

## **BILL ANALYSIS**

C.S.H.B. 3433  
By: Fletcher  
Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under the Private Security Act, the Texas Department of Public Safety and the Texas Private Security Board are responsible for the licensing and regulation of individuals and companies that provide private security services, including security guards, personal protection officers, private investigators, locksmiths, and individuals who sell, install, or monitor alarm systems. C.S.H.B. 3433 seeks to make various clarifying changes to the Private Security Act to address drafting issues resulting from recent sunset legislation, to provide express authority for certain investigative, licensing, and disciplinary actions, to provide uniformity in licensing determinations and administrative hearings, and to establish a criminal offense for failure to maintain required insurance coverage.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Private Security Board in SECTIONS 3, 8, and 13 of this bill.

### **ANALYSIS**

C.S.H.B. 3433 amends the Occupations Code to specify that "alarm system," for purposes of the Private Security Act, 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 monitored by security personnel or a security service and does not send a signal to which law enforcement or emergency services respond, rather than 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. The bill requires an applicant for a license under the Private Security Act to submit only one set, rather than two classifiable sets, of fingerprints for each applicable person and requires the fingerprints to be submitted in a manner approved by the Texas Private Security Board. The bill authorizes the Department of Public Safety (DPS) to return an application as incomplete if the applicant submits payment of a fee that is returned for insufficient funds and the applicant has received notice and an opportunity to provide payment in full.

C.S.H.B. 3433 expands the offenses with which an applicant, to qualify for a license, certificate of registration, endorsement, or security officer commission, or the applicant's manager must not be charged at the time of application to include a Class B misdemeanor offense and adds the condition that those offenses are determined to be disqualifying by Texas Private Security Board rule. The bill requires a license holder's manager to immediately cease all managerial actions, rather than be terminated, on the effective date of any summary action taken against the manager and makes any period of authorized temporary operation of the license holder's business begin on the effective date of the summary action, rather than the date of the termination.

C.S.H.B. 3433 requires an applicant for a license or license holder under the Private Security Act to provide as part of the application and to maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the applicant's or license holder's

business activities related to private security. The bill requires an applicant for the renewal of a license, registration, commission, letter of approval, permit, endorsement, or certification issued by the Texas Private Security Board to submit as part of the application fingerprints in the manner prescribed by the board, rather than two complete sets of fingerprints on forms prescribed by the board.

C.S.H.B. 3433 requires an employee or agent of DPS or the Texas Private Security Board who enters the place of business of a person regulated under the Private Security Act for the purpose of conducting an inspection or audit to notify the manager or owner of the business of the presence of the person conducting the inspection or audit and present the manager or owner with credentials that identify the person conducting the inspection or audit as an employee or agent of DPS or the board. The bill expressly does not prohibit DPS or the board from conducting an undercover investigation or covert audit in order to determine compliance with the act or a rule adopted under the act. The bill includes a manager or majority owner of a license holder among the persons against whom DPS must take disciplinary action on proof that the person engaged in certain conduct and includes failing to qualify a new manager within the time required by board rule following the termination of a manager among the conduct resulting in that required disciplinary action. The bill authorizes DPS to revoke a license, certificate, registration, endorsement, or commission if the person holding that credential under the Private Security Act submits payment of a fee or penalty that is returned for insufficient funds and the person has received notice and an opportunity to provide payment in full.

C.S.H.B. 3433 requires DPS to deny, suspend, or revoke an application for or a license, certificate of registration, endorsement, or security officer commission, as applicable, on receiving written notice from a law enforcement agency that the applicant or authorization holder has been charged with or convicted of an offense that, under Texas Private Security Board rule adopted in compliance with criminal conviction consequences, makes the person ineligible for that authorization. The bill makes it a Class A misdemeanor offense for a person required to hold insurance under Private Security Act licensing provisions to knowingly fail to provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the person related to private security and establishes that a person is presumed to have acted knowingly if the person received reasonable notice and an opportunity to provide or maintain the insurance documentation and failed to do so. The bill repeals a provision making an applicant ineligible for a license, certificate of registration, endorsement, or security officer commission if the applicant has charges pending for or has been convicted within a specified period of a Class B misdemeanor offense determined by the Texas Private Security Board to be disqualifying and a provision clarifying the characteristics that classify an offense as such a Class B misdemeanor for that purpose.

C.S.H.B. 3433 amends the Health and Safety Code to require the medical advisory board to assist DPS in determining whether an applicant for or holder of a commission as a security officer is capable of exercising sound judgment with respect to the proper use and storage of a handgun.

C.S.H.B. 3433 requires the Texas Private Security Board, not later than January 1, 2014, to adopt rules to implement the bill's provisions. The bill's provisions apply only to an application for an original or renewal license, registration, or endorsement submitted to the board on or after January 1, 2014.

C.S.H.B. 3433 repeals Sections 1702.113(b) and (c), Occupations Code.

### **EFFECTIVE DATE**

On passage, or, if the bill does not receive the necessary vote, September 1, 2013.

## COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 3433 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

### INTRODUCED

SECTION 1. Section 1702.002(1-a), Occupations Code, is amended.

SECTION 2. Section 1702.110, Occupations Code, is amended.

SECTION 3. Section 1702.113(a), Occupations Code, is amended to read as follows:

(a) An applicant for a license, certificate of registration, endorsement, or security officer commission or the applicant's manager must be at least 18 years of age and must not:

(1) at the time of application be charged under an information or indictment with the commission of a Class A or Class B misdemeanor or felony offense determined by department rule to be disqualifying [~~under an information or indictment~~];

(2) have been found by a court to be incompetent by reason of a mental defect or disease and not have been restored to competency;

(3) have been dishonorably discharged from the United States armed services, discharged from the United States armed services under other conditions determined by the board to be prohibitive, or dismissed from the United States armed services if a commissioned officer in the United States armed services; or

(4) be required to register in this or any other state as a sex offender, unless the applicant is approved by the board under Section 1702.3615.

SECTION 4. Section 1702.121(b), Occupations Code, is amended.

SECTION 5. Section 1702.124, Occupations Code, is amended.

SECTION 6. Section 1702.282(a), Occupations Code, is amended to read as follows:

(a) The board shall conduct a criminal history check, including a check of any

### HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Same as introduced version.

SECTION 2. Same as introduced version.

SECTION 3. Section 1702.113(a), Occupations Code, is amended to read as follows:

(a) An applicant for a license, certificate of registration, endorsement, or security officer commission or the applicant's manager must be at least 18 years of age and must not:

(1) at the time of application be charged under an information or indictment with the commission of a Class A or Class B misdemeanor or felony offense determined to be disqualifying by board rule [~~under an information or indictment~~];

(2) have been found by a court to be incompetent by reason of a mental defect or disease and not have been restored to competency;

(3) have been dishonorably discharged from the United States armed services, discharged from the United States armed services under other conditions determined by the board to be prohibitive, or dismissed from the United States armed services if a commissioned officer in the United States armed services; or

(4) be required to register in this or any other state as a sex offender, unless the applicant is approved by the board under Section 1702.3615.

SECTION 4. Same as introduced version.

SECTION 5. Same as introduced version.

SECTION 6. Section 1702.282(a), Occupations Code, is amended to read as follows:

(a) The board shall conduct a criminal history check, including a check of any

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

SECTION 7. Subchapter L, Chapter 1702, Occupations Code, is amended by adding Section 1702.289 to read as follows:

Sec. 1702.289. INSPECTIONS.

(a) In addition to other inspections authorized by this chapter, an employee or agent of the department or board, as applicable, may enter the place of business of a person regulated under this chapter during normal business hours for the purpose of conducting an inspection or audit to determine the person's compliance with this chapter or a rule adopted under this chapter.

(b) An employee or agent of the department or board, as applicable, who enters the place of business of a person regulated under this chapter for the purpose of conducting an inspection or audit must:

(1) notify the manager or owner of the business of the presence of the person conducting the inspection or audit; and

criminal history record information maintained by the Federal Bureau of Investigation, in the manner provided by Subchapter F, Chapter 411, Government Code, on each applicant for a license, registration, security officer commission, letter of approval, permit, endorsement, or certification. As part of its criminal history check, the board may request that the applicant provide certified copies of relevant court documents or other records. The failure to provide the requested records within a reasonable time as determined by the board may result in the application being considered incomplete. An applicant is not eligible for a license, registration, commission, letter of approval, permit, endorsement, or certification if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license, registration, commission, letter of approval, permit, endorsement, or certification. Except as provided by Subsection (d), each applicant shall submit at the time of [include in the] application, including an application for the renewal of a license, registration, commission, letter of approval, permit, endorsement, or certification, [two complete sets of] fingerprints in the manner [on forms] prescribed by the board accompanied by the fee set by the board.

SECTION 7. Subchapter L, Chapter 1702, Occupations Code, is amended by adding Section 1702.289 to read as follows:

Sec. 1702.289. INSPECTIONS.

(a) In addition to other inspections authorized by this chapter, an employee or agent of the department or board, as applicable, may enter the place of business of a person regulated under this chapter during normal business hours for the purpose of conducting an inspection or audit to determine the person's compliance with this chapter or a rule adopted under this chapter.

(b) An employee or agent of the department or board, as applicable, who enters the place of business of a person regulated under this chapter for the purpose of conducting an inspection or audit must:

(1) notify the manager or owner of the business of the presence of the person conducting the inspection or audit; and

(2) present the manager or owner of the business with credentials that identify the person conducting the inspection or audit as an employee or agent of the department or board.

(c) This section does not prohibit the department or board from conducting an undercover investigation or covert audit in order to determine compliance with this chapter or a rule adopted under this chapter.

SECTION 8. Section 1702.361, Occupations Code, is amended.

SECTION 9. Section 1702.364(a), Occupations Code, is amended.

SECTION 10. Subchapter P, Chapter 1702, Occupations Code, is amended by adding Section 1702.3841 to read as follows:

Sec. 1702.3841. INSUFFICIENT INSURANCE COVERAGE; OFFENSE. (a) A person commits an offense if the person is subject to Section 1702.124 and knowingly fails to provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the person related to private security. One is presumed to have knowingly violated this provision if reasonable notice and opportunity to cure the defect has been provided prior to the violation.

(b) An offense under this section is a Class A misdemeanor.

SECTION 11. Section 12.092(b), Health and Safety Code, is amended.

SECTION 12. Sections 1702.113(b) and (c), Occupations Code, are repealed.

SECTION 13. (a) The changes in law made by this Act to Chapter 1702, Occupations Code, apply only to an application for an original or renewal license, registration, or endorsement submitted to the Texas Private Security Board on or after January 1, 2014. An application submitted before January 1, 2014, is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(2) present the manager or owner of the business with credentials that identify the person conducting the inspection or audit as an employee or agent of the department or board.

(b) This section does not prohibit the department or board from conducting an undercover investigation or covert audit in order to determine compliance with this chapter or a rule adopted under this chapter.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Subchapter P, Chapter 1702, Occupations Code, is amended by adding Section 1702.3841 to read as follows:

Sec. 1702.3841. INSUFFICIENT INSURANCE COVERAGE; OFFENSE. (a) A person commits an offense if the person is subject to Section 1702.124 and knowingly fails to provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the person related to private security. A person is presumed to have acted knowingly for purposes of this subsection if the person received reasonable notice and an opportunity to provide or maintain the documentation required by Section 1702.124 and failed to do so.

(b) An offense under this section is a Class A misdemeanor.

SECTION 11. Same as introduced version.

SECTION 12. Same as introduced version.

SECTION 13. Same as introduced version.

(b) The Texas Private Security Board shall adopt rules to implement the changes in law made by this Act not later than January 1, 2014.

SECTION 14. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

SECTION 14. Same as introduced version.