

H.B. No. 2833

AN ACT

relating to the licensing and regulation of certain private security services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1702.004, Occupations Code, is amended to read as follows:

Sec. 1702.004. GENERAL SCOPE OF REGULATION. (a) The board [commission], in addition to performing duties required by other law or exercising powers granted by other law:

- (1) licenses investigations companies and security services contractors;
- (2) issues commissions to certain security officers;
- (3) issues authorizations to certain security officers engaged in the personal protection of individuals;
- (4) registers:
 - (A) certain individuals connected with a license holder; and
 - (B) certain individuals employed in a field connected to private investigation or private security; and

- (5) regulates license holders, security officers, and registrants under this chapter.

(b) Chapter 53 does not apply to this chapter or to any licensing, regulatory, or disciplinary determinations made under this chapter.

SECTION 2. Subchapter E, Chapter 1702, Occupations Code, is amended by adding Section 1702.085 to read as follows:

Sec. 1702.085. CONFIDENTIALITY OF RECORDS. Records maintained by the department under this chapter 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, Government Code.

SECTION 3. Section 1702.102(a), Occupations Code, is amended to read as follows:

- (a) Unless the person holds a license as a security services contractor, a person may not:
 - (1) act as an alarm systems company, armored car company, courier company, guard company, [or] guard dog company, locksmith company, or private security consultant company;
 - (2) offer to perform the services of a company in Subdivision (1); or
 - (3) engage in business activity for which a license is required under this chapter.

SECTION 4. Section 1702.104, Occupations Code, is amended to read as follows:

Sec. 1702.104. INVESTIGATIONS COMPANY. (a) A person acts as an investigations company for the purposes of this chapter if the person:

- (1) engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to:
 - (A) crime or wrongs done or threatened against a state or the United States;
 - (B) the identity, habits, business, occupation, knowledge, efficiency, loyalty,

movement, location, affiliations, associations, transactions, acts, reputation, or character of a person;

(C) the location, disposition, or recovery of lost or stolen property; or

(D) the cause or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property;

(2) engages in the business of securing, or accepts employment to secure, evidence for use before a court, board, officer, or investigating committee;

(3) engages in the business of securing, or accepts employment to secure, the electronic tracking of the location of an individual or motor vehicle other than for criminal justice purposes by or on behalf of a governmental entity; or

(4) engages in the business of protecting, or accepts employment to protect, an individual from bodily harm through the use of a personal protection officer.

(b) 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. Section 1702.113, Occupations Code, is amended to read as follows:

Sec. 1702.113. GENERAL QUALIFICATIONS FOR LICENSE, CERTIFICATE OF REGISTRATION, OR SECURITY OFFICER COMMISSION. (a) An applicant for a license, certificate of registration, or security officer commission or the applicant's manager must be at least 18 years of age and must not:

(1) have been convicted in any jurisdiction of two or more felony offenses [~~a Class A misdemeanor or equivalent offense or a greater offense~~], unless [a] full pardons have [~~pardon has~~] been granted for all convictions for reasons relating to [a] wrongful convictions [~~conviction~~];

(2) have been convicted in any jurisdiction of any of the following:

(A) a single felony or equivalent offense for which the 20th anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction; or

(B) a Class A misdemeanor or equivalent offense for which the 10th anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction;

(3) at the time of application be charged with the commission of a Class A misdemeanor or felony offense, under an information or indictment;

(4) in the 10 years preceding the date of application, have been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony;

(5) [a Class B misdemeanor or equivalent offense for which the fifth anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction;

~~[(3)]~~ have been found by a court to be incompetent by reason of a mental defect or disease and not have been restored to competency;

(6) [(4)] be suffering from habitual drunkenness or from narcotics addiction or dependence; or

~~(5)~~ have been dishonorably discharged from the United States armed services, discharged from the United States armed services under other [than honorable] conditions determined by the board to be prohibitive, or dismissed from the United States armed services if a commissioned officer in the United States armed services; or

(7) be required to register in this or any other state as a sex offender, unless the applicant is approved by the board under Section 1702.3615.

(b) An applicant is ineligible [The commission may deny an application] 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 [or equivalent] offense determined by the board to be disqualifying if the fifth anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction.

(c) For purposes of this section, an offense under the laws of this state, another state, or the United States is considered:

(1) a felony if the offense:

(A) at the time of conviction was designated by a law of this state as a felony, including a state jail felony;

(B) contains all the elements of an offense designated by a law of this state as a felony, including a state jail felony; or

(C) is punishable by confinement for one year or more in a penitentiary;

(2) a Class A misdemeanor if the offense is not a felony and the offense:

(A) at the time of conviction was designated by a law of this state as a Class A misdemeanor;

(B) contains all the elements of an offense designated by a law of this state as a Class A misdemeanor; or

(C) provides as a possible punishment confinement in a jail other than a state jail felony facility; or

(3) a Class B misdemeanor if the offense is not a felony or Class A misdemeanor and the offense:

(A) at the time of conviction was designated by a law of this state as a Class B misdemeanor;

(B) contains all the elements of an offense designated by a law of this state as a Class B misdemeanor; or

(C) provides as a possible punishment confinement in a jail other than a state jail felony facility.

(d) For purposes of this section, "convicted" has the meaning provided in Section 1702.371.

(e) 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. Section 1702.119(b), Occupations Code, is amended to read as follows:

(b) An individual may not act as a manager until the individual has:

(1) demonstrated the individual's qualifications by passing the written examination required by Section 1702.117(a); and

(2) made a satisfactory showing to the department [~~commission~~] that the individual:

(A) satisfies the requirements of Section 1702.113 and meets all qualification and experience requirements set by rule for a manager of the type of company for which the individual is applying [~~either Section 1702.114 or Section 1702.115, as appropriate~~]; and

(B) has not engaged in conduct regarding a violation or conviction that is grounds for disciplinary action under Section 1702.361(b) or 1702.3615(a).

SECTION 7. Sections 1702.124(a), (b), and (e), Occupations Code, are amended to read as follows:

(a) An applicant is not eligible for [~~The commission may not issue~~] a license unless the applicant provides as part of the application [~~files with the commission~~]:

(1) a certificate of insurance or other documentary evidence of a general liability insurance policy [~~on a certificate of insurance form prescribed by the Texas Department of Insurance and~~] countersigned by an insurance agent licensed in this state; or

(2) a certificate of insurance for surplus lines coverage obtained under Chapter 981, Insurance Code, through a licensed Texas surplus lines agent resident in this state.

(b) The general liability insurance policy must 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 [~~business~~] licensed under this chapter.

(e) An insurance certificate executed and filed with the department [~~commission~~] under this chapter remains in effect until the insurer terminates future liability by providing to the department [~~commission~~] at least 10 days' notice of the intent to terminate liability.

SECTION 8. Section 1702.133(b), Occupations Code, is amended to read as follows:

(b) A license holder or an officer, director, partner, or manager of a license holder shall 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. A private investigator who is working under the direct supervision of a licensed attorney satisfies this requirement by disclosing the information to the supervising attorney.

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

Sec. 1702.163. QUALIFICATIONS FOR SECURITY OFFICER COMMISSION. (a) An applicant employed by a license holder is not eligible for [~~The board may not issue~~] a security officer commission [~~to an applicant employed by a license holder~~] unless the applicant submits as part of the application [~~evidence~~] satisfactory evidence [~~to the board~~] that the applicant has:

(1) completed the basic training course at a school or under an instructor approved by the board;

(2) met each qualification established by this chapter and administrative [~~board~~] rule;

(3) achieved the score required by the board on the examination under Section 1702.1685;

and

(4) demonstrated to the satisfaction of the firearm training instructor that the applicant has complied with other board standards for minimum marksmanship competency with a handgun.

(b) An individual is not eligible for [The commission may not issue] a security officer commission if the [to an] individual [who]:

(1) is disqualified by state or federal law from owning or possessing a firearm [younger than 18 years of age];

(2) is incapable of exercising sound judgment in the proper use and storage of a handgun [a convicted felon]; [or]

(3) is a fugitive from justice for a felony or a Class A or Class B misdemeanor;

(4) is a chemically dependent person; or

(5) is currently restricted under a court protective order or subject to a restraining order affecting the spousal relationship, other than a restraining order solely affecting property interests [has committed an act that, if committed by a license holder, would be grounds for suspension or revocation of a license].

(c) 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. 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) 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:

(1) has been diagnosed by a licensed physician as suffering from a psychiatric disorder or condition that causes or is likely to cause substantial impairment in judgment, mood, perception, impulse control, or intellectual ability;

(2) suffers from a psychiatric disorder or condition described by Subdivision (1) that:

(A) is in remission but is reasonably likely to redevelop at a future time; or

(B) requires continuous medical treatment to avoid redevelopment;

(3) has been diagnosed by a licensed physician or declared by a court as incompetent to manage the person's own affairs; or

(4) has entered a plea of not guilty by reason of insanity in a criminal proceeding.

(e) The following constitutes evidence that a person has a psychiatric disorder or condition described by Subsection (d)(1):

(1) involuntary psychiatric hospitalization in the five years preceding the date of the application;

(2) psychiatric hospitalization in the two years preceding the date of the application;

(3) inpatient or residential substance abuse treatment in the five years preceding the date of the application;

(4) diagnosis in the five years preceding the date of the application by a licensed physician that the person is dependent on alcohol, a controlled substance, or a similar substance; or

(5) diagnosis at any time by a licensed physician that the person suffers or has suffered from a psychiatric disorder or condition consisting of or relating to:

(A) schizophrenia or delusional disorder;

(B) bipolar disorder;

(C) chronic dementia, whether caused by illness, brain defect, or brain injury;

(D) dissociative identity disorder;

(E) intermittent explosive disorder; or

(F) antisocial personality disorder.

(f) Notwithstanding Subsection (d), 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 the department 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) 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. Section 1702.221, Occupations Code, is amended to read as follows:

Sec. 1702.221. REGISTRATION REQUIRED. (a) An individual must register in accordance with the requirements of this chapter and related administrative rules [with the commission as provided by commission rule] if the individual:

(1) is employed as an alarm systems installer, alarm systems monitor, electronic access control device installer, locksmith, dog trainer, manager or branch office manager, noncommissioned security officer, private investigator, private security consultant, or security salesperson; or

(2) is an owner, officer, partner, or shareholder of a license holder.

(b) 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. Section 1702.226, Occupations Code, is transferred to Subchapter F, Chapter 1702, Occupations Code, redesignated as Section 1702.1045, and amended to read as follows:

Sec. 1702.1045 [1702.226]. PRIVATE SECURITY CONSULTING COMPANY [CONSULTANT]. A person [An individual] acts as a private security consulting company [consultant] for purposes of this chapter if the person [individual]:

(1) consults, advises, trains, or specifies or recommends products, services, methods, or procedures in the security or loss prevention industry;

(2) provides a service described by Subdivision (1) on an independent basis and without being affiliated with a particular service or product; and

(3) meets the experience requirements established by the board [~~commission~~].

SECTION 12. Section 1702.229, Occupations Code, is amended to read as follows:

Sec. 1702.229. QUALIFICATIONS FOR REGISTRATION. (a) An applicant for registration [~~individual~~] must meet the qualifications required under Section 1702.113 for a license applicant [~~be at least 18 years of age to be registered~~].

(b) In accordance with the requirements of Section 1702.0611, the board [~~The commission~~] by rule may adopt additional qualifications for an individual to be registered under this subchapter.

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

(b) Before beginning employment as a commissioned security officer, the applicant must be approved by the board [~~commission~~] based on the results of the check under Subsection (a). To continue employment in a capacity regulated under this chapter other than as a commissioned security officer, the applicant must be approved by the board [~~commission~~] based on the results of the check under Subsection (a) not later than the 120th day after the date the applicant begins employment in that capacity.

(c) A license, registration, security officer commission, letter of approval, permit, or certification issued by the board [~~commission~~] is conditional on the board's [~~commission's~~] receipt of criminal history record information.

(e) 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 10th anniversary of the date the application is filed, the applicant must 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. 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 the applicant may not be issued a license, commission, or certificate of registration under this chapter.

SECTION 14. Section 1702.284, Occupations Code, is amended to read as follows:

Sec. 1702.284. ALARM SYSTEMS RECORDS CONFIDENTIAL. Information contained in alarm systems records maintained by a governmental body that concerns the location of an alarm system, the name of the occupant of an alarm system location, or the type of alarm system used is confidential and may be disclosed only to the board, to the alarm company to which the confidential records relate, [~~commission~~] or as otherwise required by state law or court order.

SECTION 15. Sections 1702.323(c) and (d), Occupations Code, are amended to read as follows:

(c) The security department of a private business may not hire or employ an individual to perform a duty described by Section 1702.222 if the individual has been convicted of a crime that would otherwise preclude the individual from being registered under this chapter. Although the security department of a private business that hires or employs an individual as a private security officer to possess a firearm in the course and

scope of the individual's duties is required to apply for a security officer commission for the individual under this chapter, the security department of a private business is not required to apply to the board ~~[commission]~~ for any license under this chapter.

(d) This chapter applies to an individual described by Subsection (a) who in the course of employment:

(1) comes into contact with the public;

(2) wears:

(A) a uniform ~~[with any type of badge]~~ commonly associated with security personnel or law enforcement;

(B) any type of badge commonly associated with security personnel or law enforcement; or

(C) a patch or apparel containing the word ~~[with]~~ "security" or a substantially similar word that is intended to or is likely to create the impression that the individual is performing security services ~~[on the patch or apparel]~~; and

(3) performs a duty described by Section 1702.108 or 1702.222.

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

(b) This chapter does not apply to:

(1) a manufacturer or a manufacturer's authorized distributor while selling ~~[who sells]~~ equipment intended for resale ~~[and does not perform any other service that requires a license under this chapter]~~;

(2) a person engaged exclusively in the business of obtaining and providing information to:

(A) determine creditworthiness;

(B) collect debts; or

(C) ascertain the reliability of information provided by an applicant for property, life, or disability insurance or an indemnity or surety bond;

(3) a person engaged exclusively in the business of repossessing property that is secured by a mortgage or other security interest;

(4) a person who:

~~[(A)]~~ is engaged in the business of psychological testing or other testing and interviewing services, including services to determine attitudes, honesty, intelligence, personality, and skills, for preemployment purposes; ~~and~~

~~[(B) does not perform any other service that requires a license under this chapter];~~

(5) a person who:

(A) is engaged in obtaining information that is a public record under Chapter 552, Government Code, regardless of whether the person receives compensation;

(B) is not a full-time employee, as defined by Section 61.001, Labor Code, of a

person licensed under this chapter; and

(C) does not perform any other act that requires a license under this chapter;

(6) a licensed engineer practicing engineering or directly supervising engineering practice under Chapter 1001, including forensic analysis, burglar alarm system engineering, and necessary data collection;

(7) an employee of a cattle association who inspects livestock brands under the authority granted to the cattle association by the Grain Inspection, Packers and Stockyards Administration of the United States Department of Agriculture;

(8) a landman performing activities in the course and scope of the landman's business;

(9) an attorney while engaged in the practice of law;

(10) a person who obtains a document for use in litigation under an authorization or subpoena issued for a written or oral deposition;

(11) an admitted insurer, insurance adjuster, agent, or insurance broker licensed by the state, performing duties in connection with insurance transacted by that person;

(12) a person who on the person's own property or on property owned or managed by the person's employer:

(A) installs, changes, or repairs a mechanical security device;

(B) repairs an electronic security device; or

(C) cuts or makes a key for a security device;

(13) security personnel, including security contract personnel, working at a commercial nuclear power plant licensed by the United States Nuclear Regulatory Commission;

(14) a person or firm licensed as an accountant or accounting firm under Chapter 901, an owner of an accounting firm, or an employee of an accountant or accounting firm while performing services regulated under Chapter 901; or

(15) a retailer, wholesaler, or other person who sells mechanical security devices, including locks and deadbolts, but who does not:

(A) service mechanical security devices for the public outside of the person's premises; or

(B) claim to act as a locksmith.

(c) 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. 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. Section 1702.361, Occupations Code, is amended to read as follows:

Sec. 1702.361. DENIAL AND DISCIPLINARY ACTIONS ~~[POWERS OF COMMISSION]~~;

GROUND. (a) Subject to the board's final order under the hearing provisions of this subchapter ~~[Except as provided by Section 1702.3615]~~, the department ~~[commission]~~, for conduct described by Subsection (b), may:

(1) deny an application or revoke, suspend, or refuse to renew a license, registration, or

security officer commission;

(2) reprimand a license holder, registrant, or commissioned security officer; or

(3) place on probation a person whose license, registration, or security officer commission has been suspended.

(b) The department [~~commission~~] shall take disciplinary action described by Subsection (a) on proof:

(1) that the applicant, license holder, registrant, or commissioned security officer has:

(A) violated this chapter or a [~~commission~~] rule adopted under this chapter;

(B) become ineligible for licensure or registration under Section 1702.113, or a commission under Section 1702.163, if applicable, other than an action for which the department has taken summary action under Section 1702.364 [~~been convicted of a Class B misdemeanor or equivalent offense if the fifth anniversary of the date of the conviction has occurred~~];

(C) engaged in fraud, deceit, or misrepresentation; [~~or~~]

(D) made a material misstatement in an application for or renewal of a license, registration, or commission; or

(E) failed to pay in full an administrative penalty assessed under Subchapter Q, for which the board has issued a final order; or

(2) that the license holder of a registrant or commissioned security officer has submitted to the department [~~commission~~] sufficient evidence that the registrant or commissioned security officer:

(A) engaged in fraud or deceit while employed by the license holder; or

(B) committed theft while performing work as a registrant or commissioned security officer.

(c) The department [~~commission~~] may place on probation a person whose license is suspended. If a person's suspension of a license is probated, the department [~~commission~~] may require the person:

(1) to report regularly to the department [~~commission~~] on matters that are the basis of the suspension;

(2) to limit practice to the areas prescribed by the department [~~commission~~]; or

(3) to continue or review professional education until the person attains a degree of skill satisfactory to the department [~~commission~~] in those areas that are the basis of the probation.

SECTION 18. Section 1702.3615, Occupations Code, is amended to read as follows:

Sec. 1702.3615. DIRECT APPEAL IN LIMITED CASES [~~REVOCAION OR REFUSAL FOR CERTAIN OFFENSES~~]. (a) [~~Except for an application approved by the commission under Subsection (b), the commission shall 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 a:~~

~~[(1) Class A misdemeanor or equivalent offense or a greater offense; or~~

~~[(2) Class B misdemeanor or equivalent offense if the fifth anniversary of the date of conviction has not occurred.~~

~~[(b)]~~ An applicant may appeal directly to the board [~~commission~~] the denial of a license, registration, or security officer commission application if:

(1) the sole basis of the denial is the applicant's status as a registered sex offender [a conviction for a Class A misdemeanor or equivalent or a greater offense];

(2) the applicant's status as a sex offender is not based on a criminal conviction that would make the applicant ineligible under Section 1702.113 or 1702.163 [20th anniversary of the conviction has occurred]; and

(3) the applicant waives the applicant's right to a hearing before the State Office of Administrative Hearings.

(b) [(e)] A proceeding under Subsection (a) [(b)] is governed by Chapter 2001, Government Code. A hearing must be held at a regular meeting of the board [commission].

(c) In a proceeding held as provided by Subsection (a) [(d) Notwithstanding any other provision of this chapter], the board [commission] may approve the application if the board determines the circumstances surrounding the applicant's registration as a sex offender warrant approval based on factors previously established by rule.

SECTION 19. Section 1702.364, Occupations Code, is amended to read as follows:

Sec. 1702.364. SUMMARY ACTIONS [SUSPENSION]. (a) On receiving written notice from a [the Texas Department of Public Safety or another] law enforcement agency that a person [an individual] has been [arrested for or] 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 [a Class B misdemeanor or equivalent offense or a greater offense], the department shall [commission may]:

(1) summarily deny the person's [individual's] application for a license, registration, or security officer commission; [or]

(2) in the event of pending charges, summarily suspend the person's [individual's] license, certificate of registration, or security officer commission; or

(3) in the event of a conviction, summarily revoke the person's license, certificate of registration, or security officer commission.

(b) To initiate a proceeding to take action under Subsection (a), the department [commission] must serve notice to the person [individual]. The notice must:

(1) inform the person [individual] of the right to a preliminary hearing before the department [commission];

(2) state the basis [alleged violations that constitute grounds] for the summary action [suspension]; and

(3) be personally served on the person or the person's authorized representative, [individual] or sent to the person [individual] by certified or registered mail, return receipt requested, to the person's [individual's] mailing address as it appears in the department's [commission's] records.

(c) The action [suspension] is effective at the time notice is served. The [If notice is served in] person[, the individual] shall immediately surrender to the department any certificate of [commission the] registration, security officer commission, pocket card, or other form of identification issued by the department [commission. If the notice is served by mail, the individual shall immediately return to the commission the

registration, commission, pocket card, or other identification issued by the commission].

(d) At a preliminary hearing, the person [individual] must show cause why[, pending final hearing on the suspension or denial]:

(1) the application should not have been [remain] denied; [or]

(2) the registration, license, or security officer commission should not have been [remain] suspended; or

(3) the registration, license, or commission should not have been revoked.

(e) [A final hearing may be scheduled at a time after the final disposition of the charges resulting in the summary suspension or summary denial.

[#] Chapter 2001, Government Code, does not apply to the department's initial action under this section or to a preliminary hearing [proceeding] before the department [commission] under this section [except for a final administrative hearing].

[f] [~~g~~] The dismissal of a complaint, information, or indictment or an acquittal releases the person [individual] from automatic grounds for a summary denial of an application or summary suspension of a registration or security officer commission under this section. A conviction for the offense giving rise to a summary suspension is automatic grounds for immediate, summary revocation.

[g] The results of the preliminary hearing may be appealed by requesting, in writing, a hearing before an administrative law judge of the State Office of Administrative Hearings. On receipt of the request, the department shall set a hearing and give written notice of the hearing to the person.

[h] The administrative law judge shall make findings of fact and conclusions of law regarding the person's eligibility for a license under this section and promptly issue to the board a proposal for a decision.

[i] At its earliest possible quarterly meeting, the board shall consider the proposal for decision and promptly issue a final order.

[j] 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. Section 1702.371, Occupations Code, is amended to read as follows:

Sec. 1702.371. CONVICTION OF CERTAIN CRIMES. For purposes of this chapter [In this subchapter], a person is considered to be convicted of an offense [that is a Class B misdemeanor or greater offense, or an equivalent offense,] if a court enters a judgment against the person for committing an [a Class B misdemeanor or greater offense, or an equivalent] offense[.] under the laws of this state, another state, or the United States, including a conviction:

(1) in which a person is placed on and subsequently discharged from community supervision; [and]

(2) that has been set aside or dismissed following the completion of probation; or

(3) for which a person is pardoned, unless the [a full] pardon was [has been] granted for reasons relating to a wrongful conviction.

SECTION 21. Section 1702.381, Occupations Code, is amended to read as follows:

Sec. 1702.381. CIVIL PENALTY. (a) A person who is not licensed under this chapter, who does not

have a license application pending, and who violates this chapter may be assessed a civil penalty to be paid to the state not to exceed \$10,000 [~~\$1,000~~] for each violation.

(b) 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 may be assessed a civil penalty to be paid to the state in an amount not to exceed \$10,000 for each violation.

(c) A [~~The commission must give a person 30 days' notice of the requirement to obtain a license before the~~] civil penalty under this section may be assessed against a person on proof that the person has received at least 30 days' notice of the requirements of this section.

SECTION 22. Section 1702.382, Occupations Code, is amended to read as follows:

Sec. 1702.382. INJUNCTION. (a) An attorney for the department, the attorney general's office, or any criminal prosecutor in this state [~~The commission~~] may institute an action [~~in the name of the commission~~] against a person to enjoin a violation by the person of this chapter or an administrative [~~a commission~~] rule.

(b) An injunction action instituted under this section does [~~The commission is~~] not require an allegation or proof [~~required to allege or prove~~] that an adequate remedy at law does not exist or that substantial or irreparable damage would result from the continued violation to sustain an action under this section. A bond is not required for an injunction action instituted under this section.

SECTION 23. Section 1702.383, Occupations Code, is amended to read as follows:

Sec. 1702.383. ACTION FOR CIVIL PENALTY OR INJUNCTION. If a person has violated a provision of this chapter for which a penalty is imposed under Section 1702.381, an attorney for the department, the attorney general's office, or any criminal prosecutor in this state [~~the commission~~] may 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.

SECTION 24. Section 1702.401, Occupations Code, is amended to read as follows:

Sec. 1702.401. IMPOSITION OF PENALTY. In addition to any other disciplinary action taken by the department, and subject to the board's final order in a hearing under this subchapter [~~commission~~], the department [~~commission~~] may 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.

SECTION 25. Section 1702.402(a), Occupations Code, is amended to read as follows:

(a) Each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. The amount of each separate violation may not exceed \$500 [~~\$200~~].

SECTION 26. Section 1702.403, Occupations Code, is amended to read as follows:

Sec. 1702.403. [REPORT-AND] NOTICE OF VIOLATION AND PENALTY. (a) If the department [~~director~~] determines that a violation has occurred, the department [~~director may issue to the commission a report stating:~~

~~[(1) the facts on which the determination is based; and~~

~~[(2) the director's recommendation on the imposition of the penalty, including a~~

~~recommendation on the amount of the penalty.~~

~~[(b) Not later than the 14th day after the date the report is issued, the director] shall give written notice [of the report] to the person.~~

~~(b) [(e)]~~ The notice must:

- ~~(1) include a brief summary of the alleged violation;~~
- ~~(2) state the amount of the recommended penalty; and~~
- ~~(3) inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.~~

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

Sec. 1702.404. PENALTY TO BE PAID OR HEARING REQUESTED. (a) Not later than the 20th day after the date the person receives the notice, the person in writing may:

- ~~(1) accept the determination and recommended penalty [of the director]; or~~
- ~~(2) make a request for a hearing on the occurrence of the violation, the amount of the penalty, or both.~~

~~(b) If the person accepts the determination and recommended penalty, [of the director, the commission by order shall approve] the person shall pay the [determination and impose the recommended] penalty in a timely manner.~~

~~(c) The department may initiate suspension proceedings under Section 1702.361 against a person who, before the 21st day after the day the person receives the notice, either:~~

- ~~(1) accepts the penalty but fails to pay; or~~
- ~~(2) fails to respond to the notice.~~

SECTION 28. Section 1702.405, Occupations Code, is amended to read as follows:

Sec. 1702.405. HEARING. (a) If the person requests a hearing ~~[or fails to respond in a timely manner to the notice]~~, the department ~~[director]~~ shall set a hearing and give written notice of the hearing to the person. An administrative law judge of the State Office of Administrative Hearings shall hold the hearing.

(b) The administrative law judge shall make findings of fact and conclusions of law and promptly issue to the board ~~[commission]~~ a proposal for a decision about the occurrence of the violation and the amount of a proposed penalty.

SECTION 29. Section 1702.406, Occupations Code, is amended to read as follows:

Sec. 1702.406. DECISION BY BOARD ~~[COMMISSION]~~. (a) Based on the findings of fact, conclusions of law, and proposal for a decision, the board ~~[commission]~~ by order may:

- (1) find that a violation occurred and impose a penalty; or
- (2) find that a violation did not occur.

(b) The notice of the board's ~~[commission's]~~ order given to the person must include a statement of the right of the person to judicial review of the order.

~~(c) If the person does not file a petition in the appropriate civil court for judicial review of the board's order not later than the 30th day after the date of the order, the board's order is final for purposes of Section 1702.361.~~

SECTION 30. Sections 1702.2225, 1702.407, 1702.408, 1702.409, 1702.410, 1702.411, and 1702.412, Occupations Code, are repealed.

SECTION 31. The Texas Private Security Board shall 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) 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) To the extent of any conflict, this Act prevails over another Act of the 80th Legislature, Regular Session, 2007, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 33. This Act takes effect September 1, 2007.

President of the Senate

Speaker of the House

I certify that H.B. No. 2833 was passed by the House on May 2, 2007, by the following vote: Yeas 147, Nays 0, 2 present, not voting; that the House refused to concur in Senate amendments to H.B. No. 2833 on May 25, 2007, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 2833 on May 28, 2007, by the following vote: Yeas 143, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 2833 was passed by the Senate, with amendments, on May 23, 2007, by the following vote: Yeas 29, Nays 0; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 2833 on May 27, 2007, by the following vote: Yeas 30, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor