

1-1 By: Carona S.B. No. 1245
1-2 (In the Senate - Filed March 2, 2009; March 17, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 23, 2009, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; April 23, 2009, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the regulation of the business of private security.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 1702.002, Occupations Code, is amended
1-11 by amending Subdivision (1-a) and adding Subdivisions (16-a) and
1-12 (20-a) to read as follows:

1-13 (1-a) For purposes of Subdivision (1), the term "alarm
1-14 system" does not include a telephone entry system, an operator for
1-15 opening or closing a residential or commercial gate or door, or an
1-16 accessory used only to activate a gate or door, if the system,
1-17 operator, or accessory is not connected to a computer or data
1-18 processor that records or archives the voice, visual image, or
1-19 identifying information of the user ~~[an alarm system]~~.

1-20 (16-a) "Personal protection officer" means a person
1-21 who performs the activities described by Section 1702.202.

1-22 (20-a) "Security officer" means a person who performs
1-23 the activities described by Section 1702.222.

1-24 SECTION 2. Section 1702.047, Occupations Code, is amended
1-25 to read as follows:

1-26 Sec. 1702.047. ADMINISTRATIVE STAFF. The department shall
1-27 designate a department employee who shall report directly to the
1-28 board. The employee designated under this section shall provide
1-29 administrative assistance to ~~[assist]~~ the board in the performance
1-30 ~~[administration]~~ of the board's duties. ~~[The salary for an~~
1-31 ~~employee designated under this section may not exceed the salary~~
1-32 ~~specified in the General Appropriations Act for an employee subject~~
1-33 ~~to salary group A10.]~~

1-34 SECTION 3. Subsection (e), Section 1702.082, Occupations
1-35 Code, is amended to read as follows:

1-36 (e) ~~On written request, the department [The commission, at~~
1-37 ~~least quarterly until final disposition of the complaint,]~~ shall
1-38 inform ~~[notify]~~ the person filing the complaint and each person who
1-39 is a subject of the complaint of the status of the investigation
1-40 unless the information ~~[notice]~~ would jeopardize an ongoing
1-41 ~~[undercover]~~ investigation.

1-42 SECTION 4. Subchapter A, Chapter 1702, Occupations Code, is
1-43 amended by adding Section 1702.006 to read as follows:

1-44 Sec. 1702.006. FOREIGN ENTITY REGISTRATION. Licensure
1-45 under this chapter does not exempt a foreign entity from the
1-46 registration requirements of Chapter 9, Business Organizations
1-47 Code.

1-48 SECTION 5. Subsection (a), Section 1702.1056, Occupations
1-49 Code, is amended to read as follows:

1-50 (a) A person acts as a locksmith company for the purposes of
1-51 this chapter if the person:

1-52 (1) sells, installs, services, or maintains, or offers
1-53 to sell, install, service, or maintain, mechanical security
1-54 devices, including deadbolts and locks;

1-55 (2) advertises services offered by the company using
1-56 the term "locksmith"; or

1-57 (3) includes the term "locksmith" in the company's
1-58 name.

1-59 SECTION 6. Section 1702.110, Occupations Code, is amended
1-60 to read as follows:

1-61 Sec. 1702.110. APPLICATION FOR LICENSE. (a) An
1-62 application for a license under this chapter must be in the form
1-63 prescribed by the board ~~[commission]~~ and include:

1-64 (1) the full name and business address of the

2-1 applicant;

2-2 (2) the name under which the applicant intends to do

2-3 business;

2-4 (3) a statement as to the general nature of the

2-5 business in which the applicant intends to engage;

2-6 (4) a statement as to the classification for which the

2-7 applicant requests qualification;

2-8 (5) if the applicant is an entity other than an

2-9 individual, the full name and residence address of each partner,

2-10 officer who oversees the security-related aspects of the business,

2-11 and director of the applicant, and of the applicant's manager;

2-12 (6) if the applicant is an individual, two

2-13 classifiable sets of fingerprints of the applicant or, if the

2-14 applicant is an entity other than an individual, of each officer who

2-15 oversees the security-related aspects of the business and of each

2-16 partner or shareholder who owns at least a 25 percent interest in

2-17 the applicant;

2-18 (7) a verified statement of the applicant's experience

2-19 qualifications in the particular classification in which the

2-20 applicant is applying;

2-21 (8) a report from the department [~~Texas Department of~~

2-22 ~~Public Safety~~] stating the applicant's record of any convictions

2-23 for a Class B misdemeanor or equivalent offense or a greater

2-24 offense;

2-25 (9) the social security number of the individual

2-26 making the application; and

2-27 (10) other information, evidence, statements, or

2-28 documents required by the board [~~commission~~].

2-29 (b) An applicant for a license as a security services

2-30 contractor shall maintain a physical address within this state and

2-31 provide that address to the board. The board shall adopt rules to

2-32 enable an out-of-state license holder to comply with this

2-33 subsection.

2-34 SECTION 7. Section 1702.112, Occupations Code, is amended

2-35 to read as follows:

2-36 Sec. 1702.112. FORM OF LICENSE. The board [~~commission~~]

2-37 shall prescribe the form of a license, including a branch office

2-38 license. The license must include:

2-39 (1) the name of the license holder;

2-40 (2) the name under which the license holder is to

2-41 operate; [~~and~~]

2-42 (3) the license number and the date the license was

2-43 issued; and

2-44 (4) a photograph of the license holder, affixed to the

2-45 license at the time the license is issued by the board.

2-46 SECTION 8. Section 1702.121, Occupations Code, is amended

2-47 to read as follows:

2-48 Sec. 1702.121. TERMINATION OF MANAGER. (a) A license

2-49 holder shall notify the board [~~commission~~] in writing not later

2-50 than the 14th day after the date a manager ceases to be manager of

2-51 the license holder's business. The license remains in effect for a

2-52 reasonable period after notice is given as provided by board

2-53 [~~commission~~] rule pending the board's [~~commission's~~] determination

2-54 of the qualification of another manager under this subchapter.

2-55 (b) A manager shall be immediately terminated on the

2-56 effective date of any summary action taken against the manager. Any

2-57 period of temporary operation authorized under this section or

2-58 Section 1702.122 starts on the date of termination.

2-59 SECTION 9. Section 1702.127, Occupations Code, is amended

2-60 by amending Subsections (b) and (c) and adding Subsection (d) to

2-61 read as follows:

2-62 (b) A license holder shall maintain a record containing

2-63 information related to the license holder's employees as required

2-64 by the board [~~commission~~].

2-65 (c) A license holder shall maintain for [~~commission~~]

2-66 inspection by the department at the license holder's principal

2-67 place of business or branch office two recent color photographs, of

2-68 a type required by the board [~~commission~~], of each applicant,

2-69 registrant, commissioned security officer, and employee of the

3-1 license holder.

3-2 (d) A license holder shall maintain records required under

3-3 this chapter at a physical address within this state and provide

3-4 that address to the board.

3-5 SECTION 10. Section 1702.163, Occupations Code, is amended

3-6 by adding Subsection (d-1) to read as follows:

3-7 (d-1) For the purposes of determining eligibility under

3-8 Subsection (b)(2), the department may require the applicant to

3-9 authorize the release to the department of any relevant medical

3-10 records.

3-11 SECTION 11. Section 1702.201, Occupations Code, is amended

3-12 to read as follows:

3-13 Sec. 1702.201. PERSONAL PROTECTION OFFICER AUTHORIZATION

3-14 REQUIRED. An individual [A commissioned security officer] may not

3-15 act as a personal protection officer unless the individual

3-16 [officer] holds a personal protection officer authorization.

3-17 SECTION 12. Section 1702.202, Occupations Code, is amended

3-18 to read as follows:

3-19 Sec. 1702.202. PERSONAL PROTECTION OFFICER. An individual

3-20 acts as a personal protection officer if the individual, while

3-21 carrying a firearm, [+

3-22 [~~(1)~~ has been issued a security officer commission to

3-23 carry a concealed firearm; and

3-24 [~~(2)~~] provides to another [~~an~~] individual personal

3-25 protection from bodily harm.

3-26 SECTION 13. Section 1702.206, Occupations Code, is amended

3-27 to read as follows:

3-28 Sec. 1702.206. LIMITED AUTHORITY TO CARRY [~~CONCEALED~~]

3-29 FIREARMS. (a) An individual acting as a personal protection

3-30 officer may not carry a [~~concealed~~] firearm unless the officer:

3-31 (1) is either:

3-32 (A) engaged in the exclusive performance of the

3-33 officer's duties as a personal protection officer for the employer

3-34 under whom the officer's personal protection officer authorization

3-35 is issued; or

3-36 (B) traveling to or from the officer's place of

3-37 assignment; and

3-38 (2) carries the officer's security officer commission

3-39 and personal protection officer authorization on the officer's

3-40 person while performing the officer's duties or traveling as

3-41 described by Subdivision (1) and presents the commission and

3-42 authorization on request.

3-43 (b) An individual who is acting as a personal protection

3-44 officer and is wearing the uniform of a security officer, including

3-45 any uniform or apparel described by Section 1702.323(d), may not

3-46 conceal any firearm the individual is carrying and shall carry the

3-47 firearm in plain view. An individual who is acting as a personal

3-48 protection officer and is not wearing the uniform of a security

3-49 officer shall conceal the firearm.

3-50 SECTION 14. Subsection (a), Section 1702.221, Occupations

3-51 Code, is amended to read as follows:

3-52 (a) An individual must register in accordance with the

3-53 requirements of this chapter and related administrative rules if

3-54 the individual:

3-55 (1) is employed as an alarm systems installer, alarm

3-56 systems monitor, electronic access control device installer,

3-57 locksmith, dog trainer, manager or branch office manager,

3-58 noncommissioned security officer, private investigator, private

3-59 security consultant, or security salesperson; or

3-60 (2) is an owner, officer who oversees the

3-61 security-related aspects of the business, partner, or shareholder

3-62 of a license holder.

3-63 SECTION 15. Section 1702.230, Occupations Code, is amended

3-64 by amending Subsection (b) and adding Subsection (c) to read as

3-65 follows:

3-66 (b) The employer of the applicant shall make a reasonable

3-67 attempt to verify the information required under Subsection (a)(1)

3-68 before the earlier of:

3-69 (1) the date the application is submitted; or

4-1 (2) the date the applicant begins to perform the
4-2 duties of employment that require registration.

4-3 (c) An applicant must submit an application that
4-4 substantially meets the requirements of this section before
4-5 employment in a capacity for which registration is required.

4-6 SECTION 16. Subsection (c), Section 1702.232, Occupations
4-7 Code, is amended to read as follows:

- 4-8 (c) The pocket card must:
- 4-9 (1) state the name of the registrant;
- 4-10 (2) contain a color photograph, affixed to the pocket
4-11 card by the board at the time the card is issued, and the signature
4-12 of the registrant; and
- 4-13 (3) state the date the card was issued and the card's
4-14 expiration date.

4-15 SECTION 17. Subsection (a), Section 1702.282, Occupations
4-16 Code, is amended to read as follows:

4-17 (a) The board shall conduct a criminal history check,
4-18 including a check of any criminal history record information
4-19 maintained by the Federal Bureau of Investigation, in the manner
4-20 provided by Subchapter F, Chapter 411, Government Code, on each
4-21 applicant for a license, registration, security officer
4-22 commission, letter of approval, permit, or certification. As part
4-23 of its criminal history check, the board may request that the
4-24 applicant provide certified copies of relevant court documents or
4-25 other records. The failure to provide the requested records within
4-26 a reasonable time as determined by the board may result in the
4-27 application being considered incomplete. An applicant is not
4-28 eligible for a license, registration, commission, letter of
4-29 approval, permit, or certification if the check reveals that the
4-30 applicant has committed an act that constitutes grounds for the
4-31 denial of the license, registration, commission, letter of
4-32 approval, permit, or certification. Except as provided by
4-33 Subsection (d), each applicant shall include in the application two
4-34 complete sets of fingerprints on forms prescribed by the board
4-35 accompanied by the fee set by the board.

4-36 SECTION 18. Section 1702.286, Occupations Code, as added by
4-37 Chapter 1102 (H.B. 2243), Acts of the 79th Legislature, Regular
4-38 Session, 2005, is renumbered as Section 1702.2865, Occupations
4-39 Code, to read as follows:

4-40 Sec. 1702.2865 [~~1702.286~~]. CUSTOMER AUTHORIZATION REQUIRED
4-41 FOR CERTAIN LOCKSMITH SERVICES. (a) A locksmith company or
4-42 locksmith may not perform services for a customer who seeks entry to
4-43 a structure, motor vehicle, or other property unless the customer,
4-44 in the course of the transaction:

- 4-45 (1) shows the locksmith company or locksmith a
4-46 government-issued identification; and
- 4-47 (2) provides a signed authorization stating that the
4-48 customer owns or is otherwise entitled to legal access to the
4-49 structure, motor vehicle, or other property.

4-50 (b) A locksmith company or locksmith is exempt from
4-51 Subsection (a) if the locksmith is requested to perform services in
4-52 a case of imminent threat to a person or property.

4-53 SECTION 19. Section 1702.322, Occupations Code, is amended
4-54 to read as follows:

4-55 Sec. 1702.322. LAW ENFORCEMENT PERSONNEL. This chapter
4-56 does not apply to:

4-57 (1) a person who has full-time employment as a peace
4-58 officer and who receives compensation for private employment on an
4-59 individual or an independent contractor basis as a patrolman,
4-60 guard, extra job coordinator, or watchman if the officer:

- 4-61 (A) is employed in an employee-employer
4-62 relationship or employed on an individual contractual basis
4-63 directly by the recipient of the services;
- 4-64 (B) is not in the employ of another peace
4-65 officer;

4-66 (C) is not a reserve peace officer; and

4-67 (D) works as a peace officer on the average of at
4-68 least 32 hours a week, is compensated by the state or a political
4-69 subdivision of the state at least at the minimum wage, and is

5-1 entitled to all employee benefits offered to a peace officer by the
5-2 state or political subdivision;

5-3 (2) a reserve peace officer while the reserve officer
5-4 is performing guard, patrolman, or watchman duties for a county and
5-5 is being compensated solely by that county;

5-6 (3) a peace officer acting in an official capacity in
5-7 responding to a burglar alarm or detection device; or

5-8 (4) a person engaged in the business of electronic
5-9 monitoring of an individual as a condition of that individual's
5-10 community supervision, parole, mandatory supervision, or release
5-11 on bail, if the person does not perform any other service that
5-12 requires a license under this chapter.

5-13 SECTION 20. Subsection (a), Section 1702.361, Occupations
5-14 Code, is amended to read as follows:

5-15 (a) ~~The [Subject to the board's final order under the~~
5-16 ~~hearing provisions of this subchapter, the]~~ department, for conduct
5-17 described by Subsection (b), may:

5-18 (1) deny an application or revoke, suspend, or refuse
5-19 to renew a license, registration, or security officer commission;

5-20 (2) reprimand a license holder, registrant, or
5-21 commissioned security officer; or

5-22 (3) place on probation a person whose license,
5-23 registration, or security officer commission has been suspended.

5-24 SECTION 21. Section 1702.367, Occupations Code, is amended
5-25 by amending Subsection (a) and adding Subsections (f) and (g) to
5-26 read as follows:

5-27 (a) For an investigation conducted under this chapter, if
5-28 necessary to enforce this chapter or the board's rules, the
5-29 department [commission] may issue an administrative [a] subpoena to
5-30 any person in this state compelling:

5-31 (1) the production of information or documents; or

5-32 (2) the attendance and testimony of a witness [compel
5-33 the attendance of a witness or the production of a pertinent record
5-34 or document. The hearings officer may administer oaths and require
5-35 testimony or evidence to be given under oath].

5-36 (f) A person licensed or otherwise regulated under this
5-37 chapter who fails without good cause to comply with a subpoena
5-38 issued under this section may be subject to suspension of a license
5-39 under Section 1702.361.

5-40 (g) If a subpoena issued under this section relates to an
5-41 ongoing criminal investigation by the department and the department
5-42 determines that disclosure could significantly impede the
5-43 investigation, the subpoena may provide that the person to whom the
5-44 subpoena is directed may not:

5-45 (1) disclose that the subpoena has been issued;

5-46 (2) identify or describe any records requested by the
5-47 subpoena; or

5-48 (3) disclose whether records have been furnished in
5-49 response to the subpoena.

5-50 SECTION 22. Subchapter P, Chapter 1702, Occupations Code,
5-51 is amended by adding Section 1702.3835 to read as follows:

5-52 Sec. 1702.3835. DECEPTIVE TRADE PRACTICE. (a) A person
5-53 who performs or offers to perform an activity regulated under this
5-54 chapter, but who is not licensed or otherwise authorized under this
5-55 chapter to perform the activity, commits a false, misleading, or
5-56 deceptive act or practice within the meaning of Section 17.46,
5-57 Business & Commerce Code.

5-58 (b) A public or private right or remedy under Chapter 17,
5-59 Business & Commerce Code, may be used to enforce this chapter.

5-60 SECTION 23. Subsection (d), Section 46.03, Penal Code, is
5-61 amended to read as follows:

5-62 (d) It is a defense to prosecution under Subsection (a)(5)
5-63 that the actor possessed a firearm or club while traveling to or
5-64 from the actor's place of assignment or in the actual discharge of
5-65 duties as:

5-66 (1) a member of the armed forces or national guard;

5-67 (2) a guard employed by a penal institution; or

5-68 (3) a security officer commissioned by the Texas
5-69 ~~[Board of Private Investigators and]~~ Private Security Board

6-1 [~~Agencies~~] if:

6-2 (A) the actor is wearing a distinctive uniform;

6-3 and

6-4 (B) the firearm or club is in plain view; or

6-5 (4) [~~(5)~~] a security officer who holds a personal

6-6 protection authorization under Chapter 1702, Occupations Code,

6-7 provided that the officer is either:

6-8 (A) wearing the uniform of a security officer,

6-9 including any uniform or apparel described by Section 1702.323(d),

6-10 Occupations Code, and carrying the officer's firearm in plain view;

6-11 or

6-12 (B) not wearing the uniform of a security officer

6-13 and carrying the officer's firearm in a concealed manner [~~the~~

6-14 ~~Private Investigators and Private Security Agencies Act (Article~~

6-15 ~~4413(29bb), Vernon's Texas Civil Statutes)].~~

6-16 SECTION 24. Subsection (b), Section 46.15, Penal Code, as

6-17 amended by Chapters 647 (H.B. 964), 693 (H.B. 1815), and 1048 (H.B.

6-18 2101), Acts of the 80th Legislature, Regular Session, 2007, is

6-19 reenacted and amended to read as follows:

6-20 (b) Section 46.02 does not apply to a person who:

6-21 (1) is in the actual discharge of official duties as a

6-22 member of the armed forces or state military forces as defined by

6-23 Section 431.001, Government Code, or as a guard employed by a penal

6-24 institution;

6-25 (2) is traveling;

6-26 (3) is engaging in lawful hunting, fishing, or other

6-27 sporting activity on the immediate premises where the activity is

6-28 conducted, or is en route between the premises and the actor's

6-29 residence or motor vehicle, if the weapon is a type commonly used in

6-30 the activity;

6-31 (4) holds a security officer commission issued by the

6-32 Texas Private Security Board, if the person[+]

6-33 [~~(A)~~] is engaged in the performance of the

6-34 person's duties as an officer commissioned under Chapter 1702,

6-35 Occupations Code, or is traveling to or from the person's place of

6-36 assignment[+] and

6-37 [~~(B)~~] is [~~either~~+

6-38 [~~(i)~~] wearing the officer's uniform and

6-39 carrying the officer's weapon in plain view; [~~or~~]

6-40 (5) acts [~~(ii) acting~~] as a personal protection

6-41 officer and carries [~~carrying~~] the person's security officer

6-42 commission and personal protection officer authorization, if the

6-43 person:

6-44 (A) is engaged in the performance of the person's

6-45 duties as a personal protection officer under Chapter 1702,

6-46 Occupations Code, or is traveling to or from the person's place of

6-47 assignment; and

6-48 (B) is either:

6-49 (i) wearing the uniform of a security

6-50 officer, including any uniform or apparel described by Section

6-51 1702.323(d), Occupations Code, and carrying the officer's weapon in

6-52 plain view; or

6-53 (ii) not wearing the uniform of a security

6-54 officer and carrying the officer's weapon in a concealed manner;

6-55 (6) [~~(5)~~] is carrying a concealed handgun and a valid

6-56 license issued under Subchapter H, Chapter 411, Government Code, to

6-57 carry a concealed handgun of the same category as the handgun the

6-58 person is carrying;

6-59 (7) [~~(6)~~] holds an alcoholic beverage permit or

6-60 license or is an employee of a holder of an alcoholic beverage

6-61 permit or license if the person is supervising the operation of the

6-62 permitted or licensed premises; or

6-63 (8) [~~(7)~~] is a student in a law enforcement class

6-64 engaging in an activity required as part of the class, if the weapon

6-65 is a type commonly used in the activity and the person is:

6-66 (A) on the immediate premises where the activity

6-67 is conducted; or

6-68 (B) en route between those premises and the

6-69 person's residence and is carrying the weapon unloaded.

7-1 SECTION 25. The change in law made by this Act to Section
7-2 1702.110, Subsection (a), Section 1702.221, and Subsection (a),
7-3 Section 1702.282, Occupations Code, applies to an application under
7-4 Chapter 1702, Occupations Code, submitted on or after the effective
7-5 date of this Act. An application submitted before the effective
7-6 date of this Act is governed by the law in effect on the date the
7-7 application was submitted, and the former law is continued in
7-8 effect for that purpose.

7-9 SECTION 26. To the extent of any conflict, this Act prevails
7-10 over another Act of the 81st Legislature, Regular Session, 2009,
7-11 relating to nonsubstantive additions to and corrections in enacted
7-12 codes.

7-13 SECTION 27. This Act takes effect September 1, 2009.

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