

SUBJECT: Private investigator licensing requirements for computer repairers

COMMITTEE: Public Safety — favorable, without amendment

VOTE: 6 ayes — Merritt, Frost, Driver, Lewis, Rodriguez, Vo

0 nays

3 absent — Burnam, P. King, Mallory Caraway

SENATE VOTE: On final passage, May 5 — 31-0, on Local and Uncontested Calendar

WITNESSES: *(On House companion bill, HB 2287:)*
For — Robert Fogarty, Randy Kildow, Texas Association of Licensed Investigators; *(Registered, but did not testify:* Jeffrey Bright, Central Texas Chapter, Texas Burglar & Fire Alarm Association; Dana Chiodo, Technology Association of America; Patrick Craven, East Texas Chapter, Texas Burglar & Fire Alarm Association; John Helweg, Debra G. Ulmer, Houston Gulf Coast Alarm Association; Rodney Hooker, Chris Russell, Texas Burglar & Fire Alarm Association; Walter Roberts, Associated Security Services and Investigators of Texas; Michael Samulin, South Texas Alarm Association; Dave Simon, North Texas Alarm Association, Brink's Home Security; Geoff Wurzel, TECHNET)

Against — Timothy D. Hanners, Xact Data Discovery; Troy Lawrence; Debra Martinez; Neil Martinez; John Wiechman, TLSI; *(Registered, but did not testify:* Matthew Holton, Xact Data Discovery)

On — Steve Moninger, Department of Public Safety, Private Security Bureau; *(Registered, but did not testify:* Renearl Bowie, Department of Public Safety, Private Security Bureau)

BACKGROUND: Occupations Code, sec. 1702.104 outlines provisions for the regulation of private investigations companies by the Texas Commission on Private Security, including that a person licensed as an investigations company may obtain or furnish information through the review and analysis of, and the investigation into the content of, computer-based data not available to the public.

Under Occupations Code, sec. 1702.104 (a)(1), a person acts as an investigations company and is subject to licensing as a private investigator if the person engages in the business of obtaining or furnishing, or accepts employment to obtain or furnish, information related to crime or wrongs done or threatened against a state or the United States.

DIGEST:

SB 1244 would amend Occupations Code, sec. 1702.104 to exempt those who repair or maintain computers from private investigator licensing requirements if:

- the review or analysis of computer-based data was performed only to diagnose a computer or software program;
- there was no intent to obtain or furnish information related to crimes or wrongs done or threatened against a state or the United States; and
- discovery of any information about those crimes and wrongs was inadvertent.

The bill also would exempt from licensing requirements any investigative employee of an entity regulated by the:

- Texas Department of Insurance;
- Office of Thrift Supervision;
- Securities and Exchange Commission;
- Federal Deposit Insurance Corporation;
- National Association of Security Dealers; or
- Financial Industry Regulatory Authority.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

SB 1244 would clarify the Occupations Code, ch. 1704 requirements on forensic computer investigations and ensure that computer repair and maintenance specialists — such as those who work for Best Buy's Geek Squad — would not have to qualify for a private investigator's license to practice their craft. The bill would be a simple cleanup of the existing statute.

OPPONENTS
SAY:

SB 1244 would not go far enough to answer larger concerns about regulation of electronic data recovery, computer forensic analysis, and computer maintenance as private investigation work. The House should add provisions included in HB 2564, which would provide a better approach to regulating forensic computer specialists and has already been passed by the House.

NOTES:

The House companion bill, HB 2287 by Driver, was reported favorably, without amendment, by the Public Safety Committee on May 6 and was placed on the May 13 General State Calendar, where no further action was taken.

A related bill, HB 2564 by McClendon, which would remove private investigator licensing requirements for computer data specialists, passed the House by 145-1 on May 6 and has been referred to the Senate Business and Commerce Committee.