

BILL ANALYSIS

C.S.H.B. 2991
By: Phillips
Homeland Security & Public Safety
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Interested parties contend that the release or potential release of the files associated with an investigation conducted by the Texas Commission on Law Enforcement (TCOLE) regarding a complaint against a TCOLE licensee can have a chilling effect on potential witnesses or informants. C.S.H.B. 2991 seeks to address this issue and provide individuals the security to come forward in an investigation by making certain TCOLE investigation materials confidential and exempt from disclosure under state public information law.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2991 amends the Occupations Code to exclude information that is an attorney-client communication, an attorney work product, or other information protected by a privilege recognized by the Texas Rules of Civil Procedure or the Texas Rules of Evidence from the information that the holder of a license issued by the Texas Commission on Law Enforcement (TCOLE) may obtain on request regarding a complaint made against the license holder. The bill makes information or material that is prepared or compiled by TCOLE in connection with a complaint or an investigation of any person subject to TCOLE jurisdiction confidential and exempt from disclosure under state public information law, except that such information or material may be disclosed to the respondent of the complaint; to a person providing a service to TCOLE, an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against a license holder or a subsequent trial or appeal taken from a disciplinary proceeding; to a law enforcement agency; to the State Office of Administrative Hearings (SOAH); to the office of the state auditor; or to TCOLE or a TCOLE panel for use during any proceeding conducted by SOAH or in a subsequent trial or appeal of a TCOLE action or order. The release of such information as authorized does not constitute a voluntary release or disclosure of the information for purposes of state public information law.

C.S.H.B. 2991 specifies that the filing of formal charges by TCOLE against a license holder, the nature of those charges, disciplinary proceedings of TCOLE, and final disciplinary actions by TCOLE are not confidential and are subject to disclosure in accordance with state public information law. The bill specifies that, after the investigation of a complaint in which TCOLE imposes a disciplinary action against a license holder, the information and materials prepared or

compiled by TCOLE regarding the complaint and investigation of the license holder are not confidential and are subject to disclosure in accordance with state public information law, except for any information that reveals or could reveal the identity of a complainant or witness involved in the complaint, investigation, or action.

EFFECTIVE DATE

September 1, 2017.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2991 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and formatted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 1701.202(b), Occupations Code, is amended.

SECTION 1. Same as introduced version.

SECTION 2. Subchapter E, Chapter 1701, Occupations Code, is amended by adding Section 1701.2031 to read as follows:

SECTION 2. Subchapter E, Chapter 1701, Occupations Code, is amended by adding Section 1701.2031 to read as follows:

Sec. 1701.2031. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Information or material, including an investigation file, is confidential and not subject to disclosure under Chapter 552, Government Code, or any other means of legal compulsion for release, including disclosure, discovery, or subpoena, if the information or material is prepared or compiled by the commission in connection with a complaint or an investigation of any person subject to the jurisdiction of the commission.

Sec. 1701.2031. CONFIDENTIALITY OF INVESTIGATION MATERIAL. (a) Information or material, including an investigation file, is confidential and not subject to disclosure under Chapter 552, Government Code,

(b) Notwithstanding Subsection (a), information or material prepared or compiled by the commission in connection with a complaint or an investigation may be disclosed:

if the information or material is prepared or compiled by the commission in connection with a complaint or an investigation of any person subject to the jurisdiction of the commission.

(b) Notwithstanding Subsection (a), information or material prepared or compiled by the commission in connection with a complaint or an investigation may be disclosed to:

- (1) to the respondent of the complaint;
- (2) to a person providing a service to the commission, an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against a license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;
- (3) to a law enforcement agency;
- (4) to the State Office of Administrative Hearings; or

- (1) the respondent of the complaint;
- (2) a person providing a service to the commission, an expert or other witness, or an investigator, if the information is necessary for preparation for, or a presentation in, a disciplinary proceeding against a license holder, or a subsequent trial or appeal taken from a disciplinary proceeding;
- (3) a law enforcement agency;
- (4) the State Office of Administrative Hearings;
- (5) the office of the state auditor; or

(5) to the commission, or a panel of the commission, for use during any proceeding conducted by the State Office of Administrative Hearings or in a subsequent trial or appeal of a commission action or order.

(c) The release of information under Subsection (b) does not constitute a release or disclosure for purposes of Section 552.007, Government Code.

(d) The filing of formal charges by the commission against a license holder, the nature of those charges, disciplinary proceedings of the commission, and final disciplinary actions by the commission, including warnings and reprimands, are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

(e) After the investigation of a complaint in which the commission imposes a disciplinary action against a license holder under Section 1701.501, the information and materials prepared or compiled by the commission regarding the complaint and investigation of the license holder are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code, not including any information that reveals or could reveal the identity of a complainant or witness involved in the complaint, investigation, or action.

SECTION 3. Section 1701.202, Occupations Code, as amended by this Act, and Section 1701.2031, Occupations Code, as added by this Act, apply only to a complaint filed or an investigation commenced on or after the effective date of this Act. A complaint filed or an investigation commenced before that date is governed by the law in effect on the date the complaint was filed or the investigation was commenced, and the former law is continued in effect for that purpose.

SECTION 4. This Act takes effect September 1, 2017.

(6) the commission, or a panel of the commission, for use during any proceeding conducted by the State Office of Administrative Hearings or in a subsequent trial or appeal of a commission action or order.

(c) The release of information under Subsection (b) does not constitute a release or disclosure for purposes of Section 552.007, Government Code.

(d) The filing of formal charges by the commission against a license holder, the nature of those charges, disciplinary proceedings of the commission, and final disciplinary actions by the commission, including warnings and reprimands, are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code.

(e) After the investigation of a complaint in which the commission imposes a disciplinary action against a license holder under Section 1701.501, the information and materials prepared or compiled by the commission regarding the complaint and investigation of the license holder are not confidential and are subject to disclosure in accordance with Chapter 552, Government Code, not including any information that reveals or could reveal the identity of a complainant or witness involved in the complaint, investigation, or action.

SECTION 3. Same as introduced version.

SECTION 4. Same as introduced version.