

BILL ANALYSIS

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S.B. 568
By: Deuell
Health & Human Services
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

Personal emergency response services, previously regulated by the Private Security Commission, were transferred during the 78th Legislature, 3rd Called Session, 2003, to the Department of State Health Services. Following the implementation of the transfer, the state agency and the industry worked to implement the transfer and adopt rules.

S.B. 568 is the result of the findings of the agency and the industry from this process. Many of the provisions of the statute that was transferred simply do not apply to this service. S.B. 568 seeks to eliminate those provisions that are not relevant and update the terms and nomenclature to reflect current use and best practice.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the executive commissioner of the Health and Human Services Commission in SECTION 2 (Section 781.051, Health and Safety Code) of this bill.

Rulemaking authority is expressly granted to the Department of State Health Services in SECTION 2 (Sections 781.155 and 781.254, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter N, Chapter 1702, Occupations Code, by adding Section 1702.331, as follows:

Sec. 1702.331. PERSONAL EMERGENCY RESPONSE SYSTEMS. Defines "personal emergency response system." Provides that this chapter does not apply to certain individuals or entities.

SECTION 2. Amends Subtitle B, Title 9, Health and Safety Code, by adding Chapter 781, as follows:

CHAPTER 781. PERSONAL EMERGENCY RESPONSE SYSTEMS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 781.001. DEFINITIONS. Defines "alarm system," "branch office," "commissioner," "department," "manager," and "personal emergency response system."

[Reserves Sections 781.002-781.050 for expansion.]

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 781.051. GENERAL POWERS AND DUTIES. Sets forth the general powers and duties of the Department of State Health Services (department) and the executive commissioner of the Health and Human Services Commission (commissioner) under this chapter.

[Reserves Sections 781.052-781.100 for expansion.]

SUBCHAPTER C. LICENSING

Sec. 781.101. SECURITY SERVICES CONTRACTOR LICENSE REQUIRED. Prohibits a person, unless that person holds a license as a security services contractor, from acting as or offering to perform the services of an alarm systems company.

Sec. 781.102. ALARM SYSTEMS COMPANY. Provides that a person acts as an alarm systems company for the purposes of this chapter if that person sells, installs, services, monitors, or responds to a personal emergency response system.

Sec. 781.103. APPLICATION FOR LICENSE. Requires an application for a license under this chapter to be on a form prescribed by the commissioner and sets forth requirements for an application for a license under this chapter.

Sec. 781.104. ISSUANCE OF BRANCH OFFICE LICENSE. Requires a license holder to notify the department in writing of the establishment of a branch office and file in writing with the department the address of the branch office. Requires the department, on application by a license holder, to issue a branch office license.

Sec. 781.105. FORM OF LICENSE. Requires the commissioner to prescribe the form of a license, including a branch office license and provides specific information which must be included in the license.

Sec. 781.106. GENERAL QUALIFICATIONS FOR LICENSE. Sets forth the general qualifications for an application for a license under this chapter and authorizes the department to deny certain applications for specific reasons.

Sec. 781.107. EXAMINATION. Requires the department to require an applicant or the applicant's manager to demonstrate qualifications, including knowledge of applicable state laws and department rules, by taking an examination to be determined by the department. Provides that payment of the application fee entitles the applicant or the applicant's manager to take one examination without additional charge and that a person who fails the examination must pay a reexamination fee to take a subsequent examination. Requires the commissioner to set the reexamination fee not to exceed a specified amount and requires the department to develop and provide to a person who applies to take the examination material containing all applicable state laws and department rules.

Sec. 781.108. MANAGER REQUIRED. Requires a license holder's business to be operated under the direction and control of one manager and prohibits a license holder from applying to designate more than one individual to serve as manager of the license holder's business. Prohibits an individual from acting as manager until the individual has made a satisfactory showing to the department that the individual meets certain requirements.

Sec. 781.109. INSURANCE; BOND. (a) Requires a license holder to maintain on file with the department at all times the surety bond and certificate of insurance required by this chapter.

(b) Requires the department to immediately suspend the license of a license holder who violates Subsection (a).

(c) Authorizes the department to rescind the license suspension if the license holder provides proof to the department that the bond or the insurance coverage is still in effect and requires said proof to be provided in a form satisfactory to the department not later than the 10th day after the license is suspended.

(d) Prohibits the department, after suspension of the license, from reinstating the license until an application, in the form prescribed by the commissioner, is filed accompanied by a proper bond or insurance certificate, or both. Authorizes the

department to deny the application notwithstanding the applicant's compliance with this section for certain reasons.

Sec. 781.110. **INSURANCE REQUIREMENT.** Prohibits the department from issuing a license unless the applicant files with the department certain information regarding the applicant's insurance coverage showing said coverage satisfies specific minimum requirements. Provides that an insurance certificate executed and filed with the department under this chapter remains in effect until the insurer terminates future liability by providing to the department at least 10 days' notice of the intent to terminate liability.

Sec. 781.111. **BOND REQUIREMENT.** Prohibits the department from issuing a license unless the applicant files a bond with the department in the amount prescribed by the commissioner and provides that a bond executed and filed with the department under this chapter remains in effect until the surety terminates future liability by providing to the department at least 30 days' notice of the intent to terminate liability.

Sec. 781.112. **LICENSE HOLDER EXEMPTIONS FROM CERTAIN LOCAL REGULATIONS.** Provides that a license holder or employee of a license holder is exempt from certain local regulations, with exceptions.

[Reserves Sections 781.113-781.150 for expansion.]

SUBCHAPTER D. REGISTRATION REQUIREMENTS

Sec. 781.151. **REGISTRATION REQUIRED.** Provides that certain individuals must register with the department.

Sec. 781.152. **ALARM SYSTEMS INSTALLER.** Provides that, for the purposes of this chapter, an individual acts as an alarm systems installer if the individual installs, maintains, or repairs a personal emergency response system.

Sec. 781.153. **ALARM SYSTEMS MONITOR.** Provides that, for the purposes of this chapter, an individual acts as an alarm systems monitor if the individual monitors a personal emergency response system and that this section does not apply to certain individuals.

Sec. 781.154. **SECURITY SALESPERSON.** Provides that, for the purposes of this chapter, an individual acts as a security salesperson if the individual is employed by a security services contractor to sell services offered by the contractor.

Sec. 781.155. **QUALIFICATIONS FOR REGISTRATION.** Sets forth qualifications for registration under this subchapter and authorizes the department to adopt additional qualifications by rule.

Sec. 781.156. **APPLICATION FOR REGISTRATION.** Sets forth requirements for an application for registration and requires the employer of the applicant to make a reasonable attempt to verify the application information.

Sec. 781.157. **TRAINING REQUIREMENTS FOR ALARM SYSTEMS INSTALLER AND SECURITY SALESPERSON; EXAMINATION.** Authorizes the department to establish certain training and examination requirements for an alarm systems installer and security salesperson. Requires the department, if requiring certification or examination under this section, to implement rules to require that, to renew a registration, an individual who is employed as an alarm systems installer or a security salesperson and who has already once renewed the registration, obtain continuing education credits related to the line of work for which the individual is licensed. Requires the commissioner, if the department requires the continuing education, to approve classes offered by nationally recognized organizations, and requires participants in the classes to qualify according to department rules.

[Reserves Sections 781.158-781.200 for expansion.]

SUBCHAPTER E. GENERAL PROVISIONS APPLICABLE TO REGULATED
PERSONS

Sec. 781.201. **CRIMINAL HISTORY CHECK.** Requires the department to conduct a specific criminal history check on each applicant for a license or registration. Provides that an applicant is ineligible for a license or registration if the check reveals that the applicant has committed an act that constitutes grounds for the denial of the license or registration. Requires each applicant to include in the application two complete sets of fingerprints and provides that a license or registration issued by the department is conditional on the department's receipt of criminal history record information.

Sec. 781.202. **ALARM SYSTEMS RECORDS CONFIDENTIAL.** Provides that certain alarm systems records and information is confidential and may be disclosed only to the department or as otherwise required by state law or court order.

Sec. 781.203. **FALSE REPRESENTATION.** Prohibits a person from falsely representing that the person is employed by a license holder, or is licensed or registered under this chapter.

Sec. 781.204. **PROHIBITION AGAINST CERTAIN POLITICAL SUBDIVISIONS ACTING AS ALARM SYSTEMS COMPANY.** Prohibits a political subdivision, with certain exceptions, from offering alarm system sales, service, installation, or monitoring unless it was providing monitoring services to residents within the boundaries of the political subdivision on September 1, 1999. Prohibits any fee charged by the political subdivision from exceeding the cost of the monitoring.

[Reserves Sections 781.205-781.250 for expansion.]

SUBCHAPTER F. EXPIRATION; RENEWAL

Sec. 781.251. **EXPIRATION.** Provides a timeline for the expiration of a license or registration under this chapter.

Sec. 781.252. **LICENSE RENEWAL.** Provides guidelines for an eligible person to renew a license under this chapter based on the date the license will expire or the length of time the license has been expired and requirements for the department in notifying a license holder of the impending expiration of the license.

Sec. 781.253. **RENEWAL OF EXPIRED LICENSE BY OUT-OF-STATE PRACTITIONER.** Provides specific license renewal guidelines for a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for two years preceding the date the person applies for renewal.

Sec. 781.254. **STAGGERED RENEWAL; PRORATION OF LICENSE FEE.** Authorizes the department, by rule, to adopt a system under which licenses expire on various dates during the year and requires the department to, for the year in which the expiration date of a license is changed, to prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. Provides that, on renewal of the license on the new expiration date, the total renewal fee is payable.

Sec. 781.255. **EFFECT OF LICENSE RENEWAL ON DISCIPLINARY ACTION.** Provides that renewal of a license does not prohibit the bringing of a disciplinary proceeding for an act committed before the effective date of the renewal.

Sec. 781.256. **EFFECT OF SUSPENSION ON LICENSE RENEWAL REQUIREMENTS.** Provides that a suspended license expires on the license's expiration date, may not be renewed as provided by this chapter, and that a renewal does not entitle the license holder, while the license remains suspended and until the license is reinstated,

to engage in the licensed activity or in conduct in violation of the order of judgment by which the license was suspended.

Sec. 781.257. REGISTRATION RENEWAL. Provides guidelines for eligible persons to renew a registration under this chapter based on the date the registration will expire or the length of time the registration has been expired and for a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for two years preceding the date the person applies for renewal. Sets forth requirements for the department in notifying a registered individual of the impending expiration of the registration.

Sec. 781.258. CONTINUING EDUCATION. Sets forth requirements for the department in recognizing, preparing, or administering continuing education programs for license holders and registrants and requirements for license holders and registrants in participating in such programs and submitting evidence of compliance with the department's requirements regarding such programs.

[Reserves Sections 781.259-781.300 for expansion.]

SUBCHAPTER G. EXCEPTIONS

Sec. 781.301. GOVERNMENT EMPLOYEES. Provides that this chapter does not apply to an officer or employee of the United States, this state, or a political subdivision of this state while that person is performing official duties.

Sec. 781.302. LAW ENFORCEMENT PERSONNEL. Provides that this chapter does not apply to specific law enforcement personnel.

Sec. 781.303. MEDICAL ALERT SERVICES. Provides that this chapter does not apply to certain entities that provide medical alert services.

[Reserves Sections 781.304-781.350 for expansion.]

SUBCHAPTER H. DISCIPLINARY PROCEDURES

Sec. 781.351. GROUNDS FOR DISCIPLINARY ACTION. Authorizes the department, for a violation of this chapter or a rule adopted under this chapter, to take certain disciplinary actions. Sets forth specific actions which would require disciplinary action.

Sec. 781.352. HEARING. Entitles a person, if the department proposes to revoke or suspend the license or registration, to a hearing before a hearings officer appointed by the State Office of Administrative Hearings and requires the commissioner to prescribe procedures for appealing to the department a decision to revoke or suspend a license or registration.

Sec. 781.353. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this chapter to suspend or revoke a license or registration is governed by Chapter 2001 (Administrative Procedure), Government Code.

Sec. 781.354. PROBATION. Authorizes the department to require a person whose license or registration suspension is probated to meet certain requirements established by the department.

Sec. 781.355. EFFECT OF SUSPENSION; MONITORING OF EXISTING ALARM CONTRACTS. Authorizes a license holder, subject to expiration of the license under Section 781.251, to continue to monitor under an existing alarm contract or contract to monitor under an existing alarm contract for 30 days after the date of suspension of the person's license.

[Reserves Sections 781.356-781.400 for expansion.]

SUBCHAPTER I. ENFORCEMENT

Sec. 781.401. INJUNCTION. Requires the department to prosecute or file suit to enjoin a violation of this chapter or a rule adopted under this chapter.

Sec. 781.402. CIVIL PENALTY. Provides for a civil penalty for violation of this chapter or a rule adopted under this chapter and requires the attorney general, at the request of the department, to bring an action to recover a civil penalty authorized under this section.

Sec. 781.403. OFFENSE. Provides that a person commits an offense if the person performs certain actions specified in this section and sets forth classifications of said offenses.

Sec. 781.404. VENUE. Authorizes an offense under this chapter to be prosecuted in Travis County or in the county in which the offense occurred.

[Reserves Sections 781.405-781.450 for expansion.]

SUBCHAPTER J. ADMINISTRATIVE PENALTY

Sec. 781.451. IMPOSITION OF ADMINISTRATIVE PENALTY. Authorizes the department to impose an administrative penalty on a person licensed under this chapter who violates this chapter or a rule or order adopted under this chapter.

Sec. 781.452. AMOUNT OF ADMINISTRATIVE PENALTY. Sets forth guidelines for the amount of the administrative penalty, based on certain criteria.

Sec. 781.453. REPORT AND NOTICE OF VIOLATION AND PENALTY. Authorizes the commissioner or the commissioner's designee, upon determining that a violation occurred, to issue to the department a report containing specific information relating to that determination and requires the commissioner or commissioner's designee, within 14 days of issuing the report, to give written notice, which includes specific information, of the report to the person.

Sec. 781.454. PENALTY TO BE PAID OR HEARING REQUESTED. Authorizes the person, within 10 days of receiving the notice and in writing, to accept the determination and penalty or make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both. Requires the department, by order and if the person accepts the determination and penalty, to approve the determination and impose the penalty.

Sec. 781.455. HEARING. Sets forth requirements for providing notice of, scheduling, and holding a hearing under this section.

Sec. 781.456. DECISION BY DEPARTMENT. Authorizes the department, based on the findings of fact, conclusions of law, and proposal for a decision by the administrative law judge, to determine, by order, that a violation occurred and impose an administrative penalty or that a violation did not occur. Requires the notice of the department's order given to the person to include a statement of the right of the person to judicial review of the order.

Sec. 781.457. OPTIONS FOLLOWING DECISION: PAY OR APPEAL. Provides options for the person in response to the department's decision and guidelines for carrying out such options. Authorizes the commissioner or the commissioner's designee, if the person chooses to request the court to stay enforcement of the penalty by filing the required affidavit with the court, to file with the court, within five days of receiving a copy of the sworn affidavit, a contest to the affidavit. Requires the court to hold a hearing on the alleged facts in the affidavit as soon as practicable and to take certain actions based on the findings of said hearing.

Sec. 781.458. COLLECTION OF PENALTY. Authorizes the penalty, if the person does not pay the administrative penalty and the enforcement of the penalty is not stayed, to be collected and authorizes the attorney general to sue to collect the penalty.

Sec. 781.459. DETERMINATION BY COURT. Authorizes the court, upon sustaining the determination that a violation occurred, to uphold or reduce the amount of the administrative penalty and order the person to pay the full or reduced amount of the penalty. Requires the court, if the court does not sustain the finding that a violation occurred, to order that a penalty is not owed.

Sec. 781.460. REMITTANCE OF PENALTY AND INTEREST. Sets forth requirements for remittance of the penalty paid and interest accrued if the person paid the administrative penalty and the amount of the penalty is reduced or not upheld by the court.

Sec. 781.461. ADMINISTRATIVE PROCEDURE. Provides that a proceeding under this subchapter is a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 3. Repealer: Section 1702.006 (Texas Department of Health), Occupations Code.

SECTION 4. (a) Provides that a license or registration issued under Chapter 1702, Occupations Code, immediately before the effective date of this Act to a person listed in Subsection (b) shall remain valid under Chapter 781, Health and Safety Code, as added by this Act.

(b) Sets forth the persons and entities to which Subsection (a) applies.

(c) Makes application of the change in law made by this Act to disciplinary action regarding a personal emergency response system pending under Chapter 1702, Occupations Code, prospective.

(d) Makes application of the change in law made by this Act to an action involving the prosecution of an offense or any other enforcement action under Subchapter P or Q, Chapter 1702, Occupations Code, prospective.

SECTION 5. Effective date: September 1, 2005.