

SUBJECT: Allowing reserve officers to provide security guard services

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 6 ayes — B. Turner, Berman, Gutierrez, Hupp, P. King, Najera

2 nays — Keel, Driver

1 absent — Carter

WITNESSES: For — Charlie Campos, South Texas Justice of the Peace and Constable Association and Bexar County Constables Association; Gary Freeman, Justice of the Peace, Constables of Texas; Agapito Garcia; Gary Lohrke, Minyard Food Stores; Thomas Thrash, Harris County Precinct 6 Deputies Association; Otto Vehle, Bexar County Sheriff's Office, Support Division; Carol Weber, Southern Methodist University

Against — Caryl Bunton, Bob Burt, Bailey Elkin, and Mark Smith, ASSIST; Ron Delord, Combined Law Enforcement Association of Texas; Jim Lyde, Texas Municipal Police Association; David Manning, Fort Worth Police Officers Association; Scott Noris, Texas Reserve Law Officers Association; Howard Williams, Texas Police Chiefs Association

On — Wayne Green, Texas Commission on Law Enforcement Officer Standards and Education; Jay Kimbrough, Texas Board of Private Investigators and Private Security Agencies

BACKGROUND: The Private Investigators and Private Security Agencies Act (art. 4413(29bb), VTCS) regulates employees of the private security industry. The law provides that only certain officers exempt from the act can perform guard services in uniform while off duty — for example, at grocery stores or football games.

A full-time peace officer who receives compensation for private employment on an individual or independent contractor basis as a patrolman, guard, or watchman and who is not a reserve officer is exempt from the act if that officer is:

- employed in an employee-employer relationship or employed on an individual contractual basis;
- not in the employ of another peace officer; and
- working as a peace officer an average of at least 32 hours a week, compensated by the state or by a political subdivision of the state at the rate of the minimum wage or higher, and entitled to all employee benefits offered to a peace officer by the state or a political subdivision.

Currently, reserve officers are exempt from the act only while performing guard, patrolman, or watchman duties for a county and being compensated solely by that county.

**DIGEST:** CSHB 394 would amend exceptions to the Private Investigator and Private Security Agencies Act.

The bill would eliminate the provision that a peace officer is exempt only if the officer has full-time employment as a peace officer, is compensated by the state or by a political subdivision, and is entitled to benefits.

It would expand the exceptions for a reserve peace officer and would extend those exceptions to volunteer peace officers. A reserve officer or volunteer peace officer would be exempt from the act if the officer:

- was appointed, employed full-time, or commissioned as a peace officer by a governmental entity that maintained monthly records of the number of hours in which an officer volunteered or performed paid security work;
- was under the supervision and authority at all times of the governmental entity that appointed, employed full-time, or commissioned the peace officer;
- performed more volunteer hours in a month than hours in paid security work; and
- presented to the governmental entity proof that the peace officer had purchased a liability bond of at least \$250,000 payable if the peace officer incurred civil or criminal liability while performing paid security work.

These exemptions would apply only to full-time officers licensed by TCLEOSE and not subject to any other licensing authority. An exempt officer would have to submit an exemption notice annually to TCLEOSE, accompanied by a \$35 notification fee, of which \$25 would be deposited in

general revenue and \$10 would go to the law enforcement officer standards and education fund account.

This bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house.

**SUPPORTERS  
SAY:**

Private businesses should be able to pay off-duty reserve or volunteer officers to perform guard services. Currently, only full-time peace officers who work an average of at least 32 hours a week and who are eligible for benefits can perform these jobs off duty. Reserve and volunteer officers must maintain the same license and training as full-time peace officers, so they should be able to work the same off-duty jobs. Also, businesses might prefer to hire a reserve or volunteer officer because of the higher salaries paid to full-time officers.

Some private businesses prefer not to contract with security guard services and would rather hire reserve officers. Commissioned security officers receive less training than peace officers or reserve officers — 30 hours for a security guard, as compared with 560 hours for a reserve officer or peace officer. Guard services also might not perform thorough background checks on their applicants.

Reserve officers and volunteer officers are well-trained, qualified law enforcement officials. Current law prevents them from taking jobs as guards that would supplement their income without being licensed. These officers should be able to use their training and help protect public safety even when they are not called to duty with a local law enforcement agency.

Allowing businesses to hire reserve officers would deter crime and make the public feel more comfortable. Reserve officers wear the same uniforms, badges, and firearms as do their full-time peace officer counterparts. Security guards wear uniforms that are distinguishably different, and the public can tell the difference easily. It is important for the public to perceive that the person protecting them is an authority figure, and not a poorly trained, unqualified guard.

Currently, reserve officers who work off-duty jobs are subject to prosecution and the loss of their licenses. This presents complications for some officers who are full-time for part of the year and reserve officers for the remaining months. For example, officers who work in public schools may be employed

only for the school year. During summer vacation, when their status reverts to that of a reserve officer, they are prohibited from obtaining supplementary law enforcement work.

Texas has only about 6,500 reserve officers. This relatively small number of officers would not pose significant competition for full-time officers who also want these off-duty security jobs.

Small communities might have only a few full-time officers and no security guard services. In these areas, it would be very beneficial for local businesses to be able to hire reserve officers as guards.

OPPONENTS  
SAY:

The essence of being a reserve officer is doing police work on a volunteer basis, and most reserve officers have full-time jobs in other fields. Reserve officers enter training and obtain their commissions knowing that they cannot do off-duty work. They should not expect to be able to change the rules just to make extra money. Any reserve officer who wants to do police work for compensation should become a full-time peace officer.

The bill would set no requirement for the number of hours a reserve officer would have to work in a month. Therefore, a reserve officer who worked only a few hours a month in a law enforcement agency could work unlimited hours as a guard-for-hire. This, in effect, would allow a reserve or volunteer officer to run a private guard business without obtaining a guard company license or being regulated as a security guard. It also would provide an unfair competitive edge for reserve and volunteer officers over full-time peace officers or commissioned security guards.

Reserve officers already can work guard jobs if they obtain a guard license from the Texas Board of Private Investigators and Private Security Agencies. They should not be able to circumvent this licensing and regulation.

This bill would present liability issues for law enforcement agencies. If a reserve or volunteer officer injured someone or made an illegal arrest, the law enforcement agency that commissioned that officer could be held liable, regardless of the bond that the officer had to hold.

NOTES:

The committee substitute added the provisions that would expand the exceptions for reserve peace officers and extend them to volunteer peace

officers and that would require an exempt officer to submit an annual exemption notice to TCLEOSE.

A related bill, HB 949 by C. Jones, et al., also is on today's calendar.