

SUBJECT: Regulation of the business of private security

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 6 ayes — Merritt, Frost, Driver, Lewis, Rodriguez, Vo
0 nays
3 absent — Burnam, P. King, Mallory Caraway

SENATE VOTE: On final passage, May 5 — 31-0, on Local and Uncontested Calendar

WITNESSES: (*On House companion, HB 2286:*)
For — Rodney Hooker, Texas Burglar and Fire Alarm Association;
(*Registered, but did not testify:* Jeffrey Bright, Texas Burglar and Fire Alarm Association, Central Texas Chapter; Bob Burt, Walter Roberts, Associated Security Services and Investigators of the State of Texas (ASSIST); Patrick Craven, Texas Burglar and Fire Alarm Association, East Texas Chapter; John Helweg, Debra G. Ulmer, Houston Gulf Coast Alarm Association; Dean McWilliams, Chris Russell, Texas Burglar and Fire Alarm Association; Pamela Roberts; Michael Samulin, South Texas Alarm Association; Dave Simon, North Texas Alarm Association)

Against — None

On — (*Registered, but did not testify:* Reneral Bowie, Steve Moninger, Department of Public Safety, Private Security Bureau)

BACKGROUND: Occupations Code, ch. 1702 establishes the Private Security Act governing the licensing and regulation of occupations related to private security, such as alarm companies, private investigators, security guards, locksmiths, guard dog companies, and body guards.

Business Organizations Code, ch. 9 governs the registration of foreign entities transacting business in the state of Texas.

The Private Security Act requires commissioned security officers or security guards to register under a security company's license and provide

information such as name, date of birth, social security number, name and address of the applicant's employer, and a letter from the employer requesting that the applicant be registered under their license.

DIGEST: CSSB 1245 would make various changes to the Private Security Act.

Licensing of security-related companies. The bill would specify that only partners and officers who oversee the security-related aspects of a business would have to provide residence addresses and fingerprints when applying for a license under the act.

An applicant for a license as a security services contractor would have to maintain a physical address within the state and provide that address to the Texas Private Security Board. The board would adopt rules to enable an out-of-state license holder to comply with this provision. In addition, the license holder would maintain required records at the physical address provided to the board and licensure under the act would not exempt a foreign entity from the registration requirements of Business Organizations Code, ch. 9.

A license holder would notify the board in writing within 14 days of the termination of the manager of the business. The license would remain in effect for a reasonable period after notice was given, pending the board's determination of the qualification of another manager. Any authorized period of temporary operation would start on the effective date of any summary action taken against the manager.

Security officers. An individual required to register under a company's license would have to submit an application for registration before employment in a capacity for which registration was required and an employer of a registration applicant would have to make a reasonable attempt to verify the required information before the earlier of:

- the date the application was submitted; or
- the date the applicant began to perform the duties of employment that required registration.

The pocket card issued by the board for each registrant containing the name and signature of the registrant and the card's issuance and expiration

dates would have to have a color photograph affixed to the pocket card by the board at the time the card was issued.

CSSB 1245 would require that, as part of the criminal history check, the board could request the applicant provide certified copies of relevant court documents or other records. Failure to provide the requested records within a reasonable time could result in the application being considered incomplete.

The bill would clarify that the Private Security Act did not apply to full-time law enforcement personnel who received compensation for private employment on an individual or contract basis as a guard, watchman, patrolman, or extra job coordinator if the officer was employed on an individual contractual basis directly by the recipient of the services.

Body guards. A person could not act as a personal protection officer, or body guard, unless the individual held a personal protection officer authorization. An individual would act as a personal protection officer if the individual provided protection from bodily harm to another individual while carrying a firearm. If a personal protection officer was wearing the uniform of a security officer, the individual could not conceal any firearm and would have to carry the firearm in plain view. A body guard who was not wearing the uniform of a security guard would conceal the firearm.

Carrying of weapons. The bill would provide that Penal Code, sec. 46.02, which defines the offense of unlawful carrying of a weapon, did not apply to an individual acting as a personal protection officer and carrying a security officer commission and personal protection officer authorization, and would provide a defense to Penal Code, sec. 46.03, which prohibit carrying a weapon in certain areas, if the individual was engaged in the performance of the individual's duties as a body guard, or was traveling to or from the individual's place of assignment and was either:

- wearing the uniform of a security officer, and carrying a weapon in plain view; or
- not wearing a security officer uniform and carrying a weapon in a concealed manner.

Investigations. The bill would remove the requirement that the department take certain actions subject to the board's final order under hearing provisions within the act, including denying an application or

revoking, suspending or refusing to renew a license, registration, or security officer commission, reprimanding a license holder, registrant, or commissioned security officer, or placing on probation a person whose license, registration, or security officer commission had been suspended for prohibited conduct. If necessary to enforce the act or the board's rules, the department, during an investigation, could issue an administrative subpoena to any person in the state compelling the production of information or documents, or the attendance and testimony of a witness.

An individual licensed or otherwise regulated under the Private Security Act who failed without good cause to comply with a subpoena could be subject to license suspension. If a subpoena was related to an ongoing criminal investigation and the department determined that disclosure could significantly impede the investigation, the subpoena could provide that the individual who was the subject of the subpoena could not:

- disclose that the subpoena had been issued;
- identify or describe any records requested by the subpoena; or
- disclose whether records had been furnished in response to the subpoena.

CSSB 1245 would require the Department of Public Safety (DPS), upon written request — rather than quarterly until final disposition — to inform an individual filing a complaint and each individual who was a subject of the complaint of the status of the investigation unless the information would jeopardize an ongoing investigation.

DPS could require an applicant, in order to qualify for commission as a security officer, to authorize the release to the department of any relevant medical or psychiatric records for purposes of determining whether an individual was capable of exercising sound judgment in the proper use and storage of a handgun.

Miscellaneous provisions. CSSB 1245 would clarify that the definition of an “alarm system” did not include a telephone entry system, or operators or accessories for opening or closing gates or doors, that was not

connected to a computer or data processor that recorded or archived the voice, visual images, or identifying information of the user.

The bill would repeal the provision in sec. 1702.047 limiting an employee providing administrative assistance to the board to a salary not to exceed salary group A10 as specified in the General Appropriations Act.

Individuals offering to sell, install, service, or maintain mechanical security devices, including deadbolts and locks, would be acting as a locksmith company, as well as those actually selling, installing, servicing, or maintaining mechanical security devices as currently provided by law.

CSSB 1245 would add a provision to the act providing that an individual performing or offering to perform an activity regulated by the act, but who was not licensed or otherwise authorized to perform the activity, would commit a false, misleading, or deceptive act or practice, and a public or private right or remedy could be used to enforce the Private Security Act.

Effective date. The bill would apply to applications submitted on or after its September 1, 2009, effective date.

**SUPPORTERS
SAY:**

CSSB 1245 is an omnibus bill regarding the Private Security Act that would bring needed clarification and clean-up to various provisions within Occupations Code, ch. 1702. It would streamline the licensing and regulation of private security-related occupations to better protect the citizens of Texas. For example, the bill would provide for better regulation of out-of-state companies operating in Texas, so that DPS could inspect more effectively these companies to ensure that they were operating within the law. The bill also would include a deceptive trade practice provision to discourage unlicensed individuals from performing or offering to perform security services in the state and would require additional background information to be provided to DPS for purposes of making determinations for licensure.

Current practices also would be improved by the bill, such as the procedures for issuing pocket cards. Paper pocket cards, or identification cards, are mailed to licensed security companies for the commissioned security officers registered under the company. These paper pocket cards currently come from DPS without a photo. The security company takes a photograph of the security officer and affixes the photo to the card provided by the department, and they laminate the card themselves. The result is that commissioned security officer identification cards within the state do not always appear uniform or necessarily professional. Under the bill, the registrant's driver's license photo would be affixed to the pocket

card at the time the card was issued. The pocket cards sent to the security companies under the bill would resemble a Texas driver's license, thereby creating a uniform, professional card system identifying Texas commissioned security officers.

**OPPONENTS
SAY:**

No apparent opposition

NOTES:

The House companion bill, HB 2286 by Driver, was reported favorably, as substituted, by the Public Safety Committee on May 1 and was placed on the May 11 General State Calendar, where no further action was taken.