

**SUBJECT:** Removing P.I. licensing requirements for computer data specialists

**COMMITTEE:** Technology, Economic Development, and Workforce — committee substitute recommended

**VOTE:** 8 ayes — Strama, Parker, F. Brown, Button, Eissler, Gattis, Harless, Rodriguez

0 nays

1 absent — Ritter

**WITNESSES:** For — Troy Lawrence; Kall Loper, Loper Forensic Services; Debra Martinez, Global Data Finder LLC; John Wiechman, TLSI, Inc.; (*Registered, but did not testify:* Scott Broderhausen, San Antonio Computer Doctor; Arnold Martinez, Global Data Finder; Ronnie Volkening, Texas Retailers Association)

Against — None

**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.

**DIGEST:** CSHB 2564 would prohibit a computer data recovery specialist, computer forensic analyst, or computer technician from, in the course and scope of employment or for a fee, analyzing or recovering data contained in a computer unless the data analysis was authorized by a court or a law enforcement agency or the specialist, analyst, or technician, or their employer, had obtained a dated work order that would include a signed statement from the person requesting the service. The work order would have to state that the facts contained in the work order form were true and correct and that the person owned or had the right of possession to the computer or represented the owner as an authorized agent or attorney. This requirement would not apply to a computer owned by the employer of the

computer data recovery specialist, computer forensics analyst, or computer technician.

The bill would provide the following occupation definitions:

- computer data recovery specialist as one who offered the service of recovering data, for non-evidentiary purposes, from a digital form of media storage that was not accessible by the person requesting the service;
- computer forensic analyst as one who acquired, reviewed, took images of, or analyzed digital or computer-based information for the purpose of obtaining or furnishing the information for evidentiary purposes in an actual or potential civil or criminal proceeding; and,
- computer technician as one who repaired or serviced computers, including the repair of software.

A computer data recovery specialist, computer forensic analyst, computer technician, or their employer who obtained a statement of ownership would have to maintain the statement for at least a year and make the statement available for inspection upon request from a law enforcement agency under a court-ordered subpoena or search warrant. A person not following these provisions would commit a class C misdemeanor (maximum fine of \$500).

Someone providing a materially false statement in a required signed work order statement would commit a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000).

The bill would amend Occupations Code, sec. 1702.104 by excepting activities normally requiring an investigations company license in obtaining or furnishing information through the review and analysis of, and investigation into the content of, computer-based data not available to the public.

The bill would provide that obtaining or furnishing information would not include obtaining or furnishing computer-based data by a person acting as a computer data recovery specialist or computer forensic analyst, which would not constitute an investigation and would not require an investigations license.

The repair or maintenance of a computer would not constitute an investigation and would not require licensing if the person performing the repair or maintenance was installing or repairing computer equipment or diagnosing a computer or software problem and is not furnishing information or securing evidence that would require a license.

A computer data recovery specialist or computer forensic analyst who engaged in the business of securing, or accepted employment to secure, evidence for use before a court, board, officer, or investigating committee would not be conducting an investigation and would not require a license.

The bill would take effect September 1, 2009.

**SUPPORTERS  
SAY:**

CSHB 2564 would clarify the answers to questions about the need to treat electronic data recovery, computer forensic analysis, and computer maintenance as private investigation work. Currently, the Private Security Act requires forensic computer analysts, data recovery specialists, and information technology technicians to obtain a private investigator's license in order to work with the electronic data being imaged, recovered, or analyzed from computers. This is an unnecessary requirement, as access to electronic data in a computer is granted by the computer's owner or by an authorized agent of the owner, and is therefore different than a private investigation. As such, there is no need for these computer specialists to be required to hold an unnecessary license.

Those that say that these computer experts should have their own licensing ignore the fact that, when providing expert testimony during a court or administrative proceeding, computer forensic analysts and data recovery specialists are subject to the same disciplinary rules and oversight as attorneys, in addition to having their expertise vetted by legal counsel. Additionally, the Texas Department of Licensing and Regulation, the state agency likely to administer such a license, is not set up to administer one, nor does it have a testing procedure to assess capability.

**OPPONENTS  
SAY:**

If forensic computer analysts, data recovery specialists, and information technology technicians are removed from required licensing as a private investigator as CSHB 2564 proposes, the state should require them to have their own specific license to regulate them appropriately.