

By: Deuell

S.B. No. 1018

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Commission on Law Enforcement Officer Standards and Education.

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

SECTION 1. Section 1701.002, Occupations Code, is amended to read as follows:

Sec. 1701.002. APPLICATION OF SUNSET ACT. The Commission on Law Enforcement Officer Standards and Education is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2021 [~~2009~~].

SECTION 2. Section 1701.053, Occupations Code, is amended to read as follows:

Sec. 1701.053. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. (a) In this section, "Texas trade association" means a [~~nonprofit,~~] cooperative[~~7~~] and voluntarily joined statewide association of business or professional competitors in this state designed to assist its members and its industry or profession in dealing with mutual business or professional problems and in promoting their common interest.

(b) A person [~~An officer, employee, or paid consultant of a Texas trade association in the field of law enforcement~~] may not be a commission member and may not be an employee of the commission employed in a "bona fide executive, administrative, or professional

1 capacity," as that phrase is used for purposes of establishing an
2 exemption to the overtime provisions of the federal Fair Labor
3 Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if:

4 (1) the person is an officer, employee, or paid
5 consultant of a Texas trade association in the field of law
6 enforcement or county corrections; or

7 (2) the person's spouse is an officer, manager, or paid
8 consultant of a Texas trade association in the field of law
9 enforcement or county corrections [~~who is exempt from the state's~~
10 ~~position classification plan or is compensated at or above the~~
11 ~~amount prescribed by the General Appropriations Act for step 1,~~
12 ~~salary group A17, of the position classification salary schedule].~~

13 ~~(c) [A person who is the spouse of an officer, manager, or~~
14 ~~paid consultant of a Texas trade association in the field of law~~
15 ~~enforcement may not be a commission member and may not be an~~
16 ~~employee of the commission who is exempt from the state's position~~
17 ~~classification plan or is compensated at or above the amount~~
18 ~~prescribed by the General Appropriations Act for step 1, salary~~
19 ~~group A17, of the position classification salary schedule.~~

20 ~~[(d)]~~ A person may not be [~~serve as~~] a member of the
21 commission or act as the general counsel to the commission or the
22 agency if the person is required to register as a lobbyist under
23 Chapter 305, Government Code, because of the person's activities
24 for compensation on behalf of a profession related to the
25 commission's operation.

26 SECTION 3. Section 1701.056(a), Occupations Code, is
27 amended to read as follows:

1 (a) It is a ground for removal from the commission that a
2 member:

3 (1) does not have at the time of taking office
4 ~~[appointment]~~ the qualifications required by Section 1701.051(a)
5 or 1701.052;

6 (2) does not maintain during service on the commission
7 the qualifications required by Section 1701.051(a) or 1701.052;

8 (3) is ineligible for membership under ~~[violates a~~
9 ~~prohibition established by]~~ Section 1701.053;

10 (4) cannot, because of illness or disability,
11 discharge the member's duties for a substantial part of the member's
12 term; or

13 (5) is absent from more than half of the regularly
14 scheduled commission meetings that the member is eligible to attend
15 during a calendar year without an excuse approved by a majority vote
16 of the commission.

17 SECTION 4. Section 1701.059, Occupations Code, is amended
18 to read as follows:

19 Sec. 1701.059. TRAINING. (a) A ~~[To be eligible to take~~
20 ~~office as a member of the commission, a]~~ person who is appointed to
21 and qualifies for office as a member of the commission may not vote,
22 deliberate, or be counted as a member in attendance at a meeting of
23 the commission until the person completes ~~[must complete at least~~
24 ~~one course of]~~ a training program that complies with this section.

25 (b) The training program must ~~[shall]~~ provide the person
26 with information ~~[to a member]~~ regarding:

27 (1) the legislation that created the commission;

1 (2) the programs, functions, rules, and budget of the
2 commission [~~this chapter~~];

3 (3) [~~(2)~~] the results of the most recent formal audit
4 of [~~programs operated by~~] the commission;

5 (4) [~~(3)~~] the requirements of laws relating to open
6 meetings, public information, administrative procedure, and
7 conflicts of interest [~~role and functions of the commission~~]; and

8 ~~[(4) the rules of the commission, with an emphasis on~~
9 ~~the rules that relate to disciplinary and investigatory authority,]~~

10 ~~(5) [the current budget for the commission,]~~

11 ~~[(6) the results of the most recent formal audit of the~~
12 ~~commission,]~~

13 ~~[(7) the requirements of Chapters 551, 552, and 2001,~~
14 ~~Government Code,]~~

15 ~~[(8) the requirements of the conflict of interest laws~~
16 ~~and other laws relating to public officials, and]~~

17 ~~[(9)]~~ any applicable ethics policies adopted by the
18 commission or the Texas Ethics Commission.

19 (c) A person appointed to the commission is entitled to
20 reimbursement, as provided by the General Appropriations Act, for
21 travel expenses incurred in attending the training program
22 regardless of whether the attendance at the program occurs before
23 or after the person qualifies for office[~~, as provided by the~~
24 ~~General Appropriations Act, as if the person were a member of the~~
25 ~~commission)].~~

26 SECTION 5. Section 1701.153(b), Occupations Code, is
27 amended to read as follows:

1 (b) The commission shall furnish each agency and licensed
2 training school with the required reporting forms, including access
3 to electronic submission forms when the system under Section
4 1701.1523 is established.

5 SECTION 6. Section 1701.157(c), Occupations Code, is
6 amended to read as follows:

7 (c) The head of a law enforcement agency shall maintain a
8 complete and detailed [~~written~~] record of money received and spent
9 by the agency under this section. Money received under this section
10 is subject to audit by the comptroller. Money spent under this
11 section is subject to audit by the state auditor.

12 SECTION 7. Subchapter D, Chapter 1701, Occupations Code, is
13 amended by adding Sections 1701.1521, 1701.1522, 1701.1523,
14 1701.1524, and 1701.162 to read as follows:

15 Sec. 1701.1521. USE OF TECHNOLOGY. The commission shall
16 implement a policy requiring the commission to use appropriate
17 technological solutions to improve the commission's ability to
18 perform its functions. The policy must ensure that the public is
19 able to interact with the commission on the Internet.

20 Sec. 1701.1522. ALTERNATIVE DISPUTE RESOLUTION. (a) The
21 commission shall develop and implement a policy to encourage the
22 use of:

23 (1) negotiated rulemaking procedures under Chapter
24 2008, Government Code, for the adoption of commission rules; and

25 (2) appropriate alternative dispute resolution
26 procedures under Chapter 2009, Government Code, to assist in the
27 resolution of internal and external disputes under the commission's

1 jurisdiction.

2 (b) The commission's procedures relating to alternative
3 dispute resolution must conform, to the extent possible, to any
4 model guidelines issued by the State Office of Administrative
5 Hearings for the use of alternative dispute resolution by state
6 agencies.

7 (c) The commission shall designate a trained person to:

8 (1) coordinate the implementation of the policy
9 adopted under Subsection (a);

10 (2) serve as a resource for any training needed to
11 implement the procedures for negotiated rulemaking or alternative
12 dispute resolution; and

13 (3) collect data concerning the effectiveness of those
14 procedures, as implemented by the commission.

15 Sec. 1701.1523. ELECTRONIC SUBMISSION OF FORMS, DATA, AND
16 DOCUMENTS. The commission by rule shall:

17 (1) develop and establish a system for the electronic
18 submission of forms, data, and documents required to be submitted
19 to the commission under this chapter; and

20 (2) once that system is established, require law
21 enforcement agencies to submit to the commission electronically any
22 form, data, or document required to be submitted to the commission
23 under this chapter.

24 Sec. 1701.1524. RULES RELATING TO CONSEQUENCES OF CRIMINAL
25 CONVICTION OR DEFERRED ADJUDICATION. (a) The commission by rule
26 shall establish guidelines consistent with this chapter that are
27 necessary to comply with Chapter 53 to the extent that chapter

1 applies to persons licensed under this chapter.

2 (b) In its rules under this section, the commission shall
3 list the offenses for which a conviction would constitute grounds
4 for the commission to take action under Section 53.021 or for which
5 placement on deferred adjudication community supervision would
6 constitute grounds for the commission to take action under this
7 chapter.

8 Sec. 1701.162. RECORDS AND AUDIT REQUIREMENTS. (a) The
9 commission is entitled to access records maintained under Sections
10 1701.303, 1701.306, and 1701.310 by an agency hiring a person to be
11 an officer or county jailer, including records that relate to age,
12 education, physical standards, citizenship, experience, and other
13 matters relating to competence and reliability, as evidence of
14 qualification for licensing of an officer or county jailer.

15 (b) The commission shall audit the records described by
16 Subsection (a) of each law enforcement agency at least once every
17 five years.

18 (c) The commission by rule shall develop and establish a
19 framework for the audits conducted by the commission under
20 Subsection (b) that:

21 (1) addresses the types of documents subject to audit;
22 (2) provides a schedule for additional risk-based
23 inspections based on:

24 (A) whether there has been a prior violation by
25 the law enforcement agency;

26 (B) the inspection history of the agency; and

27 (C) any other factor the commission by rule

1 considers appropriate;

2 (3) provides timelines for complying with an audit
3 request or correcting a violation found during the audit process;
4 and

5 (4) establishes sanctions for failing to comply with
6 an audit request or to correct a violation found during the audit
7 process.

8 SECTION 8. Section 1701.202, Occupations Code, is amended
9 to read as follows:

10 Sec. 1701.202. COMPLAINTS. (a) The commission by rule
11 shall establish a comprehensive procedure for each phase of the
12 commission's complaint enforcement process, including:

- 13 (1) complaint intake;
14 (2) investigation;
15 (3) adjudication and relevant hearings;
16 (4) appeals;
17 (5) the imposition of sanctions; and
18 (6) public disclosure.

19 (b) On request, a license holder may obtain information
20 regarding a complaint made against the license holder under this
21 chapter, including a complete copy of the complaint file. On
22 receipt of a request under this subsection, the commission shall
23 provide the requested information in a timely manner to allow the
24 license holder time to respond to the complaint.

25 (c) The commission shall ensure that detailed information
26 regarding the commission's complaint enforcement process described
27 by this section is available on any publicly accessible Internet

1 website and in any appropriate printed materials maintained by the
2 commission [~~provide the commission's policies and procedures~~
3 ~~relating to complaint investigation and resolution to a person~~
4 ~~filing a complaint and to each person that is the subject of the~~
5 ~~complaint~~].

6 SECTION 9. Section 1701.203, Occupations Code, is amended
7 to read as follows:

8 Sec. 1701.203. RECORDS OF COMPLAINTS. (a) The commission
9 shall maintain a system to promptly and efficiently act on
10 complaints filed with the commission. The commission shall
11 maintain [~~keep an~~] information [~~file~~] about parties to the
12 complaint, [~~each written complaint filed with the commission that~~
13 ~~the commission has authority to resolve. The information file must~~
14 ~~include:~~

- 15 [~~(1) the date the complaint is received,~~
- 16 [~~(2) the name of the complainant,~~
- 17 [~~(3)] the subject matter of the complaint,~~ [~~+~~
- 18 [~~(4) a record of each person contacted in relation to~~
19 ~~the complaint,~~
- 20 [~~(5)] a summary of the results of the review or~~
- 21 investigation of the complaint, and its disposition [~~+~~ and
- 22 [~~(6) an explanation of the reason that a complaint was~~
23 ~~closed without action by the commission]~~.

24 (b) The commission shall make information available
25 describing its procedures for complaint investigation and
26 resolution.

27 (c) The commission [~~+~~ at least quarterly and until final

1 ~~disposition of the complaint,~~] shall periodically notify the
2 parties to the complaint of the status of the complaint until final
3 disposition [~~unless the notice would jeopardize an undercover~~
4 ~~investigation~~].

5 SECTION 10. Subchapter E, Chapter 1701, Occupations Code,
6 is amended by adding Section 1701.2035 to read as follows:

7 Sec. 1701.2035. TRACKING AND ANALYSIS OF COMPLAINT AND
8 VIOLATION DATA. (a) The commission shall develop and implement a
9 method for:

10 (1) tracking complaints filed with the commission
11 through their final disposition, including:

12 (A) the reason for each complaint;

13 (B) how each complaint was resolved; and

14 (C) the subject matter of each complaint that was
15 not within the jurisdiction of the commission and how the
16 commission responded to the complaint; and

17 (2) tracking and categorizing the sources and types of
18 complaints filed with the commission and of violations of this
19 chapter or a rule adopted under this chapter.

20 (b) The commission shall analyze the complaint and
21 violation data maintained under Subsection (a) to identify trends
22 and areas that may require additional regulation or enforcement.

23 SECTION 11. Section 1701.254, Occupations Code, is amended
24 by adding Subsection (d) to read as follows:

25 (d) The commission by rule shall establish a system for
26 placing a training provider on at-risk probationary status. The
27 rules must prescribe:

1 (1) the criteria to be used by the commission in
2 determining whether to place a training provider on at-risk
3 probationary status;

4 (2) a procedure and timeline for imposing corrective
5 conditions on a training provider placed on at-risk probationary
6 status and for notifying the provider regarding those conditions;
7 and

8 (3) a procedure for tracking a training provider's
9 progress toward compliance with any corrective conditions imposed
10 on the provider by the commission under this subsection.

11 SECTION 12. Section 1701.255(c), Occupations Code, is
12 amended to read as follows:

13 (c) A person may not enroll in a peace officer training
14 program under Section 1701.251(a) unless the person has received:

15 (1) a high school diploma;

16 (2) a high school equivalency certificate [~~and has~~
17 ~~completed at least 12 hours at an institution of higher education~~
18 ~~with at least a 2.0 grade point average on a 4.0 scale]~~; or

19 (3) an honorable discharge from the armed forces of
20 the United States after at least 24 months of active duty service.

21 SECTION 13. Sections 1701.451(a), (b), and (c), Occupations
22 Code, are amended to read as follows:

23 (a) Before a law enforcement agency may hire a person
24 licensed under this chapter, the agency head or the agency head's
25 designee must:

26 (1) make a [~~written~~] request to the commission for any
27 employment termination report regarding the person that is

1 maintained by the commission under this subchapter; and

2 (2) submit to the commission on the form prescribed by
3 the commission confirmation that the agency:

4 (A) conducted in the manner prescribed by the
5 commission a criminal background check regarding the person;

6 (B) obtained the person's written consent on a
7 form prescribed by the commission for the agency to view the
8 person's employment records;

9 (C) obtained from the commission any service or
10 education records regarding the person maintained by the
11 commission; and

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

14 (b) The commission by rule shall establish a system for
15 verifying an electronically submitted [~~The written~~] request
16 required by Subsection (a)(1) [~~must be on the agency's letterhead~~
17 ~~and be signed by the agency head or the agency head's designee~~].

18 (c) If the commission receives from a law enforcement agency
19 a [~~written~~] request that complies with Subsections (a)(1) and (b),
20 the commission employee having the responsibility to maintain any
21 employment termination report regarding the person who is the
22 subject of the request shall release the report to the agency.

23 SECTION 14. Section 1701.4525, Occupations Code, is amended
24 by adding Subsection (g) to read as follows:

25 (g) The commission is not considered a party in a proceeding
26 conducted by the State Office of Administrative Hearings under this
27 section.

1 SECTION 15. Section 1701.453, Occupations Code, is amended
2 to read as follows:

3 Sec. 1701.453. MAINTENANCE OF REPORTS AND STATEMENTS. The
4 commission shall maintain a copy of each report and ~~written~~
5 statement submitted to the commission under this subchapter until
6 at least the 10th anniversary of the date on which the report or
7 statement is submitted.

8 SECTION 16. Subchapter K, Chapter 1701, Occupations Code,
9 is amended by adding Section 1701.507 to read as follows:

10 Sec. 1701.507. ADMINISTRATIVE PENALTIES. (a) In addition
11 to other penalties imposed by law, a person who violates this
12 chapter or a rule adopted under this chapter is subject to an
13 administrative penalty in an amount set by the commission not to
14 exceed \$1,000 per day per violation. The administrative penalty
15 shall be assessed in a proceeding conducted in accordance with
16 Chapter 2001, Government Code.

17 (b) The amount of the penalty shall be based on:

18 (1) the seriousness of the violation;

19 (2) the respondent's history of violations;

20 (3) the amount necessary to deter future violations;

21 (4) efforts made by the respondent to correct the
22 violation; and

23 (5) any other matter that justice may require.

24 (c) The commission by rule shall establish a written
25 enforcement plan that provides notice of the specific ranges of
26 penalties that apply to specific alleged violations and the
27 criteria by which the commission determines the amount of a

1 proposed administrative penalty.

2 SECTION 17. The following laws are repealed:

- 3 (1) Section 1701.051(d), Occupations Code;
- 4 (2) Section 1701.315, Occupations Code; and
- 5 (3) Section 1701.406, Occupations Code.

6 SECTION 18. (a) The changes in law made by this Act to
7 Sections 1701.053, 1701.056, and 1701.059, Occupations Code, apply
8 only to a member of the Texas Commission on Law Enforcement Officer
9 Standards and Education appointed on or after the effective date of
10 this Act and do not affect the entitlement of a member serving on
11 the commission immediately before that date to continue to serve
12 and function as a member of the commission for the remainder of the
13 member's term.

14 (b) Not later than March 1, 2010, the Texas Commission on
15 Law Enforcement Officer Standards and Education shall adopt rules
16 and policies required under:

- 17 (1) Sections 1701.202, 1701.254, and 1701.451,
18 Occupations Code, as amended by this Act; and
- 19 (2) Sections 1701.1521, 1701.1522, 1701.1523,
20 1701.1524, and 1701.162, Occupations Code, as added by this Act.

21 (c) The changes in law made by this Act with respect to
22 conduct that is grounds for the imposition of a disciplinary
23 sanction, including an administrative penalty, apply only to
24 conduct that occurs on or after the effective date of this Act.
25 Conduct that occurs before that date is governed by the law in
26 effect on the date the conduct occurred, and the former law is
27 continued in effect for that purpose.

1 SECTION 19. This Act takes effect September 1, 2009.