

BILL ANALYSIS

Senate Research Center
83R14782 SLB-F

H.B. 3433
By: Fletcher (Estes)
Agriculture, Rural Affairs & Homeland Security
5/17/2013
Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Under the Private Security Act, the Department of Public Safety of the State of Texas and the Texas Private Security Board are responsible for the licensing and regulation of individuals and companies that provide private security services, including security guards, personal protection officers, private investigators, locksmiths, and individuals who sell, install, or monitor alarm systems. H.B. 3433 seeks to make various clarifying changes to the Private Security Act to address drafting issues resulting from recent sunset legislation, to provide express authority for certain investigative, licensing, and disciplinary actions, to provide uniformity in licensing determinations and administrative hearings, and to establish a criminal offense for failure to maintain required insurance coverage.

H.B. 3433 amends current law relating to the regulation of certain private security companies and occupations, and creates an offense.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Private Security Board in SECTION 3 (Section 1702.113, Occupations Code), SECTION 8 (Section 1702.361, Occupations Code), and SECTION 13 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1702.002(1-a), Occupations Code, to redefine "alarm system" for purposes of Subdivision (1).

SECTION 2. Amends Section 1702.110, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Requires that an application for a permit issued by the Texas Private Security Board (PSB) that entitles a person to operate a security services contractor or investigations company (license) under this chapter (Private Security) be in the form prescribed by PSB and include, among other requirements, if the applicant is an individual, the fingerprints of the applicant, rather than two classifiable sets of fingerprints of the applicant, or, if the applicant is an entity other than an individual, 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, provided in the manner prescribed by PSB.

(c) Authorizes the Department of Public Safety of the State of Texas (DPS) to return an application as incomplete if the applicant submits payment of a fee that is returned for insufficient funds and the applicant has received notice and an opportunity to provide payment in full.

SECTION 3. Amends Section 1702.113(a), Occupations Code, to provide that an applicant for a license, certificate of registration, endorsement, or security officer commission or the applicant's manager is required to be at least 18 years of age and is prohibited from, among other conditions, at the time of application being charged under an information or indictment with the commission of a Class A or Class B misdemeanor or felony offense determined to be disqualifying by PSB

rule, rather than at the time of application being charged with the commission of a Class A misdemeanor or felony offense, under an information or indictment.

SECTION 4. Amends Section 1702.121(b), Occupations Code, as follows:

(b) Requires a manager to immediately cease all managerial actions on the effective date of any summary action taken against the manager, rather than requiring a manager to 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) begins on the effective date of the summary action, rather than starts on the date of termination.

SECTION 5. Amends Section 1702.124, Occupations Code, by adding Subsection (f), to require an applicant or license holder, in addition to the requirements of this section, to provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the applicant or license holder related to private security.

SECTION 6. Amends Section 1702.282(a), Occupations Code, to require each applicant, except as provided by Subsection (d) (relating to providing that an applicant who is a peace officer is not required to submit fingerprints with the applicant's application), to submit at the time of application, including an application for the renewal of a license, registration, commission, letter of approval, permit, endorsement, or certification, fingerprints in the manner prescribed by PSB accompanied by the fee set by PSB, rather than requiring each applicant, except as provided by Subsection (d), to include in the application two complete sets of fingerprints on forms prescribed by PSB accompanied by the fee set by PSB.

SECTION 7. Amends Subchapter L, Chapter 1702, Occupations Code, by adding Section 1702.289, as follows:

Sec. 1702.289. INSPECTIONS. (a) Requires an employee or agent of DPS or PSB, as applicable, who enters the place of business of a person regulated under this chapter for the purpose of conducting an inspection or audit to:

(1) notify the manager or owner of the business of the presence of the person conducting the inspection or audit; and

(2) present the manager or owner of the business with credentials that identify the person conducting the inspection or audit as an employee or agent of DPS or PSB.

(b) Provides that this section does not prohibit DPS or PSB from conducting an undercover investigation or covert audit in order to determine compliance with this chapter or a rule adopted under this chapter.

SECTION 8. Amends Section 1702.361, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires DPS to take disciplinary action described by Subsection (a) (relating to authorizing DPS to take certain disciplinary actions) under certain circumstances, including on proof that the applicant, license holder, manager or majority owner of a license holder, registrant, endorsement holder, or commissioned security officer has, among other violations, failed to qualify a new manager within the time required by PSB rule following the termination of a manager.

(d) Authorizes DPS to revoke a license, certificate, registration, endorsement, or commission if the person holding that credential under this chapter submits payment of a fee or penalty that is returned for insufficient funds and the person has received notice and an opportunity to provide payment in full.

SECTION 9. Amends Section 1702.364(a), Occupations Code, as follows:

(a) Requires DPS, on receiving written notice from a law enforcement agency that a person has been charged with or convicted of an offense that would make the person ineligible for a license, certificate of registration, endorsement, or security officer commission under Section 1702.113 (General Qualifications for License, Certificate of Registration, or Security Officer Commission) or 1702.163 (Qualifications for Security Officer Commission), or a rule adopted under Section 1702.004(b) (relating to requiring PSB to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction)), to:

- (1) summarily deny the person's application for a license, registration, endorsement, or security officer commission;
- (2) in the event of pending charges, summarily suspend the person's license, certificate of registration, endorsement, or security officer commission; or
- (3) in the event of a conviction, summarily revoke the person's license, certificate of registration, endorsement, or security officer commission.

SECTION 10. Amends Subchapter P, Chapter 1702, Occupations Code, by adding Section 1702.3841, as follows:

Sec. 1702.3841. INSUFFICIENT INSURANCE COVERAGE; OFFENSE. (a) Provides that a person commits an offense if the person is subject to Section 1702.124 (Insurance Requirement) and knowingly fails to provide and maintain a certificate of insurance or other documentary evidence of insurance sufficient to cover all of the business activities of the person related to private security. Provides that a person is presumed to have acted knowingly for purposes of this subsection if the person received reasonable notice and an opportunity to provide or maintain the documentation required by Section 1702.124 and failed to do so.

(b) Provides that an offense under this section is a Class A misdemeanor.

SECTION 11. Amends Section 12.092(b), Health and Safety Code, to require the medical advisory board to assist DPS in determining whether an applicant for a driver's license or a license holder is capable of safely operating a motor vehicle, or an applicant for or holder of a license to carry a concealed handgun under the authority of Subchapter H (License to Carry a Concealed Handgun), Chapter 411 (Department of Public Safety of the State of Texas), Government Code, or an applicant for or holder of a commission as a security officer under Chapter 1702, Occupations Code, is capable of exercising sound judgment with respect to the proper use and storage of a handgun.

SECTION 12. Repealers: Sections 1702.113(b) (relating to providing that an applicant is ineligible for a license, certificate of registration, or commission if the applicant has charges pending for or has been convicted of a Class B misdemeanor under certain circumstances) and (c) (relating to providing that an offense, for purposes this section, is considered a Class B misdemeanor if it meets certain criteria), Occupations Code.

SECTION 13. (a) Makes application of this Act prospective to January 1, 2014.

(b) Requires PSB to adopt rules to implement the changes in law made by this Act not later than January 1, 2014.

SECTION 14. Effective date: upon passage or September 1, 2013.