

By: Carona

S.B. No. 1245

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. Subsection (e), Section 1702.082, Occupations
5 Code, is 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. Subsection (a), Section 1702.1056, Occupations
19 Code, is 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) A manager shall be immediately terminated on the
9 effective date of any summary action taken against the manager. Any
10 period of temporary operation authorized under this section or
11 Section 1702.122 starts on the date of termination.

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

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

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

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

27 SECTION 10. Section 1702.163, Occupations Code, is amended

1 by adding Subsection (d-1) to read as follows:

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

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

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

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

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

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

1 officer's duties as a personal protection officer for the employer
2 under whom the officer's personal protection officer authorization
3 is issued; or

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

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

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

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

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

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

1 (2) is an owner, officer who oversees the
2 security-related aspects of the business, partner, or shareholder
3 of a license holder.

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

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

10 (1) the date the application is submitted; or

11 (2) the date the applicant begins to perform the
12 duties of employment that require registration.

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

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

18 (c) The pocket card must:

19 (1) state the name of the registrant;

20 (2) contain a color photograph, affixed to the pocket
21 card by the board at the time the card is issued, and the signature
22 of the registrant; and

23 (3) state the date the card was issued and the card's
24 expiration date.

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

27 (a) The board shall conduct a criminal history check,

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

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

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

1 (1) shows the locksmith company or locksmith a
2 government-issued identification; and

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

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

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

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

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

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

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

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

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

1 (2) a reserve peace officer while the reserve officer
2 is performing guard, patrolman, or watchman duties for a county and
3 is being compensated solely by that county;

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

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

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

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

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

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

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

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

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

1 any person in this state compelling:

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

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

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

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

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

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

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

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

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

1 Business & Commerce Code.

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

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

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

- 10 (1) a member of the armed forces or national guard;
- 11 (2) a guard employed by a penal institution; or
- 12 (3) a security officer commissioned by the Texas
13 ~~[Board of Private Investigators and]~~ Private Security Board
14 ~~[Agencies]~~ if:

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

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

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

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

25 (B) not wearing the uniform of a security officer
26 and carrying the officer's firearm in a concealed manner ~~[the~~
27 ~~Private Investigators and Private Security Agencies Act (Article~~

1 ~~4413(29bb), Vernon's Texas Civil Statutes~~].

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

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

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

11 (2) is traveling;

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

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

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

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

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

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

1 commission and personal protection officer authorization, if the
2 person:

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

7 (B) is either:

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

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

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

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

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

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

27 (B) en route between those premises and the

1 person's residence and is carrying the weapon unloaded.

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

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

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