

BILL ANALYSIS

Senate Research Center

C.S.H.B. 2445
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Criminal Justice
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Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Before the 79th Legislature, Regular Session, 2005, there were incidents in which a law enforcement officer was terminated for disciplinary or performance problems and then hired in another department or agency without any notice of the reason for termination from the previous employment. The 79th Legislature enacted H.B. 2677, requiring hiring agencies to conduct background investigations of law enforcement officers applying for employment in another department or agency. The bill also required terminating agencies to disclose the reasons behind the terminations of law enforcement officers. These disclosures are reported on the F-5 form created by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE). However, termination definitions in the statute appear to be too broad, causing costly and time consuming reviews of some termination designations through the State Office of Administrative Hearings. Furthermore, H.B. 2677 did not provide a mechanism for identifying and removing such law enforcement officers from the job market.

C.S.H.B. 2445 defines certain termination designations and requires TCLEOSE to suspend the license of an officer if the officer has received two dishonorable discharges and to revoke the officer's license in certain situations.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Commission on Law Enforcement Officer Standards and Education in SECTION 2 (Section 1701.452, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1701.451, Occupations Code, by amending Subsection (a) and adding Subsection (a-1), as follows:

(a) Requires the law enforcement agency head (agency head) or the agency head's designee, before a law enforcement agency is authorized to hire a person licensed under this chapter (Law Enforcement Officers), to take certain actions, including to submit to the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) on the form prescribed by TCLEOSE confirmation that the agency conducted in the manner prescribed by TCLEOSE a criminal background check regarding the person and obtained the person's written consent on a form prescribed by TCLEOSE for the agency to view the person's employment records.

(a-1) Requires a law enforcement agency that obtains a consent form described by Subsection (a) to make the person's employment records available to a hiring law enforcement agency on request.

SECTION 2. Amends Section 1701.452, Occupations Code, as follows:

Sec. 1701.452. EMPLOYMENT TERMINATION REPORT. (a) Requires the agency head or designee to submit a report to TCLEOSE on a form prescribed by TCLEOSE regarding a person licensed under this chapter who resigns or retires from employment with the law enforcement agency, whose appointment with the law enforcement agency is terminated, or who separates from the law enforcement agency for any other reason.

Requires the report to be submitted by the agency head or designee within a certain timeframe.

(b) Requires the agency head or designee to include in the report required under Subsection (a) a statement on whether the license holder was honorably discharged, generally discharged, or dishonorably discharged and, as required by the commission, an explanation of the circumstances under which the person resigned, retired, or was terminated. Defines "honorably discharged," "generally discharged," and "dishonorably discharged" for the purposes of this subsection.

(c) Requires TCLEOSE by rule to further specify the circumstances that constitute honorably discharged, generally discharged, or dishonorably discharged within the definitions provided by Subsection (b). Deletes existing text relating to content required to be included in the report.

(d) Requires the head of the agency from which a license holder, rather than a person, resigns, retires, is terminated, or separates for reasons other than death, or the agency head's designee, to provide to the license holder a copy of the report. Requires the report to be provided to the license holder within a certain timeframe.

(e) Requires the agency head or designee, if the person who is the subject of the employment termination report is deceased, on request to provide a copy of the report to the person's next of kin not later than the seventh business day after the date of the request.

(f) Provides that the agency head or designee satisfies the obligation to provide the report required under Subsection (d) or (e) by sending the required report by certified mail to the last known address of the license holder or of the license holder's next of kin if the next of kin who requested the report is not otherwise available.

(g) Makes conforming changes.

SECTION 3. Amends Subchapter J, Chapter 1701, Occupations Code, by adding Section 1701.4521, as follows:

Sec. 1701.4521. LICENSE SUSPENSION FOR OFFICER DISHONORABLY DISCHARGED. (a) Requires TCLEOSE to suspend the license of an officer licensed under this chapter on notification that the officer has been dishonorably discharged if the officer has previously been dishonorably discharged from another law enforcement agency.

(b) Authorizes an officer whose license is suspended under this section to appeal the suspension in writing to TCLEOSE not later than the 30th day after the date the officer is suspended.

(c) Authorizes TCLEOSE, after a TCLEOSE determination, to revoke or reinstate the officer's license in accordance with rules or procedures adopted by the commission under this chapter related to revocation or reinstatement of a license. Requires TCLEOSE to revoke the officer's license if the officer does not appeal the suspension before the 30th day after the date the officer is suspended.

(d) Provides that TCLEOSE's decision does not affect the employment relationship between an officer licensed under this chapter and a law enforcement agency or any disciplinary action taken against an officer licensed under this chapter by a law enforcement agency.

SECTION 4. Amends Section 1701.4525, Occupations Code, by amending Subsection (e) and adding Subsection (f), as follows:

(e) Requires an administrative law judge, in a proceeding under Subsection (b) to contest TCLOESE's order or under Subsection (c) to correct an employment termination report for an order or report based on alleged misconduct, to determine if the alleged misconduct occurred by a preponderance of the evidence regardless of whether the person who is the subject of the report was terminated or the person resigned, retired, or separated in lieu of termination. Requires the administrative law judge to order the report to be changed if the alleged misconduct is not supported by a preponderance of the evidence.

(f) Redesignated from existing Subsection (e).

SECTION 5. Amends Subchapter J, Chapter 1701, Occupations Code, by adding Section 1701.458, as follows:

Sec. 1701.458. VENUE. Provides that venue for the prosecution of an offense under Section 37.10 (Tampering with Governmental Record), Penal Code, that arises from a report required under this subchapter lies in the county where the offense occurred or in Travis County.

SECTION 6. Makes application of this Act prospective.

SECTION 7. Effective date: September 1, 2007.