death, or the head's designee, shall provide to the license holder ~~[person]~~ a copy of the report. The report must be provided to the license holder not later than the seventh business day after the date the license holder:

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

(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 not later than the seventh business day after the date of the request.

(f) The head of a law enforcement agency or the head's designee satisfies the obligation to provide the report required 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) ~~[(e)]~~ 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

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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:

Sec. 1701.4521. LICENSE SUSPENSION FOR OFFICER 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 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

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reason from the agency. The report is an official government document.

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

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

(e) In a proceeding under Subsection (b) to contest 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 order the report to be changed.

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

Same as House version.

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 occurred or in Travis County.

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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 regarding a resignation or termination that occurs before the 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.

Same as House version.

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

Same as House version.