

- SUBJECT:** Exempting “mystery shoppers” from private security regulations
- COMMITTEE:** Law Enforcement — favorable, without amendment
- VOTE:** 7 ayes — Driver, Garza, Hupp, Burnam, Y. Davis, Hegar, Keel  
0 nays
- SENATE VOTE:** On final passage, April 25 — 29-0
- WITNESSES:** For — Mary Furrie; Mike Green, Speedmark and Mystery Shopping Providers Association; Eugene W. “Reb” Henry and Greg Hooser, Mystery Shopping Providers Association  
  
Against — Bob Burt, Associated Security Services and Investigators of the State of Texas; John Chisum and Paul D. Hulsey, Texas Association of Licenced Investigators; Michael Coffey; David Russell
- BACKGROUND:** The Private Security Act (Occupations Code, ch. 1702) authorizes the Texas Commission on Private Security (TCPS) to license and regulate investigations companies and security services contractors. Sec. 1702.104 subjects a person to regulation under the Private Security Act if the person engages in the business of obtaining or furnishing or accepts employment to obtain or furnish information about:
- crime or wrongs done or threatened against a state or the United States;
  - the identity, habits, business occupation, knowledge, efficiency, loyalty, movement, location, affiliations, associations, transactions, acts, reputation, or character of a person;
  - the location, disposition, or recovery of lost or stolen property; or
  - the cause of or responsibility for a fire, libel, loss, accident, damage, or injury to a person or to property.
- Several national companies hire “mystery shoppers” who visit specific stores and businesses anonymously to observe and report on the quality of customer service. Typically, mystery shoppers audit fast-food and family dining restaurants, entertainment venues, and clothing, furniture and department

stores. Most of these shoppers are paid as independent contractors at an hourly rate that generally ranges from \$7 to \$20 or more per hour.

A policy paper posted on the Internet by the TCPS holds that a company may not exclude itself from the investigations company regulations by calling itself a “mystery shopper,” “shopping service,” or “efficiency consultant.” According to TCPS, a company would have to be licensed under Occupations Code, sec. 1702.104 if its employees:

- check on sales clerks’ courtesy;
- engage the manager in conversation to determine his or her loyalty to the company and employees or general attitude;
- check employees’ handling of meat for health code violations; or
- monitor employees’ conversations in aisles in the back of the store.

According to the policy paper, the following activities could be contracted by a company not required to be licensed as an investigations company:

- check on merchandise racks for order and neatness;
- engage manager in conversation to determine if the store temperature is comfortable;
- check the temperature at which meat is being stored; and
- monitor condition of aisles in the back of store for cleanliness.

**DIGEST:**

SB 943 would amend the Occupations Code to exclude a business evaluation service from the licensing requirements of an investigations company under sec. 1702.104. The licensing requirement would not apply to a person who posed or acted anonymously as a customer or client of a business or governmental entity or to a business that collected or evaluated information such as:

- a service or product provided to a customer or client;
- compliance with policies and operational procedures;
- the appearance, cleanliness, efficiency, and other operations of an office, facility, or physical plant;
- the friendliness, courtesy, or appearance of an employee;
- the necessity or effectiveness of a training program or employee reward or other incentive program;

- the quality, availability, or price of goods or services; and
- other operations or customer services of the business or governmental entity not otherwise prohibited.

The exclusion from licensing requirements would not apply if the person engaged in an investigation or observation of an employee or agent to determine whether that employee or agent had committed a crime, or if the information provided by the business evaluation service was intended to be used as the sole basis for discipline or discharge of an employee or agent.

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, 2003.

**SUPPORTERS  
SAY:**

SB 943 would eliminate unnecessary regulation of “mystery shoppers” and other consumer research organizations. More than 150,000 Texans such as soccer moms, students, and retirees work part-time as mystery shoppers to check on the quality of customer service in restaurants and retail outlets. It requires no training as a private investigator to determine whether a customer receives a requested “super-size” soft drink or to evaluate the cleanliness of a restroom. Businesses by their nature are open to the public, and mystery shoppers are not trying to collect any trade secrets or propriety information.

Free enterprise and the market should determine how much a company pays someone to evaluate customer service. Requiring a person to hold a private security license to conduct these customer service evaluations would present a barrier to entry and would benefit only a group regulated by the TCPS. SB 943 would prohibit business evaluation services from investigating crimes or from providing the sole evidence in cases that involved employee discipline or discharge. If a company wanted to investigate theft, pilferage, or other dishonesty by employees, it still would have to hire a TCPS-licensed investigations company.

“Mystery shoppers” pose no threat to public health, safety, or welfare, and they should not have to be fingerprinted and undergo a criminal background check, as do applicants for private security licenses. TCPS only recently began to address the backlog of private security licenses filed in the wake of the September 11, 2001, terrorist attacks, and the agency should not assume

the administrative burden of processing 150,000 additional applications for mystery shoppers. These evaluators hold no particular position of special trust and should not have to undergo additional scrutiny. Limited law enforcement resources should be used to track down and prosecute criminals, not to fingerprint mystery shoppers.

SB 943 would prevent an overly expansive reading of the definition of an “investigations company.” The bill would ensure that activities that the Legislature never intended to be regulated would not be swept up in this statute. Such public policy decisions should be made by the Legislature, not by agencies.

**OPPONENTS  
SAY:**

SB 943 would blur the line between investigations that require only simple observations and those that require a trained and licensed investigations company. Seemingly simple actions can indicate criminal activity, such as whether a convenience store clerk provides a customer with a receipt for a small purchase. Failure to ring up small sales could be an indication of theft from the register. Many mystery shoppers record such actions, so it would be easy to cross over the line to conducting criminal investigations that SB 943 would not allow. Private security companies often develop complex scenarios to help identify employee theft and dishonesty. These kinds of investigations require more training and experience than determining the cleanliness of a restroom.

The bill would undermine the longstanding efforts of private security and investigations companies to professionalize the industry and to protect the public health, safety and welfare. The days when private security industry may have operated as in a detective novel or movie are long past, but the public has not adjusted its perception. The efforts of highly trained and licensed professionals should not be compromised by lowly paid and untrained people who do not have to undergo careful screening and criminal background checks.

**OTHER  
OPPONENTS  
SAY:**

The Legislature should not encourage surveillance and spying on employees, whether by mystery shoppers, licensed investigations companies, or electronic means. Consumers exercise their own choices in the market to reward good customer service. A savvy consumer will let his or her voice be heard if a

waiter is rude, a restroom is filthy, or ground beef contains shards of bone. To improve customer service, companies should raise the salaries of clerks and service personnel rather than invest in anonymous evaluations.