

BILL ANALYSIS

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S.B. 545
By: Seliger
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

When a Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) licensee's employment is terminated with a law enforcement agency, the head of the agency is required to submit an employee termination report, or F-5, to TCLEOSE. The F-5 submitted to TCLEOSE notes the date of the employment termination and the category of discharge from service with that agency. Currently, the agency head is required to submit the F-5 to TCLEOSE and to the licensee within seven business days following the date the licensee separates from the agency or once the licensee exhausts all local administrative appeals available if the termination was based on alleged misconduct.

Current law allows the licensee to contest the category of discharge noted on the F-5 by submitting a written request to correct the report to the law enforcement agency and to TCLEOSE no later than the 30th day after the date the licensee received a copy of the F-5. TCLEOSE is required to allow the agency head to submit rebuttal evidence to TCLEOSE. Because TCLEOSE, by law, is not a party to the dispute, TCLEOSE does not order the agency to correct F-5s, because TCLEOSE would then become a party to the appeal at the State Office of Administrative Hearings (SOAH).

Presently, the F-5 is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, unless the licensee is separated from the agency due to sustained incidents of excessive force or violations of the law other than traffic offenses. However, a confidential F-5 may be released upon receipt of a subpoena issued in a judicial proceeding. Any other information submitted to TCLEOSE or used during the SOAH hearing, as well as the SOAH decision and order, are subject to open records requests under Chapter 552, Government Code. This creates a loophole in the confidentiality provision as the additional information used during the hearing and the SOAH order specifically reference the content, including the category of discharge, depicted in the confidential F-5.

S.B. 545 amends multiple sections under Chapter 1701 (Law Enforcement Officers), Occupations Code, governing F-5s. This bill also requires agencies to submit to TCLEOSE and to the licensee the F-5 no later than the seventh business day after the licensee separates from the agency and after the licensee has exhausted any local appeals.

S.B. 545 also amends Section 1701.4525 (Request for Correction of Report; Administrative Penalty; Hearing; Appeal) to remove references of TCLEOSE's fact-finding and adjudicative role since both the licensee and the agency head are entitled to hearings before SOAH. TCLEOSE is not a party to the dispute. After the SOAH order becomes final and after any appeals are exhausted by the agency head, TCLEOSE may assess an administrative penalty against an agency head who fails to make a correction to the F-5.

S.B. 545 also amends Section 1701.454 (Confidentiality) to make all information submitted to TCLEOSE pertaining to F-5s, including information used during the SOAH hearing and made part of the administrative record maintained by TCLEOSE, confidential by law and not subject to Chapter 552, Government Code.

As proposed, S.B. 545 amends current law relating to employment records for law enforcement officers, including procedures to correct employment termination reports and provides an administrative penalty.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Sections 1701.452(a) and (d), Occupations Code, as follows:

(a) Requires the head of a law enforcement agency or the head's designee to submit a report to the Commission on Law Enforcement Officer Standards and Education (TCLEOSE) on a form prescribed by TCLEOSE regarding a person licensed under this chapter who resigns or retires from employment with the law enforcement agency, whose appointment with the law enforcement agency is terminated, or who separates from the law enforcement agency for any other reason. Requires the report to be submitted by the head or the designee not later than the seventh business day after the date the license holder resigns, retires, is terminated, or separates from the agency and exhausts all administrative appeals available to the license holder, if applicable, rather than resigns, retires, or separates from the agency of if the license holder was terminated based on an allegation of misconduct.

(d) Requires the head of the law enforcement agency from which a license holder resigns, retires, is terminated, or separates for reasons other than death, or the head's designee, to provide to the license holder a copy of the report. Requires that the report be provided to the license holder not later than the seventh business day after the date the license holder resigns, retires, is terminated, or separates from the agency, and exhausts all administrative appeals available to the license holder, if applicable. Makes conforming changes.

SECTION 2. Amends the heading to Section 1701.4525, Occupations Code, to read as follows:

Sec. 1701.4525. PETITION FOR CORRECTION OF REPORT; HEARING; ADMINISTRATIVE PENALTY.

SECTION 3. Amends Section 1701.4525, Occupations Code, by amending Subsections (a), (d), and (e) and adding Subsection (e-1), as follows:

(a) Authorizes a person who is the subject of an employment termination report maintained by TCLEOSE under this subchapter to contest information contained in the report by submitting to the law enforcement agency and to TCLEOSE a written petition on a form prescribed by TCLEOSE for a correction of the report not later than the 30th day after the date the person receives a copy of the report, rather than a written request for a correction of the report and any evidence contesting the information contained in the report, not later than the 30th day after the date the person receives a copy of the report. Requires TCLEOSE, on receipt of the petition, to refer the petition to the State Office of Administrative Hearings (SOAH). Deletes existing text requiring TCLEOSE to allow the head of the law enforcement agency to submit to TCLEOSE any evidence rebutting the evidence submitted by the person who is the subject of the report.

(d) Provides that a proceeding to contest information in an employment termination report is a contested case under Chapter 2001 (Administrative Procedure), Government Code. Deletes existing text providing that a proceeding under Subsection (b) (authorizing TCLEOSE to order the head of a law enforcement agency to correct a person's report in a timely manner based on certain information) to contest TCLEOSE's order or under Subsection (c) (entitling the person to a hearing conducted by SOAH if TCLEOSE refuses to order the head of a law enforcement agency to correct the person's report) to correct an employment termination report is a contested case under Chapter 2001, Government Code.

(e) Requires an administrative law judge, in a proceeding to contest information in an employment termination for a report, rather than an order or report, based on alleged misconduct, to determine if the alleged misconduct occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated or the person resigned, retired, or separated in lieu of termination. Requires the administrative law judge, if the alleged misconduct is not supported by a preponderance of the evidence, to order the report to be changed. Makes conforming changes.

(e-1) Authorizes TCLEOSE to assess an administrative penalty against an agency head who fails to make a correction to an employment termination report following an order by SOAH.

SECTION 4. Amends Section 1701.454, Occupations Code, as follows:

Sec. 1701.454. CONFIDENTIALITY. (a) Provides that all information submitted to TCLEOSE under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code. Deletes existing text providing that a report or statement submitted to TCLEOSE under this subchapter is confidential and is not subject to disclosure under Chapter 552, Government Code, unless the person resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses.

(b) Prohibits a TCLEOSE member or other person, except as provided by this subchapter, from releasing information, rather than the contents of a report or statement, submitted under this subchapter.

SECTION 5. Amends Section 1701.455, Occupations Code, to provide that information, rather than a report or statement, submitted to TCLEOSE under this subchapter is subject to subpoena only in a judicial proceeding.

SECTION 6. Repealer: Section 1701.4525(b) (relating to authorizing TCLEOSE to order the head of a law enforcement agency to correct a person's report), Occupations Code.

Repealer: Section 1701.4525(c) (relating to a person's entitlement to a hearing conducted by SOAH), Occupations Code.

SECTION 7. (a) Provides that the changes in law made by this Act to Section 1701.452, Occupations Code, apply only to a license holder who resigns, retires, is terminated, or separates from a law enforcement agency on or after the effective date of this Act. Provides that a license holder who resigns, retires, is terminated, or separates from a law enforcement agency before the effective date of this Act is governed by the law in effect on the date of the resignation, retirement, termination, or separation, and the former law is continued in effect for that purpose.

(b) Provides that the changes in law made by this Act to Section 1701.4525, Occupations Code, apply only to a petition for a correction of an employment termination report submitted on or after the effective date of this Act. Provides that a request submitted before the effective date of this Act is governed by the law in effect on the date the request was submitted, and the former law is continued in effect for that purpose.

SECTION 8. Effective date: September 1, 2011.