

By: Seliger
(Driver)

S.B. No. 545

A BILL TO BE ENTITLED

AN ACT

1
2 relating to employment records for law enforcement officers,
3 including procedures to correct employment termination reports;
4 providing an administrative penalty.

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

6 SECTION 1. Subsections (a) and (d), Section 1701.452,
7 Occupations Code, are amended to read as follows:

8 (a) The head of a law enforcement agency or the head's
9 designee shall submit a report to the commission on a form
10 prescribed by the commission regarding a person licensed under this
11 chapter who resigns or retires from employment with the law
12 enforcement agency, whose appointment with the law enforcement
13 agency is terminated, or who separates from the law enforcement
14 agency for any other reason. The report must be submitted by the
15 head or the designee not later than the seventh business day after
16 the date the license holder:

17 (1) resigns, retires, is terminated, or separates from
18 the agency; and ~~or~~

19 (2) exhausts all administrative appeals available to
20 the license holder, if applicable [~~if the license holder was~~
21 ~~terminated based on an allegation of misconduct~~].

22 (d) The head of the law enforcement agency from which a
23 license holder resigns, retires, is terminated, or separates for
24 reasons other than death, or the head's designee, shall provide to

1 the license holder a copy of the report. The report must be
2 provided to the license holder not later than the seventh business
3 day after the date the license holder:

4 (1) resigns, retires, is terminated, or separates from
5 the agency; and ~~[or]~~

6 (2) exhausts all administrative appeals available to
7 the license holder, if applicable ~~[if the license holder was
8 terminated based on an allegation of misconduct]~~.

9 SECTION 2. The heading to Section 1701.4525, Occupations
10 Code, is amended to read as follows:

11 Sec. 1701.4525. PETITION ~~[REQUEST]~~ FOR CORRECTION OF
12 REPORT; HEARING; ADMINISTRATIVE PENALTY ~~[; HEARING; APPEAL]~~.

13 SECTION 3. Section 1701.4525, Occupations Code, is amended
14 by amending Subsections (a), (d), and (e) and adding Subsection
15 (e-1) to read as follows:

16 (a) A person who is the subject of an employment termination
17 report maintained by the commission under this subchapter may
18 contest information contained in the report by submitting to the
19 law enforcement agency and to the commission a written petition on a
20 form prescribed by the commission ~~[request]~~ for a correction of the
21 report ~~[and any evidence contesting the information contained in~~
22 ~~the report]~~ not later than the 30th day after the date the person
23 receives a copy of the report. On receipt of the petition, the
24 commission shall refer the petition to the State Office of
25 Administrative Hearings ~~[The commission shall allow the head of the~~
26 ~~law enforcement agency to submit to the commission any evidence~~
27 ~~rebutting the evidence submitted by the person who is the subject of~~

1 ~~the report~~].

2 (d) A proceeding [~~under Subsection (b)~~] to contest
3 information in [the commission's order or under Subsection (c) to
4 ~~correct~~] an employment termination report is a contested case under
5 Chapter 2001, Government Code.

6 (e) In a proceeding [~~under Subsection (b)~~] to contest
7 information in [the commission's order or under Subsection (c) to
8 ~~correct~~] an employment termination report for a a [~~an order or~~]
9 report based on alleged misconduct, an administrative law judge
10 shall determine if the alleged misconduct occurred by a
11 preponderance of the evidence regardless of whether the person who
12 is the subject of the report was terminated or the person resigned,
13 retired, or separated in lieu of termination. If the alleged
14 misconduct is not supported by a preponderance of the evidence, the
15 administrative law judge shall order the report to be changed.

16 (e-1) The commission may assess an administrative penalty
17 against an agency head who fails to make a correction to an
18 employment termination report following an order by the State
19 Office of Administrative Hearings after all appeals available to
20 the agency head have been exhausted.

21 SECTION 4. Section 1701.454, Occupations Code, is amended
22 to read as follows:

23 Sec. 1701.454. CONFIDENTIALITY. (a) All information [~~A~~
24 ~~report or statement~~] submitted to the commission under this
25 subchapter is confidential and is not subject to disclosure under
26 Chapter 552, Government Code, unless the person resigned or was
27 terminated due to substantiated incidents of excessive force or

1 violations of the law other than traffic offenses.

2 (b) Except as provided by this subchapter, a commission
3 member or other person may not release information [~~the contents of~~
4 ~~a report or statement~~] submitted under this subchapter.

5 SECTION 5. Section 1701.455, Occupations Code, is amended
6 to read as follows:

7 Sec. 1701.455. SUBPOENA. Information [~~A report or~~
8 ~~statement~~] submitted to the commission under this subchapter is
9 subject to subpoena only in a judicial proceeding.

10 SECTION 6. Subsections (b) and (c), Section 1701.4525,
11 Occupations Code, are repealed.

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

21 (b) The changes in law made by this Act to Section
22 1701.4525, Occupations Code, apply only to a petition for a
23 correction of an employment termination report submitted on or
24 after the effective date of this Act. A request submitted before
25 the effective date of this Act is governed by the law in effect on
26 the date the request was submitted, and the former law is continued
27 in effect for that purpose.

1 SECTION 8. This Act takes effect September 1, 2011.