

BILL ANALYSIS

Senate Research Center
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S.B. 1245
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 1702 (Private Security), Occupations Code, referred to as the Private Security Act (Act), governs private investigating companies and securities services contractors.

As proposed, S.B. 1245 amends the Act to make several nonsubstantive changes, making the treatment of the various industries regulated under the Act more consistent, and to authorize the Department of Public Safety to administer the Act. The bill also prohibits an individual, acting as a personal protection officer from concealing a firearm and requires the person to carry it in plain view while in uniform and requires the personal protection officer, when not in uniform, to conceal the firearm.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Private Security Board in SECTION 6 (Section 1702.110, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1702.002, Occupations Code, by amending Subdivision (1-a) and adding Subdivisions (16-a) and (20-a), to define "alarm system," "personal protection officer," and "security officer."

SECTION 2. Amends Section 1702.047, Occupations Code, as follows:

Sec. 1702.047. ADMINISTRATIVE STAFF. Requires the employee designated under this section to provide administrative assistance to the Texas Private Security Board (PSB) in the performance of PSB's duties, rather than assist PSB in the administration of PSB's duties. Deletes existing text that prohibits the salary for an employee designated under this section from exceeding the salary specified in the General Appropriations Act for an employee subject to salary group A10.

SECTION 3. Amends Section 1702.082(e), Occupations Code, to require the Department of Public Safety (DPS), rather than the Texas Commission on Private Security (TCPS), to inform, rather than notify, the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the information would jeopardize an ongoing investigation, rather than an undercover investigation.

SECTION 4. Amends Subchapter A, Chapter 1702, Occupations Code, by adding Section 1702.006, as follows:

Sec. 1702.006. FOREIGN ENTITY REGISTRATION. Provides that licensure under this chapter does not exempt a foreign entity from the registration requirements of Chapter 9 (Foreign Entities), Business Organizations Code.

SECTION 5. Amends Section 1702.1056(a), Occupations Code, to provide that a person acts as a locksmith company for the purposes of this chapter if the person sells, installs, services, or maintains, or offers to sell, install, service, or maintain, mechanical security devices, including deadbolts and locks.

SECTION 6. Amends Section 1702.110, Occupations Code, as follows:

Sec. 1702.110. APPLICATION FOR LICENSE. (a) Creates this subsection from existing text. Requires that an application for a license under this chapter be in the form prescribed by PSB, rather than TCPS, and include, among other certain information, if the applicant is an entity other than an individual, the full name and residence address of each partner, officer who oversees the security-related aspects of the business, and director of the applicant, and of the applicant's manager; if the applicant is an entity other than an individual, two classifiable sets of fingerprints of each officer who oversees the security-related aspects of the business and of each partner or shareholder who owns at least a 25 percent interest in the applicant; and other information, evidence, statements, or documents required by PSB, rather than TCPS. Makes a nonsubstantive change.

(b) Requires an applicant for a license as a security services contractor to maintain a physical address within this state and provide that address to PSB. Requires PSB to adopt rules to enable an out-of-state license holder to comply with this subsection.

SECTION 7. Amends Section 1702.112, Occupations Code, as follows:

Sec. 1702.112. FORM OF LICENSE. Requires PSB, rather than TCPS, to prescribe the form of a license, including a branch office license. Includes, among the requirements of the license, a photograph of the license holder, affixed to the license at the time the license is issued by PSB.

SECTION 8. Amends Section 1702.121, Occupations Code, as follows:

Sec. 1702.121. TERMINATION OF MANAGER. (a) Creates this subsection from existing text. Requires a license holder to notify PSB, rather than TCPS, in writing not later than the 14th day after the date a manager ceases to be manager of the license holder's business. Makes conforming changes.

(b) Requires that a manager be immediately terminated on the effective date of any summary action taken against the manager. Provides that any period of temporary operation authorized under this section or Section 1702.122 (Temporary Continuation of License Holder's Business) starts on the date of termination.

SECTION 9. Amends Section 1702.127, Occupations Code, by amending Subsections (b) and (c) and adding Subsection (d), as follows:

(b) Requires a license holder to maintain a record containing information related to the license holder's employees as required by PSB, rather than TCPS.

(c) Requires a license holder to maintain for inspection by DPS, rather than for TCPS inspections, at the license holder's principal place of business or branch office two recent color photographs, of a type required by the PSB, of each applicant, registrant, commissioned security officer, and employee of the license holder. Makes conforming changes.

(d) Requires a license holder to maintain records required under this chapter at a physical address within this state and provide that address to PSB.

SECTION 10. Amends Section 1702.163, Occupations Code, by adding Subsection (d-1), to authorize DPS, for the purposes of determining eligibility under Subsection (b)(2) (relating to an individual being incapable of exercising sound judgment in the proper use and storage of a handgun), to require the applicant to authorize the release to DPS of any relevant medical records.

SECTION 11. Amends Section 1702.201, Occupations Code, as follows:

Sec. 1702.201. PERSONAL PROTECTION OFFICER AUTHORIZATION REQUIRED. Prohibits an individual, rather than a commissioned security officer, from acting as a personal protection officer unless the individual, rather than officer, holds a personal protection officer authorization.

SECTION 12. Amends Section 1702.202, Occupations Code, as follows:

Sec. 1702.202. PERSONAL PROTECTION OFFICER. Provides that an individual acts as a personal protection officer if the individual, while carrying a firearm provides to another individual personal protection from bodily harm. Deletes existing text providing that an individual acts as a personal protection officer if the individual has been issued a security officer commission to carry a concealed firearm and provides to an individual personal protection from bodily harm. Makes nonsubstantive changes.

SECTION 13. Amends Section 1702.206, Occupations Code, as follows:

Sec. 1702.206. New heading: LIMITED AUTHORITY TO CARRY FIREARMS. (a) Creates this subsection from existing text. Deletes existing text prohibiting an individual acting as a personal protection officer from carrying a concealed firearm unless the officer is performing certain actions or carries certain authorization.

(b) Prohibits an individual who is acting as a personal protection officer and is wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d) (relating to Chapter 1702 (Private Security) applying to a certain individual who meets certain requirements), from concealing any firearm the individual is carrying and requires the individual to carry the firearm in plain view. Requires an individual who is acting as a personal protection officer and is not wearing the uniform of a security officer to conceal the firearm.

SECTION 14. Amends Section 1702.221(a), Occupations Code, to require an individual to register in accordance with the requirements of this chapter and related administrative rules if the individual is an owner, officer who oversees the security-related aspects of the business, partner, or shareholder of a license holder.

SECTION 15. Amends Section 1702.230, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires the employer of the applicant to make a reasonable attempt to verify the information required under Subsection (a)(1) (relating to requirement that an application for registration include certain information) before the earlier of certain dates.

(c) Requires an applicant to submit an application that substantially meets the requirements of this section before employment in a capacity for which registration is required.

SECTION 16. Amends Section 1702.232(c), Occupations Code, to require that the pocket card contain a color photograph, affixed to the pocket card by PSB at the time the card is issued, and the signature of the registrant.

SECTION 17. Amends Section 1702.282(a), Occupations Code, to authorize PSB, as part of its criminal history check, to request that the applicant provide certified copies of relevant court documents or other records. Provides that the failure to provide the requested records within a reasonable time as determined by PSB may result in the application being considered incomplete.

SECTION 18. Renumbers Section 1702.286, Occupations Code, as added by Chapter 1102 (H.B. 2243), Acts of the 79th Legislature, Regular Session, 2005, as Section 1702.2865.

SECTION 19. Amends Section 1702.322, Occupations Code, as follows:

Sec. 1702.322. LAW ENFORCEMENT PERSONNEL. Provides that this chapter does not apply to a person who has full-time employment as a peace officer and who receives compensation for private employment on an individual or an independent contractor basis as a patrolman, guard, extra job coordinator, or watchman if the officer is employed in an employee-employer relationship or employed on an individual contractual basis directly by the recipient of the services.

SECTION 20. Amends Section 1702.361(a), Occupations Code, to delete existing text authorizing DPS, for conduct described by Subsection (b) (relating to DPS being required to take disciplinary action on proof of certain conditions), subject to PSB's final order under the hearing provisions of this subchapter, to take certain disciplinary actions.

SECTION 21. Amends Section 1702.367, Occupations Code, by amending Subsection (a) and adding Subsection (f) and (g), as follows:

(a) Authorizes DPS, rather than TCPS, if necessary to enforce this chapter or PSB's rules, for an investigation conducted under this chapter, to issue an administrative subpoena to any person in this state compelling the production of information or documents, or the attendance and testimony of a witness. Deletes existing text authorizing TCPS, for an investigation conducted under this chapter, to issue a subpoena to compel the attendance of a witness or the production of a pertinent record or document. Deletes existing text authorizing the hearings officer to administer oaths and require testimony or evidence to be given under oath.

(f) Provides that a person licensed or otherwise regulated under this chapter who fails without good cause to comply with a subpoena issued under this section may be subject to suspension of a license under Section 1702.361.

(g) Authorizes that a subpoena, if the subpoena issued under this section relates to an ongoing criminal investigation by DPS and DPS determines that disclosure could significantly impede the investigation, to provide that the person to whom the subpoena is directed is prohibited from disclosing or identifying certain information concerning the subpoena.

SECTION 22. Amends Subchapter P, Chapter 1702, Occupations Code, by adding Section 1702.3835, as follows:

Sec. 1702.3835. DECEPTIVE TRADE PRACTICE. (a) Provides that a person who performs or offers to perform an activity regulated under this chapter, but who is not licensed or otherwise authorized under this chapter to perform the activity, commits a false, misleading, or deceptive act or practice within the meaning of Section 17.46 (Deceptive Trade Practices Unlawful), Business & Commerce Code.

(b) Authorizes a public or private right or remedy under Chapter 17 (Deceptive Trade Practices), Business & Commerce Code, to be used to enforce this chapter.

SECTION 23. Amends Section 46.03(d), Penal Code, as follows:

(d) Provides that it is a defense to prosecution under Subsection (a)(5) (relating to an offense if a person possesses or goes with a certain prohibited weapon in or into a secured area of an airport) that the actor possessed a firearm or club while traveling to or from the actor's place of assignment or in the actual discharge of duties as a security officer commissioned by PSB, rather than the Texas Board of Private Investigators and Private Security Agencies, if certain conditions are met, or a security officer who holds a personal protection authorization under Chapter 1702 (Private Security), Occupations Code, provided that the officer is either wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's firearm in plain view; or not wearing the uniform of a security officer and carrying the officer's firearm in a concealed manner, rather than a security officer who holds a personal protection authorization under the Private Investigators and Private Security Agencies Act (Article 4413(29bb), V.T.C.S.).

SECTION 24. Reenacts Section 46.15(b), Penal Code, as amended by Chapters 647 (H.B. 964), 693 (H.B. 1815), and 1048 (H.B. 2101), Acts of the 80th Legislature, Regular Session, 2007, and amends it to read as follows:

(b) Provides that Section 46.02 (Unlawful Carrying Weapons), does not apply to a person who acts as a personal protection officer and carries the person's security commission and personal protection officer authorization, if the person is engaged in the performance of the person's duties as a personal protection officer under Chapter 1702, Occupations Code, or is traveling to or from the person's place of assignment and is either wearing the uniform of a security officer, including any uniform or apparel described by Section 1702.323(d), Occupations Code, and carrying the officer's weapon in plain view or not wearing the uniform of a security officer and carrying the officer's weapon in a concealed manner. Makes nonsubstantive changes.

SECTION 25. Makes application of Sections 1702.110, 1702.221(a), and 1702.282(a), Occupations Code, as added by this Act, prospective.

SECTION 26. Provides that to the extent of any conflict, this Act prevails over another Act of the 81st Legislature, Regular Session, 2009, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 27. Effective date: September 1, 2009.