

By: West

S.B. No. 1268

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to an employment termination report and other records  
3 submitted to the Texas Commission on Law Enforcement by a law  
4 enforcement agency.

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

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

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

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

15 (a) The head of a law enforcement agency or the head's  
16 designee shall submit a report to the commission on a form  
17 prescribed by the commission regarding a person licensed under this  
18 chapter [~~who resigns or retires from employment with the law~~  
19 ~~enforcement agency, whose appointment with the law enforcement~~  
20 ~~agency is terminated, or~~] who separates from the law enforcement  
21 agency for any [~~other~~] reason. The report must be submitted by the  
22 head or the designee not later than the seventh business day after  
23 the date the license holder:

24 (1) [~~resigns, retires, is terminated, or~~] separates

1 from the agency; and

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

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

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

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

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

27 [~~(B) was terminated by or retired or resigned~~

1 ~~from a law enforcement agency and the separation was for a~~  
2 ~~documented performance problem and was not because of a reduction~~  
3 ~~in workforce or an at-will employment decision.~~

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

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

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

12 (d) The head of the law enforcement agency from which a  
13 license holder ~~[resigns, retires, is terminated, or]~~ separates for  
14 reasons other than death, or the head's designee, shall provide to  
15 the license holder a copy of the report. The report must be provided  
16 to the license holder not later than the seventh business day after  
17 the date the license holder:

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

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

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

27 SECTION 3. Sections [1701.4525](#)(a), (d), and (e), Occupations

1 Code, are amended to read as follows:

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

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

15 (e) In a proceeding to contest an indication of misconduct  
16 [~~information~~] in an employment termination report [~~for a report~~  
17 ~~based on alleged misconduct~~], an administrative law judge shall  
18 determine if the alleged misconduct occurred by a preponderance of  
19 the evidence regardless of whether the person who is the subject of  
20 the report was terminated for the misconduct [~~or the person~~  
21 ~~resigned, retired, or separated in lieu of termination~~]. If the  
22 alleged misconduct is not supported by a preponderance of the  
23 evidence, the administrative law judge shall order the commission  
24 to change the report. The commission shall send the changed report  
25 to the law enforcement agency that prepared the original employment  
26 termination report. The law enforcement agency shall replace the  
27 original employment termination report with the changed report.

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

- 3                   (1) Section 1701.452(c);
- 4                   (2) Section 1701.4521; and
- 5                   (3) Section 1701.454.

6           SECTION 5. Not later than December 1, 2021, the Texas  
7 Commission on Law Enforcement shall update the form for an  
8 employment termination report as necessary to comply with Section  
9 1701.452, Occupations Code, as amended by this Act.

10          SECTION 6. The changes in law made by this Act apply only to  
11 a report required to be submitted under Section 1701.452,  
12 Occupations Code, as amended by this Act, regarding a separation of  
13 a license holder that occurs on or after December 1, 2021. A  
14 separation that occurs before December 1, 2021, is governed by the  
15 law in effect immediately before the effective date of this Act, and  
16 the former law is continued in effect for that purpose.

17          SECTION 7. This Act takes effect September 1, 2021.