

SUBJECT: Allowing certain security personnel at private businesses to be unlicensed

COMMITTEE: Licensing and Administrative Procedures — favorable, without amendment

VOTE: 5 ayes — Flores, Goolsby, Hamilton, Homer, Morrison

0 nays

4 absent — Geren, Chisum, D. Jones, Quintanilla

WITNESSES: For — John Brady, Executive Security Management Council, Conoco Phillips; Mark Caldwell, AIG, Executive Security Management Council; Ben Watson, Sprint Corporation

Against — Bob Burt, Kevin Galloway, Robert Marquis, Walter Roberts, Dan Walker, Assist; James McClure, Statewide Patrol, Inc.; Tom Swearingen, Swearingen Services; Edgar Morales; James Prock; Gonzalo David Rodriguez

On — George Craig, Texas Private Security Board

BACKGROUND: The Private Security Act, Occupations Code, ch. 1702, authorizes the Texas Department of Public Safety's Private Security Board (PSB) to license and regulate investigations companies and security services contractors. The PSB requires companies and individuals seeking licenses to undergo criminal history checks and meet educational standards.

Under sec. 1702.222, an individual is considered a security officer if that person is employed by a security department of a private business to perform the duties of an alarm systems response runner who responds to the first signal of entry, a security guard, security watchman, security patrolman, armored car guard, or courier guard. A security department of a private business provides protection and security for its own property and does not offer or provide security services to another person.

Under sec. 1702.323, the licensing requirement does not apply to individuals who have an exclusive employee-employer relationship in connection with the affairs of the employer. However, an employee at a

security department of a private business must be registered with PSB if that person carries a firearm in the course of employment or meets one of the following conditions:

- comes into contact with the public;
- wears a uniform or patch that is associated with security personnel or law enforcement; or
- acts as a security officer under the definition of section 1702.222.

Under sec. 1702.323(e), an individual who is employed at the security department of a private business must possess a PSB private investigator license if that person conducts an investigation of someone who was not employed by the same employer as the investigator and if the investigation does not take place on the premises of the employer.

DIGEST:

HB 1393 would repeal the requirement that an employee at a security department of a private business possess a PSB license if that person conducts an investigation of someone who was not employed by the same employer as the investigator and if the investigation does not take place on the premises of the employer.

The bill also would require that an employee in a security department of a private business be registered with the PSB if that person met all, rather than only one, of the following conditions:

- came into contact with the public;
- wore a uniform or patch associated with security personnel or law enforcement; and
- acted as a security officer under the definition of section 1702.222.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

The overly broad language of current law creates unreasonable licensing requirements for certain security-related personnel at private companies. HB 1393 would narrow the category of those to whom the licensing requirements should apply most appropriately.

Under current law, financial auditors and human resources personnel must have licenses to obtain information about people, such as potential employees, and practices, such as those of vendors and suppliers, outside the company. Businesses also might not be able to investigate confidential tips of unethical or unsafe behavior, such as workplace violence, without obtaining licenses for their employees.

The bill would delete a subsection of the Occupations Code that was added in 2003. Private businesses now can be cornered into having to hire the services of contract security and investigative companies merely because they are licensed in order to do jobs that their own personnel should be able to perform. Contract security companies often can provide licensed personnel faster than a business can obtain a license for its own employee. However, bringing in outside companies can compromise a business's internal trade secrets, proprietary technology, and confidential information.

Narrowing the scope of the Private Security Act to apply to those who come into contact with the public, wear a security uniform, *and* perform duties of a security officer is important because otherwise the costs to businesses of licensing employees and buying appropriate insurance would be considerable. With the current requirement to license those who meet only one of those requirements, rather than all of them, the large licensing caseload over the long term also will overburden the PSB.

OPPONENTS
SAY:

Licensed security personnel must register and be fingerprinted and be cleared by background checks. Each year thousands of applicants are turned down by the PSB for licenses because they have criminal records. It would betray the public trust if these people were allowed to wear security uniforms, yet HB 1393 would exempt many of them from licensing. The bill also would allow untrained people to conduct security. It is in the public interest to require that licensed security professionals perform security duties.

HB 1393 would allow individual businesses to police themselves when it comes to conducting background checks on people who wear security uniforms. Many businesses will not conduct these checks if they are not required to do so. A company could open itself up to legal action if a security officer that did not have a background check were to commit a crime against a patron. For example, if a felon abducted a child while acting as an on-duty security officer, the employer might be sued because it did not prevent the employment of the abductor by conducting a background check.

It is important to public safety and homeland security that people with access to key infrastructure, such as ports, have criminal background checks. This requirement should apply even to corporate security

personnel because outside firms sometimes are hired to secure government areas.

The state would lose revenue in licensing fees if the requirements were relaxed and in-house security people were not required to have licenses. The security services industry also is subject to sales tax, so when security personnel are hired on a contract basis, it generates sales tax revenue for the state.

HB 1393 also would mean that companies would not be required to carry liability insurance covering unlicensed security personnel. This change would result in reduced financial protection for businesses and increased costs when problems occurred.

NOTES:

The companion bill, SB 622 by Shapiro, has been referred to the Senate Business and Commerce Committee.