87R2949 MAW-F

By:  West S.B. No. 1268

A BILL TO BE ENTITLED

AN ACT

relating to an employment termination report and other records submitted to the Texas Commission on Law Enforcement by a law enforcement agency.

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

SECTION 1.  Section 1701.451(c), Occupations Code, is amended to read as follows:

(c)  If the commission receives from a law enforcement agency a request that complies with Subsections (a)(1) and (b), the commission [~~employee having the responsibility to maintain any employment termination report regarding the person who is the subject of the request~~] shall release the report to the agency.

SECTION 2.  Sections 1701.452(a), (b), (d), and (g), Occupations Code, are amended to read as follows:

(a)  The head of a law enforcement agency or the head's designee shall submit a report to the commission on a form prescribed by the commission 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. The report must be submitted by the head or the designee not later than the seventh business day after the date the license holder:

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

(2)  exhausts all administrative appeals available to the license holder, if applicable.

(b)  The head of a law enforcement agency or the head's designee shall indicate [~~include~~] in the report required under Subsection (a) [~~a statement on~~] whether the license holder was suspected of misconduct, regardless of whether the license holder was terminated for misconduct [~~honorably discharged, generally discharged, or dishonorably discharged and, as required by the commission, an explanation of the circumstances under which the person resigned, retired, or was terminated~~]. For purposes of this subsection, "misconduct" includes a license holder engaging in criminal conduct, regardless of whether the license holder was arrested for, charged with, or convicted of an offense [~~:~~

[~~(1)  "Honorably discharged" means a license holder who, while in good standing and not because of pending or final disciplinary actions or a documented performance problem, retired, resigned, or separated from employment with or died while employed by a law enforcement agency.~~

[~~(2)  "Generally discharged" means a license holder who:~~

[~~(A)  was terminated by, retired or resigned from, or died while in the employ of a law enforcement agency and the separation was related to a disciplinary investigation of conduct that is not included in the definition of dishonorably discharged; or~~

[~~(B)  was terminated by or retired or resigned from a law enforcement agency and the separation was for a documented performance problem and was not because of a reduction in workforce or an at-will employment decision.~~

[~~(3)  "Dishonorably discharged" means a license holder who:~~

[~~(A)  was terminated by a law enforcement agency or retired or resigned in lieu of termination by the agency in relation to allegations of criminal misconduct; or~~

[~~(B)  was terminated by a law enforcement agency or retired or resigned in lieu of termination by the agency for insubordination or untruthfulness~~].

(d)  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, shall provide to the license holder a copy of the report. The report must be provided to the license holder not later than the seventh business day after the date the license holder:

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

(2)  exhausts all administrative appeals available to the license holder, if applicable.

(g)  The head of a law enforcement agency or the head's designee must submit a report under this section each time a person licensed under this chapter [~~resigns, retires, is terminated, or~~] separates for any [~~other~~] reason from the agency. The report is an official government document.

SECTION 3.  Sections 1701.4525(a), (d), and (e), Occupations Code, are amended to read as follows:

(a)  A person who is the subject of an employment termination report maintained by the commission under this subchapter may contest an indication under Section 1701.452(b) that the person was suspected of misconduct [~~information~~] contained in the report by submitting to the law enforcement agency and to the commission a written petition on a form prescribed by the commission for a correction of the report not later than the 30th day after the date the person receives a copy of the report. On receipt of the petition, the commission shall refer the petition to the State Office of Administrative Hearings.

(d)  A proceeding to contest an indication of misconduct [~~information~~] in an employment termination report is a contested case under Chapter 2001, Government Code.

(e)  In a proceeding to contest an indication of misconduct [~~information~~] in an employment termination report [~~for a report based on alleged misconduct~~], an administrative law judge shall 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 for the misconduct [~~or the person resigned, retired, or separated in lieu of termination~~]. If the alleged misconduct is not supported by a preponderance of the evidence, the administrative law judge shall order the commission to change the report. The commission shall send the changed report to the law enforcement agency that prepared the original employment termination report. The law enforcement agency shall replace the original employment termination report with the changed report.

SECTION 4.  The following provisions of the Occupations Code are repealed:

(1)  Section 1701.452(c);

(2)  Section 1701.4521; and

(3)  Section 1701.454.

SECTION 5.  Not later than December 1, 2021, the Texas Commission on Law Enforcement shall update the form for an employment termination report as necessary to comply with Section 1701.452, Occupations Code, as amended by this Act.

SECTION 6.  The changes in law made by this Act apply only to a report required to be submitted under Section 1701.452, Occupations Code, as amended by this Act, regarding a separation of a license holder that occurs on or after December 1, 2021. A separation that occurs before December 1, 2021, 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 7.  This Act takes effect September 1, 2021.