

By: Driver

H.B. No. 2833

A BILL TO BE ENTITLED

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.

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

3 Sec. 1702.085. CONFIDENTIALITY OF RECORDS. Records  
4 maintained by the department under this chapter on the home  
5 address, home telephone number, driver's license number, or social  
6 security number of an applicant or a license holder, registrant, or  
7 security officer commission holder are confidential and are not  
8 subject to mandatory disclosure under Chapter 552, Government Code.

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

11 (a) Unless the person holds a license as a security services  
12 contractor, a person may not:

13 (1) act as an alarm systems company, armored car  
14 company, courier company, guard company, ~~[or]~~ guard dog company,  
15 locksmith company, or private security consultant company;

16 (2) offer to perform the services of a company in  
17 Subdivision (1); or

18 (3) engage in business activity for which a license is  
19 required under this chapter.

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

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

25 (1) engages in the business of obtaining or  
26 furnishing, or accepts employment to obtain or furnish, information  
27 related to:

1 (A) crime or wrongs done or threatened against a  
2 state or the United States;

3 (B) the identity, habits, business, occupation,  
4 knowledge, efficiency, loyalty, movement, location, affiliations,  
5 associations, transactions, acts, reputation, or character of a  
6 person;

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

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

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

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

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

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

25 SECTION 5. Section 1702.113, Occupations Code, is amended  
26 to read as follows:

27 Sec. 1702.113. GENERAL QUALIFICATIONS FOR LICENSE,

1 CERTIFICATE OF REGISTRATION, OR SECURITY OFFICER COMMISSION. (a)

2 An applicant for a license, certificate of registration, or  
3 security officer commission or the applicant's manager must be at  
4 least 18 years of age and must not:

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

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

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

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

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

23 (4) have not, in the 10 years preceding the date of  
24 application, been adjudicated as having engaged in delinquent  
25 conduct violating a penal law of the grade of felony;

26 (5) [~~a Class B misdemeanor or equivalent offense for~~  
27 ~~which the fifth anniversary of the date of conviction has not~~

1 ~~occurred before the date of application, unless a full pardon has~~  
2 ~~been granted for reasons relating to a wrongful conviction;~~

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

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

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

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

17 (b) An applicant is ineligible [~~The commission may deny an~~  
18 ~~application~~] for a license, certificate of registration, or  
19 commission if the applicant has charges pending for or has been  
20 convicted in any jurisdiction of a Class B misdemeanor for an [~~or~~  
21 ~~equivalent~~] offense determined by the board to be disqualifying if  
22 the fifth anniversary of the date of conviction has not occurred  
23 before the date of application, unless a full pardon has been  
24 granted for reasons relating to a wrongful conviction.

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

27 (1) a felony if the offense:

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

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

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

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

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

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

14           (C) confinement in a jail other than a state jail  
15 felony facility is set as a possible punishment; or

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

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

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

22           (C) confinement in a jail other than a state jail  
23 felony facility is set as a possible punishment.

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

26           (e) An individual's eligibility under this chapter is not  
27 affected by any relationship or lack of relationship between the

1 nature of the criminal charges or conviction and the regulated  
2 occupation.

3 SECTION 6. Section 1702.119(b), Occupations Code, is  
4 amended to read as follows:

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

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

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

12 (A) satisfies the requirements of Section  
13 1702.113 and meets all qualification and experience requirements  
14 set by rule for a manager of the type of company for which the  
15 individual is applying [~~either Section 1702.114 or Section~~  
16 ~~1702.115, as appropriate~~]; and

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

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

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

25 (1) a certificate of insurance or other documentary  
26 evidence of a general liability insurance policy [~~on a certificate~~  
27 ~~of insurance form prescribed by the Texas Department of Insurance~~

1 ~~and~~] countersigned by an insurance agent licensed in this state; or

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

5 (b) The general liability insurance policy must be  
6 conditioned to pay on behalf of the license holder damages that the  
7 license holder becomes legally obligated to pay because of bodily  
8 injury, property damage, or personal injury, caused by an event  
9 involving the principal, or an officer, agent, or employee of the  
10 principal, in the conduct of any activity or service for which the  
11 license holder is [~~business~~] licensed under this chapter.

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

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

19 (b) A license holder or an officer, director, partner, or  
20 manager of a license holder shall disclose to a law enforcement  
21 officer or a district attorney, or that individual's  
22 representative, information the person obtains that relates to a  
23 criminal offense. A private investigator who is working under the  
24 direct supervision of a licensed attorney satisfies this  
25 requirement by disclosing the information to the supervising  
26 attorney.

27 SECTION 9. Section 1702.163, Occupations Code, is amended



1 to read as follows:

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

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

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

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

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

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

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

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

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

26           (4) is a chemically dependent person; or

27           (5) is currently restricted under a court protective

1 order or subject to a restraining order affecting the spousal  
2 relationship, other than a restraining order solely affecting  
3 property interests [~~has committed an act that, if committed by a~~  
4 ~~license holder, would be grounds for suspension or revocation of a~~  
5 ~~license~~].

6 (c) An individual who has been convicted twice in the  
7 10-year period preceding the date on which the person applies for a  
8 security officer commission of an offense of the grade of Class B  
9 misdemeanor or greater that involves the use of alcohol or a  
10 controlled substance as a statutory element of the offense is a  
11 chemically dependent person for purposes of this section and is not  
12 qualified to receive a security officer commission under this  
13 subchapter. This subsection does not preclude the disqualification  
14 of an individual for being a chemically dependent person if other  
15 evidence exists to demonstrate that the person is a chemically  
16 dependent person.

17 (d) For purposes of Subsection (b)(2), a person is incapable  
18 of exercising sound judgment with respect to the proper use and  
19 storage of a handgun if the person:

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

24 (2) suffers from a psychiatric disorder or condition  
25 described by Subsection (d)(1) that:

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

1                   (B) requires continuous medical treatment to  
2 avoid redevelopment;

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

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

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

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

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

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

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

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

23                           (A) schizophrenia or delusional disorder;

24                           (B) bipolar disorder;

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

27                           (D) dissociative identity disorder;

1           (E) intermittent explosive disorder; or

2           (F) antisocial personality disorder.

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

13           (g) An individual's eligibility under this section is not  
14 affected by a relationship or lack of relationship between the  
15 nature of a criminal charge or conviction and the regulated  
16 occupation.

17           SECTION 10. Section 1702.221, Occupations Code, is amended  
18 to read as follows:

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

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

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

3           (b) Registration under this chapter does not preclude an  
4 individual from performing additional duties or services  
5 authorized by the individual's employer that are not regulated by  
6 this chapter.

7           SECTION 11. Section 1702.226, Occupations Code, is  
8 transferred to Subchapter F, redesignated as Section 1702.1045, and  
9 further amended to read as follows:

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

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

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

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

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

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

1           (b) In accordance with the requirements of Section  
2 1702.0611, the board [~~The commission~~] by rule may adopt additional  
3 qualifications for an individual to be registered under this  
4 subchapter.

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

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

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

20           (e) On receipt of notice that a check of the applicant's  
21 criminal record has uncovered an unresolved and potentially  
22 disqualifying arrest that occurred before the 10th anniversary of  
23 the date the application is filed, the applicant must provide a  
24 letter of reference from the county sheriff, prosecuting attorney,  
25 or judge of the county in which the applicant was arrested stating  
26 that a record of a disposition related to the arrest does not exist,  
27 and to the best of the county sheriff's, prosecuting attorney's, or

1 judge's knowledge the applicant is free of any disqualifying  
2 convictions. If the applicant fails to provide either the letter of  
3 reference or documentary proof of the final disposition of the  
4 arrest, the application is considered incomplete and the applicant  
5 may not be issued a license, commission, or certificate of  
6 registration under this chapter.

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

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

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

19 (c) The security department of a private business may not  
20 hire or employ an individual to perform a duty described by Section  
21 1702.222 if the individual has been convicted of a crime that would  
22 otherwise preclude the individual from being registered under this  
23 chapter. Although the security department of a private business  
24 that hires or employs an individual as a private security officer to  
25 possess a firearm in the course and scope of the individual's duties  
26 is required to apply for a security officer commission for the  
27 individual under this chapter, the security department of a private

1 business is not required to apply to the board [~~commission~~] for any  
2 license under this chapter.

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

5 (1) comes into contact with the public;

6 (2) wears:

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

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

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

15 (3) performs a duty described by Section 1702.108 or  
16 1702.222.

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

21 (b) This chapter does not apply to:

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

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



- 1 (A) determine creditworthiness;  
2 (B) collect debts; or  
3 (C) ascertain the reliability of information  
4 provided by an applicant for property, life, or disability  
5 insurance or an indemnity or surety bond;

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

9 (4) a person who[÷

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

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

16 (5) a person who:

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

20 (B) is not a full-time employee, as defined by  
21 Section 61.001, Labor Code, of a person licensed under this  
22 chapter; and

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

25 (6) a licensed engineer practicing engineering or  
26 directly supervising engineering practice under Chapter 1001,  
27 including forensic analysis, burglar alarm system engineering, and

1 necessary data collection;

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

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

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

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

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

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

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

19 (B) repairs an electronic security device; or

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

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

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

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

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

6           (B) claim to act as a locksmith.

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

14           SECTION 17. Section 1702.361, Occupations Code, is amended  
15 to read as follows:

16           Sec. 1702.361. DENIAL AND DISCIPLINARY ACTIONS [~~POWERS OF~~  
17 ~~COMMISSION~~]; GROUNDS. (a) Subject to the board's final order under  
18 the hearing provisions of this subchapter [~~Except as provided by~~  
19 ~~Section 1702.3615~~], the department [~~commission~~], for conduct  
20 described by Subsection (b), may:

21           (1) deny an application or revoke, suspend, or refuse  
22 to renew a license, registration, or security officer commission;

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

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

27           (b) The department [~~commission~~] shall take disciplinary

1 action described by Subsection (a) on proof:

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

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

6 (B) become ineligible for licensure or  
7 registration under Section 1702.113, or a commission under Section  
8 1702.163, if applicable, other than an action for which the  
9 department has taken summary action under Section 1702.364 ~~[been~~  
10 ~~convicted of a Class B misdemeanor or equivalent offense if the~~  
11 ~~fifth anniversary of the date of the conviction has occurred]~~;

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

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

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

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

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

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

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

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

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

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

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

14 Sec. 1702.3615. DIRECT APPEAL IN LIMITED CASES [~~REVOCATION~~  
15 ~~OR REFUSAL FOR CERTAIN OFFENSES~~]. (a) [~~Except for an application~~  
16 ~~approved by the commission under Subsection (b), the commission~~  
17 ~~shall revoke or refuse to renew a registration, license, or~~  
18 ~~security officer commission if the applicant, license holder,~~  
19 ~~registrant, or commissioned security officer has been convicted of~~  
20 ~~a:~~

21 [~~(1) Class A misdemeanor or equivalent offense or a~~  
22 ~~greater offense, or~~

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

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

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

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

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

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

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

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

21 Sec. 1702.364. SUMMARY ACTIONS [~~SUSPENSION~~]. (a) On  
22 receiving written notice from a a [~~the Texas Department of Public~~  
23 ~~Safety or another~~] law enforcement agency that a person [~~an~~  
24 ~~individual~~] has been [~~arrested for or~~] charged with or convicted of  
25 an offense that would make the person ineligible for a license,  
26 certificate of registration, or security officer commission under  
27 Section 1702.113 or 1702.163 [~~a Class B misdemeanor or equivalent~~

1 ~~offense or a greater offense~~], the department shall [~~commission~~  
2 ~~may~~]:

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

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

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

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

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

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

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

24 (c) The action [~~suspension~~] is effective at the time notice  
25 is served. The [~~If notice is served in~~] person[, ~~the individual~~]  
26 shall immediately surrender to the department any certificate of  
27 [~~commission the~~] registration, security officer commission, pocket

1 card, or other form of identification issued by the department  
2 [~~commission. If the notice is served by mail, the individual shall~~  
3 ~~immediately return to the commission the registration, commission,~~  
4 ~~pocket card, or other identification issued by the commission].~~

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

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

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

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

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

17 [~~(f)~~] Chapter 2001, Government Code, does not apply to the  
18 department's initial action under this section or to a preliminary  
19 hearing [~~proceeding~~] before the department [~~commission~~] under this  
20 section [~~except for a final administrative hearing~~].

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

27 (g) The results of the preliminary hearing may be appealed



1 by requesting, in writing, a hearing before an administrative law  
2 judge of the State Office of Administrative Hearings. On receipt of  
3 the request, the department shall set a hearing and give written  
4 notice of the hearing to the person.

5 (h) The administrative law judge shall make findings of fact  
6 and conclusions of law regarding the person's eligibility for a  
7 license under this section and promptly issue to the board a  
8 proposal for a decision.

9 (i) At its earliest possible quarterly meeting, the board  
10 shall consider the proposal for decision and promptly issue a final  
11 order.

12 (j) An individual's eligibility under this section is not  
13 affected by any relationship or lack of relationship between the  
14 nature of the criminal charges or conviction and the regulated  
15 occupation.

16 SECTION 20. Section 1702.371, Occupations Code, is amended  
17 to read as follows:

18 Sec. 1702.371. CONVICTION OF CERTAIN CRIMES. For purposes  
19 of this chapter [~~In this subchapter~~], a person is considered to be  
20 convicted of an offense [~~that is a Class B misdemeanor or greater~~  
21 ~~offense, or an equivalent offense,~~] if a court enters a judgment  
22 against the person for committing an [~~a Class B misdemeanor or~~  
23 ~~greater offense, or an equivalent~~] offense[~~7~~] under the laws of  
24 this state, another state, or the United States, including a  
25 conviction:

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

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

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

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

8           Sec. 1702.381. CIVIL PENALTY. (a) A person who is not  
9 licensed under this chapter, who does not have a license  
10 application pending, and who violates this chapter may be assessed  
11 a civil penalty to be paid to the state not to exceed \$10,000  
12 [~~\$1,000~~] for each violation.

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

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

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

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

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

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

16           Sec. 1702.383. ACTION FOR CIVIL PENALTY OR INJUNCTION. If a  
17 person has violated a provision of this chapter for which a penalty  
18 is imposed under Section 1702.381, an attorney for the department,  
19 the attorney general's office, or any criminal prosecutor in this  
20 state [~~the commission~~] may institute a civil suit in a Travis County  
21 district court or in a district court in the county in which the  
22 violation occurred for injunctive relief under Section 1702.382 or  
23 for assessment and recovery of the civil penalty.

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

26           Sec. 1702.401. IMPOSITION OF PENALTY. In addition to any  
27 other disciplinary action taken by the department, and subject to

1 the board's final order in a hearing under this subchapter  
2 ~~[commission]~~, the department ~~[commission]~~ may impose an  
3 administrative penalty on a person licensed, commissioned, or  
4 registered under this chapter who violates this chapter or a rule or  
5 order adopted under this chapter.

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

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

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

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

17 ~~[(1) the facts on which the determination is based,~~  
18 ~~and~~

19 ~~[(2) the director's recommendation on the imposition~~  
20 ~~of the penalty, including a recommendation on the amount of the~~  
21 ~~penalty.~~

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

25 (b) ~~[(c)]~~ The notice must:

26 (1) include a brief summary of the alleged violation;

27 (2) state the amount of the recommended penalty; and

1 (3) inform the person of the person's right to a  
2 hearing on the occurrence of the violation, the amount of the  
3 penalty, or both.

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

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

9 (1) accept the determination and recommended penalty  
10 ~~[of the director]~~; or

11 (2) make a request for a hearing on the occurrence of  
12 the violation, the amount of the penalty, or both.

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

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

20 (1) accepts the penalty but fails to pay; or

21 (2) fails to respond to the notice.

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

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

1 State Office of Administrative Hearings shall hold the hearing.

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

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

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

11 (1) find that a violation occurred and impose a  
12 penalty; or

13 (2) find that a violation did not occur.

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

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

21 SECTION 30. Sections 1702.2225, 1702.407, 1702.408,  
22 1702.409, 1702.410, 1702.411, and 1702.412, Occupations Code, are  
23 repealed.

24 SECTION 31. The Texas Private Security Board shall adopt  
25 the rules and procedures necessary to implement the changes in law  
26 made by this Act to Chapter 1702, Occupations Code, not later than  
27 December 1, 2007.

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

5           (b) To the extent of any conflict, this Act prevails over  
6 another Act of the 80th Legislature, Regular Session, 2007,  
7 relating to nonsubstantive additions to and corrections in enacted  
8 codes.

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

H.B. No. 2833

1 COMMITTEE AMENDMENT NO. 1

2 Amend H.B. No. 2833 on page 22, line 19, by striking  
3 "Government" and substituting "Occupations".

4 80R15447 YDB-F

Driver