

SUBJECT: Use by a peace officer of status to promote certain private businesses

COMMITTEE: Homeland Security and Public Safety — committee substitute recommended

VOTE: 8 ayes — Pickett, Fletcher, Cortez, Dale, Flynn, Lavender, Sheets, Simmons
0 nays
1 absent — Kleinschmidt

WITNESSES: For — Cathy Sisk, Harris County

Against — (*Registered, but did not testify:* Lon Craft, Texas Municipal Police Association)

On — John Helenberg, Texas Commission on Law Enforcement TCLEOSE

DIGEST: CSHB 710 would prevent an officer from using rank or status, including the title “officer” or “peace officer,” to advertise or otherwise promote a private business in which the officer was a manager, contractor, or employee unless the business was related directly to the profession of law enforcement, including private security, firearms instruction, or another related business as determined by the Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE).

An officer who violated this restriction would be subject to disciplinary action by the commission.

CSHB 710 would take effect on September 1, 2013.

SUPPORTERS SAY: CSHB 710 would help prevent officers from trading on the public trust and esteem placed in law enforcement for private commercial gain. Use of rank or officer status is misleading in the context of business promotion because it could give people the impression of official approval by public entities of private businesses.

The bill is narrowly tailored in that it would affect only those officers who cited their rank or status to promote private businesses unrelated to their law enforcement experience. Officers promoting businesses directly related to the profession of law enforcement, including private security and firearms instruction, still would be allowed to cite their rank or officer status. The bill would be expected to only affect a small number of officers in Texas because it would target only officers who were abusing their status for business purposes.

The bill would be constitutional because the Supreme Court of the United States ruled in *Garcetti v. Ceballos*, 547 U.S. 410 (2006), that governments are allowed to curtail the speech rights of public employees. While the rights of public employees to speak as private citizens on matters of public concern are protected, the commercial speech rights of employees speaking in what might be construed as their official capacity may be regulated. Officers citing rank or officer status while promoting a private commercial enterprise easily falls within the range of acceptable curtailment.

**OPPONENTS
SAY:**

HB 710 would curtail the freedom of expression of officers. Many officers in Texas have side businesses or work a second job to make ends meet. The bill could affect the number of jobs available to them.