88R9077 SCP-D

By:  Paxton, et al. S.B. No. 1445

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Texas Commission on Law Enforcement.

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

SECTION 1.  Section 1701.002, Occupations Code, is amended to read as follows:

Sec. 1701.002.  APPLICATION OF SUNSET ACT. The Texas Commission on Law Enforcement is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2035 [~~2023~~].

SECTION 2.  Section 1701.059, Occupations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b)  The training program must provide the person with information regarding:

(1)  the law governing [~~legislation that created the~~] commission operations;

(2)  the programs, functions, rules, and budget of the commission;

(3)  the scope of and limitations on the rulemaking authority of the commission;

(4)  the results of the most recent formal audit of the commission;

(5) [~~(4)~~]  the requirements of:

(A)  laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest; and

(B)  other laws applicable to members of a state policy-making body in performing their duties; and

(6) [~~(5)~~]  any applicable ethics policies adopted by the commission or the Texas Ethics Commission.

(d)  The executive director of the commission shall create a training manual that includes the information required by Subsection (b). The executive director shall distribute a copy of the training manual annually to each member of the commission. Each commission member shall sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 3.  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, and 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; and

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

SECTION 4.  Section 1701.163, Occupations Code, is amended to read as follows:

Sec. 1701.163.  MINIMUM STANDARDS FOR LAW ENFORCEMENT AGENCIES [~~INFORMATION PROVIDED BY COMMISSIONING ENTITIES~~]. [~~(a) This section applies only to an entity authorized by statute or by the constitution to create a law enforcement agency or police department and commission, appoint, or employ officers that first creates a law enforcement agency or police department and first begins to commission, appoint, or employ officers on or after September 1, 2009.~~

[~~(b)~~]  The [~~entity shall submit to the~~] commission, with input from an advisory committee, shall by rule establish minimum standards with respect to the creation or operation of a law enforcement agency, including [~~on creation of the law enforcement agency or police department information regarding~~]:

(1)  a determination regarding the need for creating the [~~law enforcement~~] agency [~~or police department~~] in the community;

(2)  the sustainable funding sources for the [~~law enforcement~~] agency [~~or police department~~];

(3)  the physical resources available to officers, which may differ based on the size of the law enforcement agency, including:

(A)  duty firearms, including patrol rifles and shotguns;

(B)  less lethal force weapons, including a requirement of at least one per officer on duty;

(C)  effective communications equipment;

(D)  protective equipment, including a requirement of at least one protective vest per officer on duty;

(E)  officer uniforms; and

(F)  patrol vehicles and associated equipment;

(4)  the physical facilities of [~~that~~] the [~~law enforcement~~] agency [~~or police department will operate~~], including any [~~descriptions of the~~] evidence room, dispatch area, or [~~and~~] public area;

(5)  the [~~law enforcement~~] policies of the [~~law enforcement~~] agency [~~or police department~~], including policies on:

(A)  use of force;

(B)  vehicle pursuit;

(C)  professional conduct of officers;

(D)  domestic abuse protocols;

(E)  response to missing persons;

(F)  supervision of part-time officers; [~~and~~]

(G)  impartial policing;

(H)  active shooters; and

(I)  barricaded subjects;

(6)  the administrative structure of the [~~law enforcement~~] agency [~~or police department~~];

(7)  liability insurance; and

(8)  any other standard [~~information~~] the commission considers necessary [~~requires by rule~~].

SECTION 5.  Subchapter D, Chapter 1701, Occupations Code, is amended by adding Sections 1701.165, 1701.166, 1701.167, 1701.168, and 1701.169 to read as follows:

Sec. 1701.165.  ADVISORY COMMITTEES. (a) The commission by rule may establish advisory committees to make recommendations to the commission on programs, rules, and policies administered by the commission.

(b)  In establishing an advisory committee under this section, the commission shall adopt rules, including rules regarding:

(1)  the purpose, role, responsibility, goals, and duration of the committee;

(2)  the size of and quorum requirement for the committee;

(3)  qualifications for committee membership;

(4)  appointment procedures for members;

(5)  terms of service for members;

(6)  training requirements for members;

(7)  policies to avoid conflicts of interest by committee members;

(8)  a periodic review process to evaluate the continuing need for the committee; and

(9)  policies to ensure the committee does not violate any provision of Chapter 551, Government Code, applicable to the commission or the committee.

Sec. 1701.166.  SUBPOENA. (a) The commission may compel by subpoena the production for inspection or copying of a record described by Section 1701.162(a) that is relevant to the investigation of an alleged violation of this chapter or a commission rule.

(b)  The commission, acting through the attorney general, may bring an action to enforce a subpoena issued under Subsection (a) against a person who fails to comply with the subpoena.

(c)  Venue for an action brought under Subsection (b) is in a district court in:

(1)  Travis County; or

(2)  any county in which the commission may conduct a hearing.

(d)  The court shall order compliance with the subpoena if the court finds that good cause exists to issue the subpoena.

Sec. 1701.167.  EXAMINATION OF LICENSE HOLDER. (a) The commission shall adopt rules specifying the circumstances under which the commission may request that a license holder submit to an examination described by Section 1701.306(a) by a psychologist, psychiatrist, or physician selected by the commission to determine whether the license holder continues to meet the standards required by that section.

(b)  If the license holder refuses to submit to the examination, the commission shall issue an order requiring the person to show cause for the person's refusal at a hearing on the order scheduled for not later than the 30th day after the date notice is served on the person. The commission shall provide notice under this section by personal service or by registered mail, return receipt requested.

(c)  At the hearing, the person may appear in person and by counsel and present evidence to justify the person's refusal to submit to examination. After the hearing, the commission shall issue an order requiring the person to submit to an examination under this section or withdrawing the request for the examination.

(d)  Unless the request is withdrawn, the commission may suspend the license of a person who refuses to submit to the examination.

(e)  An appeal from the commission's order under this section is governed by Chapter 2001, Government Code.

(f)  If the results of an examination under this section show that the person does not meet the standards of Section 1701.306(a), the commission shall suspend the person's license.

(g)  Records relating to a request or order of the commission or a hearing or examination conducted under this section, including, if applicable, the identity of the person notifying the commission that a license holder may not meet the standards required by Section 1701.306(a), are confidential and not subject to disclosure under Chapter 552, Government Code.

(h)  An order issued by the commission regarding a license holder that is based on information obtained during an examination under this section may only reference the statutory basis for the order and may not disclose the reason for the examination.

Sec. 1701.168.  REFUSAL OR FAILURE OF EXAMINATION. (a) Except as provided by Subsection (b), a law enforcement agency shall report to the commission a license holder who refuses to submit to or fails an examination ordered under Section 1701.167.

(b)  A law enforcement agency is not required to report a failed examination under Subsection (a) if the license holder submits to and successfully completes a treatment program within a reasonable time, as prescribed by commission rule. A law enforcement agency may assign a license holder who submits to a treatment program under this subsection to a non-law enforcement role for the duration of the treatment program and until the license holder passes the examination.

Sec. 1701.169.  PREEMPLOYMENT DATABASE. The commission shall designate one or more national law enforcement databases that a law enforcement agency must access to complete the preemployment background check required under Sections 1701.303(a) and 1701.451(a). A database designated under this section must:

(1)  contain records related to a person's previous law enforcement employment or experience, including any:

(A)  commendations or awards;

(B)  misconduct or disciplinary records; and

(C)  certifications or licenses held;

(2)  be maintained by the federal government or a nationally recognized law enforcement accreditation association; and

(3)  provide a process for a person to contest or amend any information maintained in the database relating to the person.

SECTION 6.  Section 1701.202, Occupations Code, is amended by amending Subsection (b) and adding Subsection (d) to read as follows:

(b)  Except as provided by Subsection (d), on [~~On~~] request, a license holder is entitled to [~~may~~] obtain information regarding a complaint made against the license holder under this chapter, including a complete copy of the complaint file. On receipt of a request under this subsection, the commission shall provide the requested information in a timely manner to allow the license holder time to respond to the complaint.

(d)  The commission is not required to provide the identity of any nontestifying complainant in response to a request under Subsection (b).

SECTION 7.  Section 1701.203(c), Occupations Code, is amended to read as follows:

(c)  The commission shall periodically notify the complaint parties [~~to the complaint~~] of the status of the complaint until final disposition unless the notice would jeopardize an investigation.

SECTION 8.  Subchapter E, Chapter 1701, Occupations Code, is amended by adding Section 1701.205 to read as follows:

Sec. 1701.205.  OFFICER PROFILES. (a) The commission shall create a public database containing profiles of each officer licensed under this chapter. A profile must:

(1)  include the information required by Subsection (b); and

(2)  be compiled in a format that makes the information contained in the profile readily available to the public.

(b)  Except as otherwise provided by this section, a profile must contain the following information with respect to each officer:

(1)  the date the officer completed the basic training course;

(2)  whether the officer is in compliance with continuing education requirements and the continuing education courses completed;

(3)  the total hours of training the officer has completed; and

(4)  the date the officer's license was issued.

(c)  The commission shall adopt rules to exclude from the database profiles for certain officers if including the profile would create a safety risk for the officer based on the officer's position or duties, including the profiles of undercover officers and officers involved in active narcotics operations.

SECTION 9.  Section 1701.253, Occupations Code, is amended by adding Subsection (a-1) and amending Subsections (g), (h), (i), (j), (l), (m), (o), and (p) to read as follows:

(a-1)  The commission by rule shall establish deadlines for an officer to complete any minimum curriculum requirements that are not completed as part of the officer's basic training course.

(g)  As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on asset forfeiture under Chapter 59, Code of Criminal Procedure, for officers licensed under this chapter. [~~An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.~~]

(h)  As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on racial profiling for officers licensed under this chapter. [~~An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.~~]

(i)  As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on identity theft under Section 32.51, Penal Code, for officers licensed under this chapter. [~~An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.~~]

(j)  As part of the minimum curriculum requirements, the commission shall require an officer to complete a 40-hour statewide education and training program on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments. [~~An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.~~] An officer may not satisfy the requirements of this subsection or Section 1701.402(g) by taking an online course on de-escalation and crisis intervention techniques to facilitate interaction with persons with mental impairments.

(l)  As part of the minimum curriculum requirements, the commission shall require an officer licensed by the commission on or after January 1, 2016, to complete a canine encounter training program established by the commission under Section 1701.261. [~~An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.~~]

(m)  As part of the minimum curriculum requirements, the commission shall establish a statewide comprehensive education and training program on procedures for interacting with drivers who are deaf or hard of hearing, as defined by Section 81.001, Human Resources Code, including identifying specialty license plates issued to individuals who are deaf or hard of hearing under Section 504.204, Transportation Code. [~~An officer shall complete a program established under this subsection not later than the second anniversary of the date the officer is licensed under this chapter or the date the officer applies for an intermediate proficiency certificate, whichever date is earlier.~~]

(o)  As part of the minimum curriculum requirements, the commission shall require an officer to complete the civilian interaction training program developed under Section 1701.268. [~~An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.~~]

(p)  As part of the minimum curriculum requirements, the commission shall require an officer to complete the basic education and training program on the trafficking of persons developed under Section 1701.258(a). [~~An officer shall complete the program not later than the second anniversary of the date the officer is licensed under this chapter unless the officer completes the program as part of the officer's basic training course.~~]

SECTION 10.  Section 1701.303(a), Occupations Code, is amended to read as follows:

(a)  Before a [~~A~~] law enforcement agency or governmental entity [~~that~~] hires a person for whom a license is sought, the law enforcement agency must:

(1)  review any information relating to the person available in a database designated by the commission under Section 1701.169; and

(2)  file an application with the commission as provided by commission rule.

SECTION 11.  Section 1701.404(b), Occupations Code, is amended to read as follows:

(b)  The commission may certify a sheriff, sheriff's deputy, constable, other peace officer, county jailer, or justice of the peace as a special officer for offenders with mental impairments if the person:

(1)  completes a training course in emergency first aid and lifesaving techniques approved by the commission;

(2)  completes a training course administered by the commission on mental health issues and offenders with mental impairments; and

(3)  passes an examination administered by the commission that is designed to test the person's:

(A)  knowledge and recognition of the characteristics and symptoms of mental illness, intellectual disabilities [~~mental retardation~~], and developmental [~~mental~~] disabilities; and

(B)  knowledge of mental health crisis intervention strategies for people with mental impairments.

SECTION 12.  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 must, on a form and in the manner prescribed by the commission:

(1)  obtain the person's written consent for the agency to review the information required to be reviewed under this section;

(2)  request from the commission and any other applicable person information required to be reviewed under this section; and

(3)  submit to the commission confirmation that the agency, to the best of the agency's ability before hiring the person:

(A)  contacted each entity or individual necessary to obtain the information required to be reviewed under this section; and

(B)  except as provided by Subsection (b), obtained and reviewed as related to the person, as applicable:

(i)  personnel files and other employee records from each previous law enforcement agency employer, including the employment application submitted to the previous employer;

(ii)  employment termination reports maintained by the commission under this subchapter;

(iii)  service records maintained by the commission;

(iv)  proof that the person meets the minimum qualifications for enrollment in a training program under Section 1701.251(a);

(v)  a military veteran's United States Department of Defense Form DD-214 or other military discharge record;

(vi)  criminal history record information;

(vii)  information on pending warrants as available through the Texas Crime Information Center and National Crime Information Center;

(viii)  evidence of financial responsibility as required by Section 601.051, Transportation Code;

(ix)  a driving record from the Department of Public Safety;

(x)  proof of United States citizenship; [~~and~~]

(xi)  information on the person's background from at least three personal references and at least two professional references; and

(xii)  information on the person's law enforcement background as available through a database designated by the commission under Section 1701.169.

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

Sec. 1701.453.  MAINTENANCE OF REPORTS [~~AND STATEMENTS~~]. The commission shall maintain a copy of each report [~~and statement~~] submitted to the commission under this subchapter until at least the 10th anniversary of the date on which the report [~~or statement~~] is submitted.

SECTION 14.  Section 1701.456(a), Occupations Code, is amended to read as follows:

(a)  The commission is not liable for civil damages for providing information contained in a report [~~or statement~~] maintained by the commission under this subchapter if the commission released the information as provided by this subchapter.

SECTION 15.  The heading to Subchapter K, Chapter 1701, Occupations Code, is amended to read as follows:

SUBCHAPTER K. DISCIPLINARY GROUNDS AND PROCEDURES

SECTION 16.  Subchapter K, Chapter 1701, Occupations Code, is amended by adding Section 1701.5011 to read as follows:

Sec. 1701.5011.  EMERGENCY SUSPENSION. (a) The commission shall adopt rules specifying the circumstances under which the commission may issue an emergency order, without a hearing, suspending a person's license for a period not to exceed 90 days after determining that the person constitutes an imminent threat to the public health, safety, or welfare.

(b)  An order suspending a license under this section must state the length of the suspension in the order.

(c)  If an emergency order is issued without a hearing under this section, the commission shall, not later than the 10th day after the date the order was issued, set the time and place for a hearing on the order. The hearing must be conducted as soon as practicable. A hearing under this section to affirm, modify, or set aside the emergency order shall be conducted by the State Office of Administrative Hearings. The order shall be affirmed to the extent that good cause existed to issue the order.

(d)  The commission by rule may prescribe procedures for the determination and appeal of an emergency order issued under this section, including a rule allowing the commission to affirm, modify, or set aside a decision made by the State Office of Administrative Hearings under Subsection (c).

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

SECTION 17.  The following provisions of the Occupations Code are repealed:

(1)  Sections 1701.452(b) and (c);

(2)  Section 1701.4521; and

(3)  Section 1701.4525.

SECTION 18.  (a) Except as provided by Subsection (b) of this section, Section 1701.059, Occupations Code, as amended by this Act, applies to a member of the Texas Commission on Law Enforcement appointed before, on, or after the effective date of this Act.

(b)  A member of the Texas Commission on Law Enforcement who, before the effective date of this Act, completed the training program required by Section 1701.059, Occupations Code, as that law existed before the effective date of this Act, is only required to complete additional training on the subjects added by this Act to the training program required by Section 1701.059, Occupations Code. A commission member described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the commission held on or after December 1, 2023, until the member completes the additional training.

SECTION 19.  (a) Not later than March 1, 2024, the Texas Commission on Law Enforcement shall:

(1)  adopt rules and update forms as necessary to implement the changes in law made by this Act to Chapter 1701, Occupations Code; and

(2)  designate the database as required by Section 1701.169, Occupations Code, as added by this Act.

(b)  Not later than September 1, 2024, the Texas Commission on Law Enforcement shall establish the database containing officer profiles as required by Section 1701.205, Occupations Code, as added by this Act.

SECTION 20.  Sections 1701.303(a) and 1701.451(a), Occupations Code, as amended by this Act, apply only with respect to a person hired on or after March 1, 2024. A person hired before March 1, 2024, 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 21.  The changes in law made by this Act to Subchapter J, Chapter 1701, Occupations Code, 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 March 1, 2024. A separation that occurs before March 1, 2024, 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 22.  This Act takes effect September 1, 2023.