

By: Driver

H.B. No. 2286

Substitute the following for H.B. No. 2286:

By: Merritt

C.S.H.B. No. 2286

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of the business of private security.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1702.002, Occupations Code, is amended by amending Subdivision (1-a) and adding Subdivisions (16-a) and (20-a) to read as follows:

(1-a) For purposes of Subdivision (1), the term "alarm system" does not include a telephone entry system, an operator for opening or closing a residential or commercial gate or door, or an accessory used only to activate a gate or door, if the system, operator, or accessory is not connected to a computer or data processor that records or archives the voice, visual image, or identifying information of the user [~~an alarm system~~].

(16-a) "Personal protection officer" means a person who performs the activities described by Section 1702.202.

(20-a) "Security officer" means a person who performs the activities described by Section 1702.222.

SECTION 2. Section 1702.047, Occupations Code, is amended to read as follows:

Sec. 1702.047. ADMINISTRATIVE STAFF. The department shall designate a department employee who shall report directly to the board. The employee designated under this section shall provide administrative assistance to [~~assist~~] the board in the performance [~~administration~~] of the board's duties. [~~The salary for an~~

1 ~~employee designated under this section may not exceed the salary~~
2 ~~specified in the General Appropriations Act for an employee subject~~
3 ~~to salary group A10.]~~

4 SECTION 3. Section 1702.082(e), Occupations Code, is
5 amended to read as follows:

6 (e) On written request, the department [~~The commission, at~~
7 ~~least quarterly until final disposition of the complaint,~~] shall
8 inform [~~notify~~] the person filing the complaint and each person who
9 is a subject of the complaint of the status of the investigation
10 unless the information [~~notice~~] would jeopardize an ongoing
11 [~~undercover~~] investigation.

12 SECTION 4. Subchapter A, Chapter 1702, Occupations Code, is
13 amended by adding Section 1702.006 to read as follows:

14 Sec. 1702.006. FOREIGN ENTITY REGISTRATION. Licensure
15 under this chapter does not exempt a foreign entity from the
16 registration requirements of Chapter 9, Business Organizations
17 Code.

18 SECTION 5. Section 1702.1056(a), Occupations Code, is
19 amended to read as follows:

20 (a) A person acts as a locksmith company for the purposes of
21 this chapter if the person:

22 (1) sells, installs, services, or maintains, or offers
23 to sell, install, service, or maintain, mechanical security
24 devices, including deadbolts and locks;

25 (2) advertises services offered by the company using
26 the term "locksmith"; or

27 (3) includes the term "locksmith" in the company's

1 name.

2 SECTION 6. Section 1702.110, Occupations Code, is amended
3 to read as follows:

4 Sec. 1702.110. APPLICATION FOR LICENSE. (a) An
5 application for a license under this chapter must be in the form
6 prescribed by the board [~~commission~~] and include:

7 (1) the full name and business address of the
8 applicant;

9 (2) the name under which the applicant intends to do
10 business;

11 (3) a statement as to the general nature of the
12 business in which the applicant intends to engage;

13 (4) a statement as to the classification for which the
14 applicant requests qualification;

15 (5) if the applicant is an entity other than an
16 individual, the full name and residence address of each partner,
17 officer who oversees the security-related aspects of the business,
18 and director of the applicant, and of the applicant's manager;

19 (6) if the applicant is an individual, two
20 classifiable sets of fingerprints of the applicant or, if the
21 applicant is an entity other than an individual, of each officer who
22 oversees the security-related aspects of the business and of each
23 partner or shareholder who owns at least a 25 percent interest in
24 the applicant;

25 (7) a verified statement of the applicant's experience
26 qualifications in the particular classification in which the
27 applicant is applying;

1 (8) a report from the department [~~Texas Department of~~
2 ~~Public Safety~~] stating the applicant's record of any convictions
3 for a Class B misdemeanor or equivalent offense or a greater
4 offense;

5 (9) the social security number of the individual
6 making the application; and

7 (10) other information, evidence, statements, or
8 documents required by the board [~~commission~~].

9 (b) An applicant for a license as a security services
10 contractor shall maintain a physical address within this state and
11 provide that address to the board. The board shall adopt rules to
12 enable an out-of-state license holder to comply with this
13 subsection.

14 SECTION 7. Section 1702.112, Occupations Code, is amended
15 to read as follows:

16 Sec. 1702.112. FORM OF LICENSE. The board [~~commission~~]
17 shall prescribe the form of a license, including a branch office
18 license. The license must include:

19 (1) the name of the license holder;

20 (2) the name under which the license holder is to
21 operate; [~~and~~]

22 (3) the license number and the date the license was
23 issued; and

24 (4) a photograph of the license holder, affixed to the
25 license at the time the license is issued by the board.

26 SECTION 8. Section 1702.121, Occupations Code, is amended
27 to read as follows:

1 Sec. 1702.121. TERMINATION OF MANAGER. (a) A license
2 holder shall notify the board [~~commission~~] in writing not later
3 than the 14th day after the date a manager ceases to be manager of
4 the license holder's business. The license remains in effect for a
5 reasonable period after notice is given as provided by board
6 [~~commission~~] rule pending the board's [~~commission's~~] determination
7 of the qualification of another manager under this subchapter.

8 (b) Any period of temporary operation authorized under this
9 section or Section 1702.122 starts on the effective date of any
10 summary action taken against the manager.

11 SECTION 9. Section 1702.127, Occupations Code, is amended
12 by amending Subsections (b) and (c) and adding Subsection (d) to
13 read as follows:

14 (b) A license holder shall maintain a record containing
15 information related to the license holder's employees as required
16 by the board [~~commission~~].

17 (c) A license holder shall maintain for [~~commission~~]
18 inspection by the department at the license holder's principal
19 place of business or branch office two recent color photographs, of
20 a type required by the board [~~commission~~], of each applicant,
21 registrant, commissioned security officer, and employee of the
22 license holder.

23 (d) A license holder shall maintain records required under
24 this chapter at a physical address within this state and provide
25 that address to the board.

26 SECTION 10. Section 1702.163, Occupations Code, is amended
27 by adding Subsection (d-1) to read as follows:

1 (d-1) For the purposes of determining eligibility under
2 Subsection (b)(2), the department may require the applicant to
3 authorize the release to the department of any relevant medical
4 records.

5 SECTION 11. Section 1702.201, Occupations Code, is amended
6 to read as follows:

7 Sec. 1702.201. PERSONAL PROTECTION OFFICER AUTHORIZATION
8 REQUIRED. An individual [~~A commissioned security officer~~] may not
9 act as a personal protection officer unless the individual
10 [~~officer~~] holds a personal protection officer authorization.

11 SECTION 12. Section 1702.202, Occupations Code, is amended
12 to read as follows:

13 Sec. 1702.202. PERSONAL PROTECTION OFFICER. An individual
14 acts as a personal protection officer if the individual, while
15 carrying a firearm, [+
16

17 [~~(1) has been issued a security officer commission to~~
18 ~~carry a concealed firearm, and~~

19 [~~(2)~~] provides to another [~~an~~] individual personal
20 protection from bodily harm.

21 SECTION 13. Section 1702.206, Occupations Code, is amended
22 to read as follows:

23 Sec. 1702.206. LIMITED AUTHORITY TO CARRY [~~CONCEALED~~]
24 FIREARMS. (a) An individual acting as a personal protection
25 officer may not carry a [~~concealed~~] firearm unless the officer:

26 (1) is either:

27 (A) engaged in the exclusive performance of the
officer's duties as a personal protection officer for the employer

1 under whom the officer's personal protection officer authorization
2 is issued; or

3 (B) traveling to or from the officer's place of
4 assignment; and

5 (2) carries the officer's security officer commission
6 and personal protection officer authorization on the officer's
7 person while performing the officer's duties or traveling as
8 described by Subdivision (1) and presents the commission and
9 authorization on request.

10 (b) An individual who is acting as a personal protection
11 officer and is wearing the uniform of a security officer, including
12 any uniform or apparel described by Section 1702.323(d), may not
13 conceal any firearm the individual is carrying and shall carry the
14 firearm in plain view. An individual who is acting as a personal
15 protection officer and is not wearing the uniform of a security
16 officer shall conceal the firearm.

17 SECTION 14. Section 1702.221(a), Occupations Code, is
18 amended to read as follows:

19 (a) An individual must register in accordance with the
20 requirements of this chapter and related administrative rules if
21 the individual:

22 (1) is employed as an alarm systems installer, alarm
23 systems monitor, electronic access control device installer,
24 locksmith, dog trainer, manager or branch office manager,
25 noncommissioned security officer, private investigator, private
26 security consultant, or security salesperson; or

27 (2) is an owner, officer who oversees the

1 security-related aspects of the business, partner, or shareholder
2 of a license holder.

3 SECTION 15. Section 1702.230, Occupations Code, is amended
4 by amending Subsection (b) and adding Subsection (c) to read as
5 follows:

6 (b) The employer of the applicant shall make a reasonable
7 attempt to verify the information required under Subsection (a)(1)
8 before the earlier of:

- 9 (1) the date the application is submitted; or
10 (2) the date the applicant begins to perform the
11 duties of employment that require registration.

12 (c) An applicant must submit an application that
13 substantially meets the requirements of this section before
14 employment in a capacity for which registration is required.

15 SECTION 16. Section 1702.232(c), Occupations Code, is
16 amended to read as follows:

- 17 (c) The pocket card must:
18 (1) state the name of the registrant;
19 (2) contain a color photograph, affixed to the pocket
20 card by the board at the time the card is issued, and the signature
21 of the registrant; and
22 (3) state the date the card was issued and the card's
23 expiration date.

24 SECTION 17. Section 1702.282(a), Occupations Code, is
25 amended to read as follows:

26 (a) The board shall conduct a criminal history check,
27 including a check of any criminal history record information

1 maintained by the Federal Bureau of Investigation, in the manner
2 provided by Subchapter F, Chapter 411, Government Code, on each
3 applicant for a license, registration, security officer
4 commission, letter of approval, permit, or certification. As part
5 of its criminal history check, the board may request that the
6 applicant provide certified copies of relevant court documents or
7 other records. The failure to provide the requested records within
8 a reasonable time as determined by the board may result in the
9 application being considered incomplete. An applicant is not
10 eligible for a license, registration, commission, letter of
11 approval, permit, or certification if the check reveals that the
12 applicant has committed an act that constitutes grounds for the
13 denial of the license, registration, commission, letter of
14 approval, permit, or certification. Except as provided by
15 Subsection (d), each applicant shall include in the application two
16 complete sets of fingerprints on forms prescribed by the board
17 accompanied by the fee set by the board.

18 SECTION 18. Section 1702.286, Occupations Code, as added by
19 Chapter 1102 (H.B. 2243), Acts of the 79th Legislature, Regular
20 Session, 2005, is renumbered as Section 1702.2865, Occupations
21 Code, to read as follows:

22 Sec. 1702.2865 [~~1702.286~~]. CUSTOMER AUTHORIZATION REQUIRED
23 FOR CERTAIN LOCKSMITH SERVICES. (a) A locksmith company or
24 locksmith may not perform services for a customer who seeks entry to
25 a structure, motor vehicle, or other property unless the customer,
26 in the course of the transaction:

27 (1) shows the locksmith company or locksmith a

1 government-issued identification; and

2 (2) provides a signed authorization stating that the
3 customer owns or is otherwise entitled to legal access to the
4 structure, motor vehicle, or other property.

5 (b) A locksmith company or locksmith is exempt from
6 Subsection (a) if the locksmith is requested to perform services in
7 a case of imminent threat to a person or property.

8 SECTION 19. Section 1702.322, Occupations Code, is amended
9 to read as follows:

10 Sec. 1702.322. LAW ENFORCEMENT PERSONNEL. This chapter
11 does not apply to:

12 (1) a person who has full-time employment as a peace
13 officer and who receives compensation for private employment on an
14 individual or an independent contractor basis as a patrolman,
15 guard, extra job coordinator, or watchman if the officer:

16 (A) is employed in an employee-employer
17 relationship or employed on an individual contractual basis
18 directly by the recipient of the services;

19 (B) is not in the employ of another peace
20 officer;

21 (C) is not a reserve peace officer; and

22 (D) works as a peace officer on the average of at
23 least 32 hours a week, is compensated by the state or a political
24 subdivision of the state at least at the minimum wage, and is
25 entitled to all employee benefits offered to a peace officer by the
26 state or political subdivision;

27 (2) a reserve peace officer while the reserve officer

1 is performing guard, patrolman, or watchman duties for a county and
2 is being compensated solely by that county;

3 (3) a peace officer acting in an official capacity in
4 responding to a burglar alarm or detection device; or

5 (4) a person engaged in the business of electronic
6 monitoring of an individual as a condition of that individual's
7 community supervision, parole, mandatory supervision, or release
8 on bail, if the person does not perform any other service that
9 requires a license under this chapter.

10 SECTION 20. Section 1702.361(a), Occupations Code, is
11 amended to read as follows:

12 (a) The [~~Subject to the board's final order under the~~
13 ~~hearing provisions of this subchapter, the~~] department, for conduct
14 described by Subsection (b), may:

15 (1) deny an application or revoke, suspend, or refuse
16 to renew a license, registration, or security officer commission;

17 (2) reprimand a license holder, registrant, or
18 commissioned security officer; or

19 (3) place on probation a person whose license,
20 registration, or security officer commission has been suspended.

21 SECTION 21. Section 1702.367, Occupations Code, is amended
22 by amending Subsection (a) and adding Subsections (f) and (g) to
23 read as follows:

24 (a) For an investigation conducted under this chapter, if
25 necessary to enforce this chapter or the board's rules, the
26 department [~~the commission~~] may issue an administrative [~~a~~]
27 subpoena to any person in this state compelling:

1 (1) the production of information or documents; or

2 (2) the attendance and testimony of a witness [~~to~~

3 ~~compel the attendance of a witness or the production of a pertinent~~
4 ~~record or document. The hearings officer may administer oaths and~~
5 ~~require testimony or evidence to be given under oath].~~

6 (f) A person licensed or otherwise regulated under this
7 chapter who fails without good cause to comply with a subpoena
8 issued under this section may be subject to suspension of a license
9 under Section 1702.361.

10 (g) If a subpoena issued under this section relates to an
11 ongoing criminal investigation by the department and the department
12 determines that disclosure could significantly impede the
13 investigation, the subpoena may provide that the person to whom the
14 subpoena is directed may not:

15 (1) disclose that the subpoena has been issued;

16 (2) identify or describe any records requested by the
17 subpoena; or

18 (3) disclose whether records have been furnished in
19 response to the subpoena.

20 SECTION 22. Subchapter P, Chapter 1702, Occupations Code,
21 is amended by adding Section 1702.3835 to read as follows:

22 Sec. 1702.3835. DECEPTIVE TRADE PRACTICE. (a) A person who
23 performs or offers to perform an activity regulated under this
24 chapter, but who is not licensed or otherwise authorized under this
25 chapter to perform the activity, commits a false, misleading, or
26 deceptive act or practice within the meaning of Section 17.46,
27 Business & Commerce Code.

1 (b) A public or private right or remedy under Chapter 17,
2 Business & Commerce Code, may be used to enforce this chapter.

3 SECTION 23. Section 46.03(d), Penal Code, is amended to
4 read as follows:

5 (d) It is a defense to prosecution under Subsection (a)(5)
6 that the actor possessed a firearm or club while traveling to or
7 from the actor's place of assignment or in the actual discharge of
8 duties as:

9 (1) a member of the armed forces or national guard;

10 (2) a guard employed by a penal institution; or

11 (3) a security officer commissioned by the Texas
12 ~~[Board of Private Investigators and]~~ Private Security Board
13 ~~[Agencies]~~ if:

14 (A) the actor is wearing a distinctive uniform;
15 and

16 (B) the firearm or club is in plain view; or

17 (4) ~~(5)~~ a security officer who holds a personal
18 protection authorization under Chapter 1702, Occupations Code,
19 provided that the officer is either:

20 (A) wearing the uniform of a security officer,
21 including any uniform or apparel described by Section 1702.323(d),
22 Occupations Code, and carrying the officer's firearm in plain view;
23 or

24 (B) not wearing the uniform of a security officer
25 and carrying the officer's firearm in a concealed manner ~~[the~~
26 ~~Private Investigators and Private Security Agencies Act (Article~~
27 ~~4413(29bb), Vernon's Texas Civil Statutes)]~~.

1 SECTION 24. Section 46.15(b), Penal Code, as amended by
2 Chapters 647 (H.B. 964), 693 (H.B. 1815), and 1048 (H.B. 2101), Acts
3 of the 80th Legislature, Regular Session, 2007, is reenacted and
4 amended to read as follows:

5 (b) Section 46.02 does not apply to a person who:

6 (1) is in the actual discharge of official duties as a
7 member of the armed forces or state military forces as defined by
8 Section 431.001, Government Code, or as a guard employed by a penal
9 institution;

10 (2) is traveling;

11 (3) is engaging in lawful hunting, fishing, or other
12 sporting activity on the immediate premises where the activity is
13 conducted, or is en route between the premises and the actor's
14 residence or motor vehicle, if the weapon is a type commonly used in
15 the activity;

16 (4) holds a security officer commission issued by the
17 Texas Private Security Board, if the person~~+~~

18 [~~(A)~~] is engaged in the performance of the
19 person's duties as an officer commissioned under Chapter 1702,
20 Occupations Code, or is traveling to or from the person's place of
21 assignment~~+~~ and

22 [~~(B)~~] is ~~either+~~

23 [~~(i)~~] wearing the officer's uniform and
24 carrying the officer's weapon in plain view; ~~or~~

25 (5) acts [~~(ii) acting~~] as a personal protection
26 officer and carries [~~carrying~~] the person's security officer
27 commission and personal protection officer authorization, if the

1 person:

2 (A) is engaged in the performance of the person's
3 duties as a personal protection officer under Chapter 1702,
4 Occupations Code, or is traveling to or from the person's place of
5 assignment; and

6 (B) is either:

7 (i) wearing the uniform of a security
8 officer, including any uniform or apparel described by Section
9 1702.323(d), Occupations Code, and carrying the officer's weapon in
10 plain view; or

11 (ii) not wearing the uniform of a security
12 officer and carrying the officer's weapon in a concealed manner;

13 (6) [~~5~~] is carrying a concealed handgun and a valid
14 license issued under Subchapter H, Chapter 411, Government Code, to
15 carry a concealed handgun of the same category as the handgun the
16 person is carrying;

17 (7) [~~6~~] holds an alcoholic beverage permit or
18 license or is an employee of a holder of an alcoholic beverage
19 permit or license if the person is supervising the operation of the
20 permitted or licensed premises; or

21 (8) [~~7~~] is a student in a law enforcement class
22 engaging in an activity required as part of the class, if the weapon
23 is a type commonly used in the activity and the person is:

24 (A) on the immediate premises where the activity
25 is conducted; or

26 (B) en route between those premises and the
27 person's residence and is carrying the weapon unloaded.

1 SECTION 25. The change in law made by this Act to Sections
2 1702.110, 1702.221(a), and 1702.282(a), Occupations Code, apply to
3 an application under Chapter 1702, Occupations Code, submitted on
4 or after the effective date of this Act. An application submitted
5 before the effective date of this Act is governed by the law in
6 effect on the date the application was submitted, and the former law
7 is continued in effect for that purpose.

8 SECTION 26. To the extent of any conflict, this Act prevails
9 over another Act of the 81st Legislature, Regular Session, 2009,
10 relating to nonsubstantive additions to and corrections in enacted
11 codes.

12 SECTION 27. This Act takes effect September 1, 2009.