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By:  Hinojosa S.B. No. 988

A BILL TO BE ENTITLED

AN ACT

relating to misconduct and standards of conduct applicable to certain persons licensed by the Texas Commission on Law Enforcement.

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

SECTION 1.  Chapter 2, Code of Criminal Procedure, is amended by adding Articles 2.1397 and 2.1398 to read as follows:

Art. 2.1397.  PEACE OFFICER AND JAILER STANDARDS OF CONDUCT. (a) In this article, "law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers. The term includes a sheriff.

(b)  Each law enforcement agency in this state shall adopt the standards of conduct for peace officers or county jailers, as applicable, developed by the Texas Commission on Law Enforcement under Section 1701.166, Occupations Code.

(c)  A law enforcement agency may tailor the contents of the applicable standards as necessary based on the agency's size, jurisdiction, and resources.

Art. 2.1398.  DUTIES OF LAW ENFORCEMENT AGENCY REGARDING MISCONDUCT. (a) In this article, "law enforcement agency" means an agency of the state or an agency of a political subdivision of the state authorized by law to employ peace officers. The term includes a sheriff.

(b)  The chief administrator of a law enforcement agency in this state shall report to the Texas Commission on Law Enforcement each allegation that a person licensed under Chapter 1701, Occupations Code, and employed by the agency engaged in any improper or unlawful acts, including:

(1)  being convicted of, placed on deferred adjudication for, or entering a plea of guilty or nolo contendere to any offense other than a misdemeanor punishable by fine only;

(2)  engaging in conduct that would constitute any offense other than a misdemeanor punishable by fine only;

(3)  falsifying a police report or evidence in a criminal investigation;

(4)  destroying evidence in a criminal investigation;

(5)  using excessive force on multiple occasions;

(6)  accepting a bribe;

(7)  engaging in fraud;

(8)  unlawfully using a controlled substance;

(9)  engaging in an act for which the officer is liable under 42 U.S.C. Section 1983;

(10)  committing perjury;

(11)  making, submitting, or filing, or causing to be submitted or filed, a false report to the Texas Commission on Law Enforcement;

(12)  misusing an official position or misappropriating property;

(13)  engaging in an unprofessional relationship with an individual arrested or detained, or in the custody of a correctional facility;

(14)  committing sexual harassment involving physical contact; or

(15)  misusing criminal history record information.

(c)  A report required under Subsection (b) must be in writing on a form prescribed by the Texas Commission on Law Enforcement and submitted not later than the 15th day after the date the law enforcement agency is made aware of the allegation.

(d)  The chief administrator of the law enforcement agency shall update any report submitted under Subsection (b) after the agency's investigation into the allegation is concluded. The updated report must include any disciplinary action taken against the license holder, including whether the license holder was terminated or if the license holder resigned, retired, or separated in lieu of termination.

(e)  On a finding by the Texas Commission on Law Enforcement that the chief administrator of a law enforcement agency intentionally failed to submit a report required under Subsection (b), the commission shall begin disciplinary proceedings against the chief administrator.

SECTION 2.  Section 1701.151, Occupations Code, is amended to read as follows:

Sec. 1701.151.  GENERAL POWERS OF COMMISSION; RULEMAKING AUTHORITY. The commission may:

(1)  adopt rules for the administration of this chapter and for the commission's internal management and control;

(2)  establish minimum standards relating to competence and reliability, including education, training, physical, mental, and moral standards, for licensing as an officer, county jailer, public security officer, or telecommunicator;

(3)  report to the governor and legislature on the commission's activities, with recommendations on matters under the commission's jurisdiction, and make other reports that the commission considers desirable;

(4)  require a state agency or a county, special district, or municipality in this state that employs officers, telecommunicators, or county jailers to submit reports and information;

(5)  contract as the commission considers necessary for services, facilities, studies, and reports required for:

(A)  cooperation with municipal, county, special district, state, and federal law enforcement agencies in training programs; and

(B)  performance of the commission's other functions, including the operation of the database under Section 1701.165; and

(6)  conduct research and stimulate research by public and private agencies to improve law enforcement and police administration.

SECTION 3.  Subchapter D, Chapter 1701, Occupations Code, is amended by adding Sections 1701.165 and 1701.166 to read as follows:

Sec. 1701.165.  DATABASE OF LICENSE HOLDER MISCONDUCT. (a) The commission shall establish an electronic database for information concerning license holder misconduct to provide for the collection and analysis of information by the commission. The commission shall:

(1)  allow law enforcement agencies in this state to electronically access the database for purposes of obtaining information related to the following concerning a license holder:

(A)  hiring;

(B)  disciplinary actions;

(C)  resignations or terminations; and

(D)  certification and training;

(2)  adopt policies and procedures under which specified personnel of a law enforcement agency may access the database for a purpose described by Subdivision (1), including establishing qualifications for access; and

(3)  distribute the policies and procedures adopted under Subdivision (2) to law enforcement agencies in this state.

(b)  The commission shall include in the database reports submitted to the commission under Article 2.1398, Code of Criminal Procedure.

(c)  The commission shall prescribe and make available to law enforcement agencies in this state a form to be used for submitting a report of an allegation of misconduct to the database. The form must require the law enforcement agency to report:

(1)  the license holder's:

(A)  date of hire;

(B)  position; and

(C)  identifying characteristics; and

(2)  detailed information concerning:

(A)  the nature of the misconduct; and

(B)  the disposition of the allegation.

(d)  The commission is not liable for civil damages for providing information contained in the database if the commission released the information as provided by this section and the procedures adopted by the commission under this section. A law enforcement agency, agency head, or other law enforcement official is not liable for civil damages for submitting a report to the database if the report is made in good faith.

(e)  Any allegation of misconduct reported to the database is not considered final until all applicable appeals have been exhausted or waived by the license holder named in the allegation.

(f)  The commission shall adopt appropriate measures to ensure the security of the database in accordance with applicable state or federal laws or rules.

(g)  Information maintained in the database is confidential and not subject to disclosure under Chapter 552, Government Code.

Sec. 1701.166.  STANDARDS OF CONDUCT. (a) The commission by rule shall prescribe standards of conduct for officers, county jailers, and school marshals.

(b)  The standards of conduct must establish best practices with respect to the following as appropriate for the type of license:

(1)  professionalism;

(2)  sexual harassment;

(3)  sexual assault;

(4)  domestic violence;

(5)  any criminal offense against a minor;

(6)  the use of alcohol or controlled substances;

(7)  the use of force;

(8)  the use of tactical teams;

(9)  the use of invasive surveillance techniques;

(10)  the use of brief, noninvasive stops of persons suspected of committing an offense;

(11)  arrests;

(12)  the issuance of citations in lieu of arrest for misdemeanor offenses punishable by fine only;

(13)  the release of recordings taken by body worn cameras; and

(14)  the conduct of interrogations of persons suspected of committing an offense.

(c)  In adopting the standards of conduct, the commission shall ensure members of the public are given an opportunity to provide input.

(d)  The commission shall make the standards of conduct and any associated training materials available on the commission's Internet website.

(e)  The commission shall biennially review and update the standards of conduct as necessary.

(f)  Not later than December 1 of each year, the commission shall submit a report regarding the standards of conduct to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the legislature with primary jurisdiction over the commission or criminal justice matters. The report must include:

(1)  information regarding the extent to which law enforcement agencies have adopted and implemented the standards of conduct; and

(2)  any legislative recommendations necessary to ensure uniform implementation of the standards.

SECTION 4.  The heading to Section 1701.451, Occupations Code, is amended to read as follows:

Sec. 1701.451.  DUTIES OF LAW ENFORCEMENT AGENCY SEEKING TO HIRE LICENSE HOLDER [~~PREEMPLOYMENT REQUEST FOR EMPLOYMENT TERMINATION REPORT AND SUBMISSION OF BACKGROUND CHECK CONFIRMATION FORM~~].

SECTION 5.  Section 1701.451(a), Occupations Code, is amended to read as follows:

(a)  Before a law enforcement agency may hire a person licensed under this chapter, the agency head or the agency head's designee must:

(1)  make a request to the commission for any employment termination report regarding the person that is maintained by the commission under this subchapter; [~~and~~]

(2)  review any information regarding the person that is maintained in the database under Section 1701.165; and

(3)  submit to the commission on the form prescribed by the commission confirmation that the agency:

(A)  conducted in the manner prescribed by the commission a criminal background check regarding the person;

(B)  obtained the person's written consent on a form prescribed by the commission for the agency to view the person's employment records;

(C)  obtained from the commission any service or education records regarding the person maintained by the commission; [~~and~~]

(D)  contacted each of the person's previous law enforcement employers; and

(E)  reviewed the information in the database as required by Subdivision (2).

SECTION 6.  Not later than January 1, 2022, the Texas Commission on Law Enforcement shall:

(1)  adopt rules and standards of conduct and prescribe forms necessary to implement the changes in law made by this Act; and

(2)  establish the database required by Section 1701.165, Occupations Code, as added by this Act.

SECTION 7.  Section 1701.451(a), Occupations Code, as amended by this Act, applies only with respect to a person hired on or after January 1, 2022. A person hired before January 1, 2022, is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 8.  (a) Not later than February 1, 2022, the Texas Commission on Law Enforcement shall submit to the governor, the lieutenant governor, the speaker of the house of representatives, and each standing committee of the legislature with primary jurisdiction over the commission or criminal justice matters a report on the standards of conduct adopted under Section 1701.166, Occupations Code, as added by this Act. The report must include information related to the development of the standards and the steps the commission has taken to make the standards available to law enforcement agencies in this state.

(b)  The Texas Commission on Law Enforcement shall submit its first report under Section 1701.166(f), Occupations Code, as added by this Act, not later than December 1, 2022.

SECTION 9.  Not later than March 1, 2022, each law enforcement agency in this state shall adopt the applicable standards of conduct required by Article 2.1397, Code of Criminal Procedure, as added by this Act.

SECTION 10.  This Act takes effect September 1, 2021.