

## **BILL ANALYSIS**

Senate Research Center

H.B. 2833  
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Criminal Justice  
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Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Private Security Act contains several drafting errors from previous amendments, and many references to entities that are no longer in existence since the administration of the Act was transferred to the Department of Public Safety in 2004. Additionally, the qualifications for licensing and registration under the Act have not been amended in many years. As such, they do not reflect the current legislative attitude toward licensing requirements for occupations regulated by the state.

H.B. 2833 makes numerous non-substantive changes to the Act to reflect the current administering entities and to correct previous drafting errors. The bill updates the qualifications for applicants under the Act, including a reduction in the length of time for which different convictions will disqualify an applicant. The bill also makes various other changes to the Act to simplify the licensing process for applicants and to simplify the administration and enforcement of the Act.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the Texas Commission on Private Security (TCPS) is transferred to the Texas Private Security Board (TPSB) in SECTION 12 (Section 1702.229, Occupations Code) of this bill.

Rulemaking authority is expressly granted to TPSB in SECTION 31 of this bill.

Rulemaking authority previously granted to TCPS is rescinded in SECTION 10 (Section 1702.221, Occupations Code), SECTION 12 (Section 1702.229, Occupations Code), and SECTION 22 (Section 1702.382, Occupations Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1702.004, Occupations Code, as follows:

Sec. 1702.004. GENERAL SCOPE OF REGULATION. (a) Creates this subsection from existing text. Provides that the Texas Private Security Board (TPSB), rather than the Texas Commission on Private Security (TCPS), in addition to performing duties required by other law or exercising powers granted by other law, takes certain actions related to licensing, commissions, authorizations, and the registration and regulation of private security personnel.

(b) Provides that Chapter 53 (Consequence of Criminal Conviction) does not apply to this chapter or to any licensing, regulatory, or disciplinary determinations made under this chapter.

SECTION 2. Amends Subchapter E, Chapter 1702, Occupations Code, by adding Section 1702.085, as follows:

Sec. 1702.085. CONFIDENTIALITY OF RECORDS. Provides that records maintained by the Department of Public Safety (DPS) under this chapter (Private Security) on the home address, home telephone number, driver's license number, or Social Security number of an applicant or a license holder, registrant, or security officer commission

holder are confidential and are not subject to mandatory disclosure under Chapter 552 (Public Information), Government Code.

SECTION 3. Amends Section 1702.102(a), Occupations Code, to prohibit a person from acting as a locksmith company, or private security consultant company unless the person holds a license as a security services contractor.

SECTION 4. Amends Section 1702.104, Occupations Code, as follows:

Sec. 1702.104. INVESTIGATIONS COMPANY. (a) Creates this section from existing text.

(b) Provides that, for purposes of Subsection (a)(1), obtaining or furnishing information includes information obtained or furnished through the review and analysis of, and the investigation into the content of, computer-based data not available to the public.

SECTION 5. Amends Section 1702.113, Occupations Code, as follows:

Sec. 1702.113. New heading: GENERAL QUALIFICATIONS FOR LICENSE, CERTIFICATE OF REGISTRATION, OR SECURITY OFFICER COMMISSION. (a) Requires an applicant for a license, certificate of registration, or security officer commission or the applicant's manager to be at least 18 years of age and prohibits such an applicant from having been convicted of certain crimes as set forth in this subsection.

(b) Provides that an applicant is ineligible for a license, certificate of registration, or commission if the applicant has charges pending for or has been convicted in any jurisdiction of a Class B misdemeanor for an offense determined by TPSB to be disqualifying if the fifth anniversary of the date of conviction has not occurred before the date of application. Makes conforming changes.

(c) Provides that, for purposes of this section, an offense under the laws of this state, another state, or the United States is considered to be a felony or a misdemeanor if it meets certain conditions set forth in this subsection.

(d) Defines "convicted."

(e) Provides that an individual's eligibility under this chapter is not affected by any relationship or lack of relationship between the nature of the criminal charges or conviction and the regulated occupation.

SECTION 6. Amends Section 1702.119(b), Occupations Code, to prohibit an individual from acting as a manager until the individual has made a satisfactory showing to DPS, rather than TCPS, that the individual meets all qualification and experience requirements set by rule for a manager of the type of company for which the individual is applying, rather than satisfying the requirements of either Section 1702.114 (Additional Qualifications for Investigative Company License) or 1702.115 (Additional Qualifications for Security Services Contractor License), as appropriate, in addition to other requirements previously set forth in this subsection.

SECTION 7. Amends Sections 1702.124(a), (b), and (e), Occupations Code, as follows:

(a) Provides that an applicant is not eligible for a license unless the applicant provides as part of the application a certificate of insurance or other documentary evidence of a general liability insurance policy countersigned by an insurance agent licensed in this state. Deletes existing text providing for such ineligibility unless the applicant provides evidence of a general liability insurance policy on a certificate of insurance form prescribed by the Texas Department of Insurance. Makes conforming changes.

(b) Requires the general liability insurance policy to be conditioned to pay on behalf of the license holder damages that the license holder becomes legally obligated to pay because of bodily injury, property damage, or personal injury, caused by an event

involving the principal, or an officer, agent, or employee of the principal, in the conduct of any activity or service for which the license holder is licensed under this chapter. Makes a conforming deletion.

(e) Makes conforming changes.

SECTION 8. Amends Section 1702.133(b), Occupations Code, to provide that a private investigator who is working under the direct supervision of a licensed attorney satisfies the requirement to disclose to a law enforcement officer or a district attorney, or that individual's representative, information the person obtains that relates to a criminal offense by disclosing the information to the supervising attorney.

SECTION 9. Amends Section 1702.163, Occupations Code, is amended to read as follows:

Sec. 1702.163. QUALIFICATIONS FOR SECURITY OFFICER COMMISSION. (a) Provides that an applicant employed by a license holder is not eligible for a security officer commission unless the applicant submits as part of the application satisfactory evidence that the applicant has met certain conditions set forth in this subsection, including having met each qualification established by this chapter and administrative, rather than TPSB, rule. Makes conforming changes.

(b) Provides that an individual is not eligible for a security officer commission if the individual meets certain conditions set forth in this subsection. Makes conforming changes.

(c) Provides that an individual who has been convicted twice in the 10-year period preceding the date on which the person applies for a security officer commission of an offense of the grade of Class B misdemeanor or greater that involves the use of alcohol or a controlled substance as a statutory element of the offense is a chemically dependent person for purposes of this section and is not qualified to receive a security officer commission under this subchapter. Provides that this subsection does not preclude the disqualification of an individual for being a chemically dependent person if other evidence exists to demonstrate that the person is a chemically dependent person.

(d) Provides that, for purposes of Subsection (b)(2), a person is incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person meets certain conditions set forth in this subsection.

(e) Provides that certain conditions set forth in this subsection constitute evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1).

(f) Provides that a person who has previously been diagnosed as suffering from a psychiatric disorder or condition described by Subsection (d) or listed in Subsection (e) is not, because of that disorder or condition, incapable of exercising sound judgment with respect to the proper use and storage of a handgun if the person provides DPS with a certificate from a licensed physician whose primary practice is in the field of psychiatry stating that the psychiatric disorder or condition is in remission and is not reasonably likely to develop at a future time.

(g) Provides that an individual's eligibility under this section is not affected by a relationship or lack of relationship between the nature of a criminal charge or conviction and the regulated occupation.

SECTION 10. Amends Section 1702.221, Occupations Code, as follows:

Sec. 1702.221. REGISTRATION REQUIRED. (a) Creates this subsection from existing text. Requires an individual to register in accordance with the requirements of

this chapter and related administrative rules, rather than with TCPS as provided by TCPS rule, if the individual is a certain individual as set forth in this subsection.

(b) Provides that registration under this chapter does not preclude an individual from performing additional duties or services authorized by the individual's employer that are not regulated by this chapter.

SECTION 11. Transfers Section 1702.226, Occupations Code, to Subchapter F, Chapter 1702, Occupations Code, redesignates that section as Section 1702.1045, and amends that section as follows:

Sec. 1702.1045. New heading: PRIVATE SECURITY CONSULTING COMPANY. Provides that a person acts as a private security consulting company, rather than a consultant, for purposes of this chapter if the person takes certain actions set forth in this subsection. Makes conforming and nonsubstantive changes.

SECTION 12. Amends Section 1702.229, Occupations Code, as follows:

Sec. 1702.229. QUALIFICATIONS FOR REGISTRATION. (a) Requires an applicant for registration to meet the qualifications required under Section 1702.113 for a license applicant, rather than be at least 18 years of age to be registered.

(b) Authorizes TPSB, in accordance with the requirements of Section 1702.0611 (Rulemaking Procedures), rather than TCPS, by rule to adopt additional qualifications for an individual to be registered under this subchapter.

SECTION 13. Amends Section 1702.282, Occupations Code, by amending Subsections (b) and (c) and adding Subsection (e), as follows:

(b) and (c) Makes conforming changes.

(e) Requires the applicant, on receipt of notice that a check of the applicant's criminal record has uncovered an unresolved and potentially disqualifying arrest that occurred before the 10<sup>th</sup> anniversary of the date the application is filed, to provide a letter of reference from the county sheriff, prosecuting attorney, or judge of the county in which the applicant was arrested stating that a record of a disposition related to the arrest does not exist, and to the best of the county sheriff's, prosecuting attorney's, or judge's knowledge the applicant is free of any disqualifying convictions.

Provides that, if the applicant fails to provide either the letter of reference or documentary proof of the final disposition of the arrest, the application is considered incomplete and prohibits the applicant from being issued a license, commission, or certificate of registration under this chapter.

SECTION 14. Amends Section 1702.284, Occupations Code, to provide that certain information contained in alarm systems records maintained by a governmental body is confidential and may be disclosed only to the TPSB, rather than TCPS, to the alarm company to which the confidential records relate, or as otherwise required by state law or court order.

SECTION 15. Amends Sections 1702.323(c) and (d), Occupations Code, as follows:

(c) Makes a conforming change.

(d) Provides that this chapter applies to an individual described by Subsection (a) who in the course of employment wears certain articles as set forth in this subsection and performs a duty described by Section 1702.108 (Guard Company).

SECTION 16. Amends Section 1702.324, Occupations Code, as amended by Chapters 518, 728, 1102, and 1155, Acts of the 79<sup>th</sup> Legislature, Regular Session, 2005, by reenacting and amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that this chapter does not apply to a manufacturer or a manufacturer's authorized distributor while selling equipment intended for resale, or an employee of an accountant or accounting firm while performing services regulated under Chapter 901 (Accountants). Deletes existing text providing that this chapter does not apply to manufacturer, a manufacturer's authorized distributor, or a person who does not perform any other service that requires a license under this chapter.

(c) Provides that the exemptions provided by Subsection (b) apply only to a person described in that subsection while the person is performing services directly related to and dependent on the provision of the exempted service that does not otherwise require licensing under this chapter. Provides that the exemptions do not apply to activities or services that are independent of the service or profession that is the basis for the exemption.

SECTION 17. Amends Section 1702.361, Occupations Code, as follows:

Sec. 1702.361. New heading: DENIAL AND DISCIPLINARY ACTIONS; GROUNDS. (a) Authorizes DPS, rather than TCPS, subject to TPSB's final order under the hearing provisions of this subchapter for conduct described by Subsection (b), to take certain actions set forth in this subsection. Deletes existing text providing an exception.

(b) Requires DPS to take disciplinary action described by Subsection (a) on proof of certain facts about an applicant as set forth in this subsection. Makes conforming changes.

(c) Makes conforming changes.

SECTION 18. Amends Section 1702.3615, Occupations Code, as follows:

Sec. 1702.3615. New heading: DIRECT APPEAL IN LIMITED CASES. (a) Redesignated from existing Subsection (b). Authorizes an applicant to appeal directly to TPSB, rather than TCPS, the denial of a license, registration, or security officer commission application if the applicant meets certain conditions set forth in this subsection. Deletes existing text requiring TCPS to revoke or refuse to renew a registration, license, or security officer commission if the applicant, license holder, registrant, or commissioned security officer has been convicted of certain crimes as previously set forth in this subsection.

(b) Redesignated from existing Subsection (c). Makes conforming changes.

(c) Redesignated from existing Subsection (d). Authorizes TPSB in a proceeding held as provided by Subsection (a), to approve the application if it determines the circumstances surrounding the applicant's registration as a sex offender warrant approval based on factors previously established by rule. Makes conforming changes.

SECTION 19. Amends Section 1702.364, Occupations Code, as follows:

Sec. 1702.364. New heading: SUMMARY ACTIONS. (a) Requires DPS, rather than authorizes TCPS, on receiving written notice from a law enforcement agency, rather than DPS, that a person has been charged with or convicted of an offense that would make the person ineligible for a license, certificate of registration, or security officer commission under Section 1702.113 or 1702.163, rather than a Class B misdemeanor or equivalent offense or a greater offense, to take certain suspension or revocation actions as set forth in this subsection.

(b) Sets forth the requirements of the notice required to be sent to the person to initiate a proceeding to take action under Subsection (a). Makes conforming changes.

(c) Deletes existing text requiring an individual who receives notice, if it is served by mail, immediately to return to TCPS the registration, commission, pocket card, or other identification issued by TCPS. Makes conforming and nonsubstantive changes.

(d) Requires the person, at a preliminary hearing, to show cause why certain actions taken against the person should not have been taken. Deletes existing text requiring such action by the person pending final hearing on the suspension or denial.

(e) Redesignated from existing Subsection (f). Provides that Chapter 2001 (Administrative Procedure), Government Code, does not apply to DPS's initial action under this section or to a preliminary hearing before DPS under this section. Deletes existing text excepting a final administrative hearing and authorizing a final hearing to be scheduled at a time after the final disposition of the charges resulting in the summary suspension or summary denial. Makes conforming changes.

(f) Redesignated from existing Subsection (g). Provides that a conviction for the offense giving rise to a summary suspension is automatic grounds for immediate, summary revocation. Makes conforming changes.

(g) Authorizes the results of the preliminary hearing to be appealed by requesting, in writing, a hearing before an administrative law judge of the State Office of Administrative Hearings. Requires DPS, on receipt of the request, to set a hearing and give written notice of the hearing to the person.

(h) Requires the administrative law judge to make findings of fact and conclusions of law regarding the person's eligibility for a license under this section and promptly issue to TPSB a proposal for a decision.

(i) Requires TPSB to consider the proposal for decision and promptly issue a final order at its earliest possible quarterly meeting.

(j) Provides that an individual's eligibility under this section is not affected by any relationship or lack of relationship between the nature of the criminal charges or conviction and the regulated occupation.

SECTION 20. Amends Section 1702.371, Occupations Code, to provide that, for purposes of this chapter, rather than subchapter, a person is considered to be convicted of an offense, rather than a Class B misdemeanor or greater offense or an equivalent offense, if a court enters a judgment against the person for committing an offense under the laws of this state, another state, or the United States, including certain convictions as set forth in this subsection. Makes conforming changes.

SECTION 21. Amends Section 1702.381, Occupations Code, as follows:

Sec. 1702.381. CIVIL PENALTY. (a) Authorizes a person who is not licensed under this chapter, who does not have a license application pending, and who violates this chapter to be assessed a civil penalty to be paid to the state not to exceed \$10,000, rather than \$1,000, for each violation.

(b) Authorizes a person who contracts with or employs a person who is required to hold a license, certificate of registration, or security officer commission under this chapter knowing that the person does not hold the required license, certificate, or commission or who otherwise, at the time of contract or employment, is in violation of this chapter to be assessed a civil penalty to be paid to the state in an amount not to exceed \$10,000 for each violation.

(c) Authorizes a civil penalty under this section to be assessed against a person on proof that the person has received at least 30 days' notice of the requirements

of this section. Deletes existing text requiring TCPS to give a person 30 days notice of the requirement to obtain a license before the penalty may be assessed.

SECTION 22. Amends Section 1702.382, Occupations Code, as follows:

Sec. 1702.382. INJUNCTION. (a) Authorizes an attorney for DPS, the attorney general's office, or any criminal prosecutor in this state, rather than TCPS, to institute an action against a person to enjoin a violation by the person of this chapter or an administrative, rather than TCPS, rule. Makes conforming changes.

(b) Provides that a bond is not required for an injunction action instituted under this section. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Section 1702.383, Occupations Code, to authorize an attorney for DPS, the attorney general's office, or any criminal prosecutor in this state, if a person has violated a provision of this chapter for which a penalty is imposed under Section 1702.381, to institute a civil suit in a Travis County district court or in a district court in the county in which the violation occurred for injunctive relief under Section 1702.382 or for assessment and recovery of the civil penalty. Makes a conforming change.

SECTION 24. Amends Section 1702.401, Occupations Code, to authorize DPS, in addition to any other disciplinary action taken by DPS, and subject to TPSB's final order in a hearing under this subchapter, to impose an administrative penalty on a person licensed, commissioned, or registered under this chapter who violates this chapter or a rule or order adopted under this chapter. Makes conforming changes.

SECTION 25. Amends Section 1702.402(a), Occupations Code, to prohibit the amount of each separate violation from exceeding \$500, rather than \$200.

SECTION 26. Amends Section 1702.403, Occupations Code, as follows:

Sec. 1702.403. New heading: NOTICE OF VIOLATION AND PENALTY. (a) Requires DPS, if DPS, rather than the chief administrator of the TCPS (director), determines that a violation has occurred, to give written notice to the person. Deletes existing text requiring the director to issue a certain report and requiring notice to be sent not later than the 14<sup>th</sup> day after the date the report is issued.

(b) Redesignated from existing Subsection (c). Requires the notice to include certain information and statements previously set forth in this subsection.

SECTION 27. Amends Section 1702.404, Occupations Code, is amended to read as follows:

Sec. 1702.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Makes a conforming change.

(b) Requires the person to pay the penalty in a timely manner if the person accepts the determination and recommended penalty. Deletes existing text requiring TCPS by order to approve the determination and impose the recommended penalty.

(c) Authorizes DPS to initiate suspension proceedings under Section 1702.361 against a person who, before the 21<sup>st</sup> day after the day the person receives the notice, either accepts the penalty but fails to pay or fails to respond to the notice.

SECTION 28. Amends Section 1702.405, Occupations Code, to make conforming changes.

SECTION 29. Amends Section 1702.406, Occupations Code, as follows:

Sec. 1702.406. New heading: DECISION BY BOARD. (a) and (b) Makes conforming changes.

(c) Provides that, if the person does not file a petition in the appropriate civil court for judicial review of the TPSB's order not later than the 30<sup>th</sup> day after the date of the order, the TPSB's order is final for purposes of Section 1702.361.

SECTION 30. Repealer: Sections 1702.2225 (Locksmith Company Registration Required), 1702.407 (Options Following Decision: Pay or Appeal), 1702.408 (Stay or Enforcement of Penalty), 1702.409 (Collection of Penalty), 1702.410 (Decision of Court), 1702.411 (Remittance of Penalty and Interest), and 1702.412 (Releaser of Bond), Occupations Code.

SECTION 31. Requires TPSB to adopt the rules and procedures necessary to implement the changes in law made by this Act to Chapter 1702, Occupations Code, not later than December 1, 2007.

SECTION 32. (a) Provides that the changes in law made by this Act to Chapter 1702, Occupations Code, apply only to an application for a license, commission, or certificate of registration submitted on or after January 1, 2008.

(b) Provides that, to the extent of any conflict, this Act prevails over another Act of the 80<sup>th</sup> Legislature, Regular Session, 2007, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 33. Effective date: September 1, 2007.