

BILL ANALYSIS

C.S.S.B. 1245
By: Carona
Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Chapter 1702, Occupations Code, referred to as the Private Security Act, governs private investigations companies and securities services contractors.

C.S.S.B. 1245 amends the act to make several nonsubstantive changes, making the treatment of the various industries regulated under the act more consistent, and to authorize the Department of Public Safety to administer the act. The bill prohibits an individual, acting as a personal protection officer while in uniform from concealing a firearm, requiring such individual to carry the firearm in plain view, and requires a personal protection officer, when not in uniform, to conceal the firearm.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Private Security Board in SECTION 6 of this bill.

ANALYSIS

C.S.S.B. 1245 amends provisions of the Occupations Code relating to the regulation of the business of private security and makes clarifying changes and technical corrections. The bill removes a provision prohibiting the salary of an employee of the Department of Public Safety (DPS) designated as the administrative assistant to the Texas Private Security Board from exceeding the salary specified for a certain salary group in the General Appropriations Act. The bill includes a person who offers to sell, install, service, or maintain mechanical security devices, in addition to those who perform those actions, among the persons who act as a locksmith company for the purposes of the Private Security Act.

C.S.S.B. 1245 requires DPS on written request, rather than the Texas Commission on Private Security at least quarterly until the final disposition of the complaint, to inform a person filing a complaint with the commission and each person who is a subject of the complaint of the status of the investigation unless the information would jeopardize an ongoing, rather than an undercover, investigation.

C.S.S.B. 1245 establishes that licensure under the Private Security Act does not exempt a foreign entity from the registration requirements under the Business Organizations Code.

C.S.S.B. 1245 clarifies that an officer whose personal identifying information is required to be included in an entity's application for a license issued under the Private Security Act and who is required to register in accordance with the Private Security Act and related administrative rules is the officer who oversees the security-related aspects of the business. The bill requires an applicant for a license as a security services contractor to maintain a physical address within Texas and to provide that address to the board and requires the board to adopt rules to enable an out-of-state license holder to comply with those address requirements.

C.S.S.B. 1245 requires the commission, rather than the board, to prescribe the form of a license. The bill adds to the items that must be included in a license issued under the Private Security Act a photograph of the license holder, affixed to the license at the time the license is issued by the board.

C.S.S.B. 1245 provides that any period of temporary operation authorized on the termination of the manager of a private security license holder's business or the temporary continuation of a license holder's business starts on the effective date of any summary action taken against the manager.

C.S.S.B. 1245 requires a license holder to maintain records required under the Private Security Act at a physical address within Texas and to provide that address to the board. The bill authorizes DPS to require an applicant for a security officer commission to authorize the release to DPS of any relevant medical records for the purposes of determining if the applicant is incapable of exercising sound judgment in the proper use and storage of a handgun as required under the security officer commission qualifications.

C.S.S.B. 1245 expands the requirement that a commissioned security officer acting as a personal protection officer hold a personal protection officer authorization to include any individual acting as a personal protection officer. The bill specifies that a person acts as a personal protection officer if the individual, while carrying a firearm, provides another individual personal protection from bodily harm, rather than if the individual has been issued a security officer commission to carry a concealed firearm and provides that protection. The bill prohibits an individual who is acting as a personal protection officer and is wearing the uniform of a security officer, including a uniform, apparel, patch, or badge associated with security personnel, from concealing any firearm the individual is carrying and requires the individual to carry the firearm in plain view. The bill requires an individual who is acting as a personal protection officer and is not wearing the uniform of a security officer to conceal that person's firearm.

C.S.S.B. 1245 establishes as a deadline by which the employer of an applicant for registration under the Private Security Act is required to make a reasonable attempt to verify certain personally identifying information required on an application for registration the date the application is submitted or the date the applicant begins to perform the duties of employment that require registration, whichever is earlier. The bill requires an applicant for registration to submit an application that substantially meets the requirements established under law before employment in a capacity for which registration is required. The bill requires the color photograph required to be contained in a pocket card issued to each registrant under the Private Security Act to be affixed to the pocket card by the board at the time the card is issued. The bill authorizes the board, as part of its criminal history check on applicants under the act, to request that the applicant provide certified copies of relevant court documents or other records. The bill provides that failure to provide the requested records within a reasonable time as determined by the board may result in the application being considered incomplete. The bill clarifies that a person who has full-time employment as a peace officer and who receives compensation for private contract employment must be directly employed by the recipient of the services in addition to other requirements to be exempt from regulation under the Private Security Act.

C.S.S.B. 1245 modifies the authorization to undertake certain disciplinary actions against a license holder, registrant, or commissioned security officer to authorize DPS to take the disciplinary actions, rather than the DPS subject to the board's final order after a hearing. The bill transfers authority from the commission to DPS to issue a subpoena relating to a complaint investigation conducted under the Private Security Act, to produce information or documents or compel attendance and testimony of a witness provided the subpoena is necessary to enforce the provisions of the Private Security Act or the board's rules. The bill specifies that the subpoena may be delivered to any person in Texas and removes the authority of a hearings officer to administer oaths and require testimony or evidence to be given under oath. The bill provides that a person licensed or otherwise regulated under the Private Security Act who fails without

good cause to comply with a subpoena issued under a complaint investigation may be subject to suspension of a license. The bill authorizes a subpoena, if the subpoena relates to an ongoing criminal investigation by DPS and DPS determines that disclosure could significantly impede the investigation, to provide that the person to whom the subpoena is directed may not disclose that the subpoena has been issued, identify or describe any records requested by the subpoena, or disclose whether records have been furnished in response to the subpoena.

C.S.S.B. 1245 provides that a person who performs or offers to perform a private security activity, but who is not licensed or otherwise authorized to perform the activity, commits a false, misleading, or deceptive act or practice as defined under a certain provision in the Business & Commerce Code. The bill provides that a public or private right or remedy under deceptive trade practices may be used to enforce the Private Security Act. The bill clarifies that the term "alarm system" does not include an accessory that is not connected to a computer or data processor that records or archives the voice, visual image, or identifying information of the user rather than an alarm system. The bill defines "personal protection officer" and "security officer."

C.S.S.B. 1245 amends the Penal Code to modify the affirmative defense to prosecution for an offense of possessing a prohibited weapon in a secured area of an airport for a security officer who holds a personal protection authorization to provide for the defense only if the officer is either wearing the uniform of a security officer and carrying the officer's firearm in plain view or is not wearing the uniform of a security officer and carrying the officer's firearm in a concealed manner.

C.S.S.B. 1245 reenacts and amends Section 46.15(b), Penal Code, as amended by Chapters 647 (H.B. 964), 693 (H.B. 1815), and 1048 (H.B. 2101), Acts of the 80th Legislature, Regular Session, 2007, to specify that a person who acts as a personal protection officer and carries the person's security officer commission and protection officer authorization is exempt from provisions regarding the offense of the unlawful carrying of weapons if the person is engaged in the performance of duties as a personal protection officer, or is traveling to or from the person's place of assignment, and is either wearing the uniform of a security officer and carrying the officer's weapon in plain view, or is not wearing the uniform of a security officer and carrying the officer's weapon in a concealed manner. The bill provides that, to the extent of any conflict, its provisions prevail over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

EFFECTIVE DATE

September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1245 removes a provision included in the original requiring that a manager of a private security license holder's business be immediately terminated on the effective date of any summary action taken against the manager. The substitute differs from the original by specifying that any period of temporary operation authorized on the termination of the manager or the temporary continuation of a license holder's business starts on the effective date of any summary action taken against the manager, rather than on the date of termination of the manager as in the original.