

By: King of Hemphill

H.B. No. 4286

A BILL TO BE ENTITLED

AN ACT

relating to procedures for and the consequences of the dishonorable discharge of certain peace officers; creating a criminal offense.

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

SECTION 1. Chapter 810, Government Code, is amended by adding Section 810.005 to read as follows:

Sec. 810.005. CERTAIN PEACE OFFICERS INELIGIBLE FOR RETIREMENT ANNUITY. (a) In this section:

(1) "Dishonorably discharged peace officer" means a peace officer who is reported as dishonorably discharged in a report required by Section 1701.452, Occupations Code.

(2) "Governing body of a public retirement system" and "public retirement system" have the meanings assigned by Section 802.001.

(3) "Governmental entity" means a unit of government that is the employer of active members of a public retirement system.

(4) "Peace officer" means a person who is elected, appointed, or employed as a peace officer under Article 2.12, Code of Criminal Procedure, Section 37.081 or 51.203, Education Code, or other law.

(b) In accordance with Section 66, Article XVI, Texas Constitution, and to the extent a public retirement system may implement this section and remain a qualified plan under Section

1 401(a), Internal Revenue Code of 1986 (26 U.S.C. Section 401), this
2 section applies to a public retirement system with a member or
3 annuitant who holds a position as a peace officer with the
4 associated governmental entity of the system.

5 (c) Except as provided by Subsection (d), a member or
6 annuitant of a public retirement system is not eligible to receive a
7 service retirement annuity under the retirement system if the
8 person is a dishonorably discharged peace officer.

9 (d) A public retirement system, on receipt of a notice under
10 Subsection (i), shall suspend payments of a service retirement
11 annuity to a person the system determines is ineligible to receive
12 the annuity under Subsection (c). A person who is determined
13 ineligible to receive an annuity under Subsection (c) who, in an
14 administrative or judicial proceeding, subsequently prevails in
15 contesting the information in the report resulting in the report no
16 longer reflecting that the person is dishonorably discharged:

17 (1) is entitled to receive an amount equal to the
18 accrued total of payments and interest earned on the payments
19 withheld during the suspension period; and

20 (2) may resume receipt of annuity payments on payment
21 to the retirement system of an amount equal to the contributions
22 refunded to the person under Subsection (e).

23 (e) A person who is ineligible to receive a service
24 retirement annuity under Subsection (c) is entitled to a refund of
25 the person's service retirement annuity contributions, including
26 interest earned on those contributions. A refund under this
27 subsection is subject to an award of all or part of the person's

1 service retirement annuity contributions to a former spouse,
2 including as a just and right division of the contributions on
3 divorce, payment of child support, or payment of spousal
4 maintenance or contractual alimony or other order of a court.

5 (f) On petition by the spouse of a person who forfeits a
6 service retirement annuity under this section:

7 (1) a court may make a just and right division of the
8 person's service retirement annuity by awarding to the person's
9 spouse all or part of the community property interest in the annuity
10 forfeited by the person; and

11 (2) a court shall, if the person's service retirement
12 annuity was partitioned or exchanged by written agreement of the
13 spouses as provided by Subchapter B, Chapter 4, Family Code, before
14 the person was dishonorably discharged, award the annuity forfeited
15 by the person to the person's spouse as provided in the agreement.

16 (g) Ineligibility for a service retirement annuity under
17 this section does not impair a person's right to any other
18 retirement benefit for which the person is eligible.

19 (h) The governing body of a public retirement system shall
20 adopt rules and procedures to implement this section.

21 (i) A governmental entity shall notify the appropriate
22 public retirement system if a person employed by the governmental
23 entity as a peace officer is dishonorably discharged.

24 SECTION 2. Section 87.031(c), Local Government Code, is
25 amended to read as follows:

26 (c) For purposes of Subsection (a), "a misdemeanor
27 involving official misconduct" includes a misdemeanor under:

1 (1) Section 1701.452(h), Occupations Code; or

2 (2) Section 39.07, Penal Code.

3 SECTION 3. Subchapter G, Chapter 1701, Occupations Code, is
4 amended by adding Section 1701.3111 to read as follows:

5 Sec. 1701.3111. DISQUALIFICATION: DISHONORABLE DISCHARGE.

6 A person whose license has been revoked under Section 1701.4521 is
7 disqualified to be an officer and the commission may not issue a
8 license to the person.

9 SECTION 4. The heading to Section 1701.452, Occupations
10 Code, is amended to read as follows:

11 Sec. 1701.452. EMPLOYMENT TERMINATION REPORT; OFFENSE.

12 SECTION 5. Section 1701.452, Occupations Code, is amended
13 by amending Subsection (b) and adding Subsections (b-1) and (h) to
14 read as follows:

15 (b) The head of a law enforcement agency or the head's
16 designee shall include in the report required under Subsection (a)
17 a statement on whether the license holder was honorably discharged,
18 generally discharged, or dishonorably discharged and, for a license
19 holder who was generally discharged or dishonorably discharged [as
20 required by the commission], an explanation of the circumstances
21 under which the person resigned, retired, or was terminated,
22 including a description of any disciplinary or performance issues
23 for which the person was discharged.

24 (b-1) For purposes of this section [subsection]:

25 (1) "Honorably discharged" means a license holder who,
26 while in good standing and not because of pending or final
27 disciplinary actions or a documented performance problem, retired,

1 resigned, or separated from employment with or died while employed
2 by a law enforcement agency.

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

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

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

13 (3) "Dishonorably discharged" means a license holder
14 who:

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

18 (B) was terminated by a law enforcement agency or
19 retired or resigned in lieu of termination by the agency for
20 insubordination or untruthfulness; or

21 (C) was terminated by a law enforcement agency or
22 retired or resigned in lieu of termination by the agency:

23 (i) after receiving notice from the
24 attorney representing the state that the attorney will no longer
25 accept cases submitted for prosecution by the license holder due to
26 conduct by the license holder that would be required to be disclosed
27 to a defendant under Article 39.14, Code of Criminal Procedure, or

1 the Texas Disciplinary Rules of Professional Conduct; or

2 (ii) for engaging in conduct that would
3 constitute grounds for the attorney representing the state to
4 provide a notice described by Subparagraph (i).

5 (h) A person required to submit a report under Subsection
6 (a) commits an offense if the person, with respect to a license
7 holder whose separation is described by Subsection (b-1)(2) or (3),
8 knowingly submits a report that does not indicate that the license
9 holder was generally discharged or dishonorably discharged, as
10 applicable, in the statement required by Subsection (b). An
11 offense under this subsection is a Class B misdemeanor.

12 SECTION 6. Section 1701.4521, Occupations Code, is amended
13 to read as follows:

14 Sec. 1701.4521. LICENSE REVOCATION [~~SUSPENSION~~] FOR
15 OFFICER DISHONORABLY DISCHARGED. (a) The commission shall suspend
16 the license of an officer licensed under this chapter on
17 notification that the officer has been dishonorably discharged [~~if~~
18 ~~the officer has previously been dishonorably discharged from~~
19 ~~another law enforcement agency~~].

20 (b) An officer whose license is suspended under this section
21 may appeal the suspension in writing to the commission not later
22 than the 30th day after the date the officer is suspended.

23 (c) The [~~After a~~] commission shall [~~determination, the~~
24 ~~commission may~~] revoke [~~or reinstate~~] the officer's license if the
25 commission determines, after the hearing, that the officer was
26 dishonorably discharged [~~in accordance with rules or procedures~~
27 ~~adopted by the commission under this chapter related to revocation~~

1 ~~or reinstatement of a license]~~.

2 (c-1) The commission shall revoke the officer's license if
3 the officer does not appeal the suspension before the 30th day after
4 the date the officer is suspended.

5 (d) The commission's decision does not affect:

6 (1) the employment relationship between an officer
7 licensed under this chapter and a law enforcement agency; or

8 (2) any disciplinary action taken against an officer
9 licensed under this chapter by a law enforcement agency.

10 (e) A hearing under this section is a contested case under
11 Chapter 2001, Government Code.

12 SECTION 7. Section 1701.453, Occupations Code, is amended
13 to read as follows:

14 Sec. 1701.453. MAINTENANCE OF REPORTS AND STATEMENTS. (a) A
15 law enforcement agency shall maintain a complete and unredacted
16 copy of each report and statement submitted to the commission under
17 this subchapter regarding a license holder who was generally
18 discharged or dishonorably discharged, as those terms are defined
19 by Section 1701.452(b-1), until at least the 20th anniversary of
20 the date of the discharge.

21 (b) The commission shall maintain a copy of each report and
22 statement submitted to the commission under this subchapter until
23 at least the 10th anniversary of the date on which the report or
24 statement is submitted.

25 SECTION 8. Section 1701.454(a), Occupations Code, is
26 amended to read as follows:

27 (a) All information submitted to the commission under this

1 subchapter is confidential and is not subject to disclosure under
2 Chapter 552, Government Code, unless the person was generally
3 discharged or dishonorably discharged, as those terms are defined
4 by Section 1701.452(b-1) [~~resigned or was terminated due to~~
5 ~~substantiated incidents of excessive force or violations of the law~~
6 ~~other than traffic offenses~~].

7 SECTION 9. Section 1701.456, Occupations Code, is amended
8 by amending Subsection (b) and adding Subsection (c) to read as
9 follows:

10 (b) A law enforcement agency, agency head, or other law
11 enforcement official, or the political subdivision served by the
12 agency, is not liable for civil damages for a report made by that
13 agency or person if the report is made in good faith.

14 (c) An attorney representing the state, the office of the
15 attorney representing the state, or the political subdivision
16 served by the attorney is not liable for civil damages for a notice
17 described by Section 1701.452(b-1)(3)(C)(i) if the notice was
18 provided by the attorney representing the state in good faith.

19 SECTION 10. Not later than December 1, 2021, the Texas
20 Commission on Law Enforcement shall update the form for an
21 employment termination report as necessary to comply with Section
22 1701.452, Occupations Code, as amended by this Act.

23 SECTION 11. The changes in law made by this Act apply only
24 to a report required to be submitted under Section 1701.452,
25 Occupations Code, as amended by this Act, regarding a resignation,
26 retirement, termination, or separation of a license holder that
27 occurs on or after December 1, 2021. A resignation, retirement,

1 termination, or separation that occurs before December 1, 2021, is
2 governed by the law in effect immediately before the effective date
3 of this Act, and the former law is continued in effect for that
4 purpose.

5 SECTION 12. This Act takes effect September 1, 2021.