

## **BILL ANALYSIS**

Senate Research Center  
81R3326 BEF/SLB/JSC-F

S.B. 1017  
By: Hinojosa  
Government Organization  
3/27/2009  
As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Department of Public Safety (DPS) and the Private Security Board (board) are subject to the Sunset Act and will be abolished on September 1, 2009, unless continued by the legislature. The Sunset review found that Texas continues to need DPS and the board.

As proposed, S.B. 1017 requires DPS to manage the Vehicle Inspection Program as a civilian business and licensing operation with established goals and expected performance outcomes; clarifies roles in emergency management; discourages the misuse of witnesses in administrative license revocation hearings; restructures DPS's internal affairs function; authorizes DPS to put the classroom portion of the concealed handgun licensing renewal class and written test online; requires the Sunset Advisory Commission to conduct a limited scope review of DPS in 2011; standardizes licensing and enforcement provisions in the board; removes the board's separate sunset date; and continues DPS for 12 years.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the governor's division of emergency management is transferred to the Texas Division of Emergency Management in SECTION 2B.05 (Section 418.073, Government Code) of this bill.

Rulemaking authority previously granted to the Texas Commission on Private Security (TCPS) is transferred to the Texas Private Security Board (board) in SECTION 4.02 (Section 1702.004, Occupations Code), SECTION 4.10 (Section 1702.030, Occupations Code), SECTION 4.18 (Section 1702.061, Occupations Code), SECTION 4.24 (Section 1702.0645, Occupations Code), SECTION 4.33 (Section 1702.103, Occupations Code), SECTION 4.40 (Section 1702.116, Occupations Code), SECTION 4.57 (Section 1702.1675, Occupations Code), SECTION 4.58 (Section 1702.168, Occupations Code), SECTION 4.60 (Section 1702.171, Occupations Code), SECTION 4.65 (Section 1702.204, Occupations Code), SECTION 4.78 (Section 1702.239, Occupations Code), SECTION 4.90 (Section 1702.304, Occupations Code), and SECTION 4.93 (Section 1702.309, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the board in SECTION 4.68 (Section 1702.221, Occupations Code), SECTION 4.80 (Section 1702.241, Occupations Code), and SECTION 4.108 (Section 1702.402, Occupations Code) of this bill.

Rulemaking authority previously granted to TCPS is transferred to the Public Safety Commission in SECTION 4.20 (Section 1702.062, Occupations Code) of this bill.

Rulemaking authority previously granted to TCPS is rescinded in SECTION 4.30 (Section 1702.082, Occupations Code) of this bill.

Rulemaking authority previously granted to the public safety director is rescinded in SECTION 5.06 (Section 411.1095, Government Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1.01. Amends Subchapter A, Chapter 548, Transportation Code, by adding Section 548.008, as follows:

Sec. 548.008. VEHICLE INSPECTION PROGRAM DIRECTOR. (a) Provides that a vehicle inspection program (program) is managed by a program director who is prohibited from being a commissioned officer.

(b) Requires that the office of the program director be located in Austin, Texas.

(c) Sets forth the duties of the program director.

(d) Requires the regional offices to make reports as requested by the program director.

## ARTICLE 2. DIVISION OF EMERGENCY MANAGEMENT

### PART A. ORGANIZATION OF DIVISION

SECTION 2A.01. Amends Section 418.004, Government Code, by amending Subdivision (2) and adding Subdivision (9), to redefine "division" and define "department."

SECTION 2A.02. Amends Sections 418.041(a)-(c), as follows:

(a) Provides that the Texas Division of Emergency Management (division) is a division of the Department of Public Safety of the State of Texas (DPS). Deletes existing text providing that the division of emergency management is a division of the office of the governor.

(b) Provides that the division is managed by a chief appointed by the public safety director of DPS (director), with the approval of the governor, and that the chief serves at the pleasure of the public safety director. Deletes existing text providing that the division is managed by a director appointed by the governor and that the director serves at the pleasure of the governor.

(c) Requires representatives of certain agencies, at least once every two months, to meet to coordinate efforts, prevent overlap of activities, and ensure that the state's approach to emergency management and homeland security is unified. Deletes existing text requiring the director to appoint a state coordinator.

SECTION 2A.03. Amends Section 418.072, Government Code, as follows:

Sec. 418.072. DISASTER EMERGENCY FUNDING BOARD. Sets forth the composition of the disaster emergency funding board (board), to include the executive commissioner of the Health and Human Services Commission (HHSC) and the chief of the division, rather than the commissioner of the Department of Human Services (TDHS) and the director of the division.

SECTION 2A.04. Amends Section 418.074(b), Government Code, to authorize the chief of the division, rather than the state coordinator, if designated by the governor, to dispense a gift, grant, or loan for certain purposes.

### PART B. CONFORMING AMENDMENTS REFLECTING DIVISION'S NAME CHANGE

SECTION 2B.01. Amends Section 12.0012, Agriculture Code, to make conforming changes.

SECTION 2B.02. Amends Sections 88.303(a) and (d), Education Code, to make conforming changes.

SECTION 2B.03. Amends Section 418.014(e), Government Code, to make a conforming change.

SECTION 2B.04. Amends the heading of Subchapter C, Chapter 418, Government Code, to read as follows:

## SUBCHAPTER C. TEXAS DIVISION OF EMERGENCY MANAGEMENT

SECTION 2B.05. Amends Section 418.073(d), Government Code, to make a conforming change.

SECTION 2B.06. Amends Section 421.021(a), Government Code, to make a conforming change.

SECTION 2B.07. Amends Section 661.907(b), Government Code, to make a conforming change.

SECTION 2B.08. Amends Section 661.919(b), Government Code, to make a conforming change.

SECTION 2B.09. Amends Section 501.001(5), Government Code, to make a conforming change.

SECTION 2B.10. Amends Sections 16.055(a) and (b), Water Code, as follows:

(a) Makes conforming changes.

(b) Sets forth the composition of the drought preparedness council to include the Texas AgriLife, rather than Agricultural, Extension Service. Makes a conforming change.

SECTION 2B.11. Amends Section 1(3), Chapter 350 (S.B. 1101), Acts of the 71st Legislature, Regular Session, 1989 (Article 6419c, Vernon's Texas Civil Statutes), to make a conforming change.

SECTION 2B.12. Provides that a reference in law or a rule to the "governor's division of emergency management" or the "division of emergency management in the office of the governor" means the Texas Division of Emergency Management in DPS.

### ARTICLE 3. ADMINISTRATIVE SUSPENSION OF DRIVER'S LICENSE FOR INTOXICATION OFFENSES

SECTION 3.01. Amends Section 524.038, Transportation Code, by amending Subsection (d) and adding Subsection (e), as follows:

(d) Provides that an affidavit from an expert witness whose presence is timely requested, rather than a person whose presence is timely requested under this section, is inadmissible if the expert witness fails to appear at a hearing without a showing of good cause. Authorizes that an affidavit under this section, otherwise, to be submitted in lieu of an appearance at the hearing by the expert witness, rather than by the breath test operator (operator), breath test technical supervisor (supervisor), or expert witness. Makes a conforming change.

(e) Provides that an affidavit from a operator or supervisor is admissible unless the judge determines that justice requires the operator or supervisor to be present.

SECTION 3.02. Amends Section 524.039, Transportation Code, as follows:

Sec. 524.039. APPEARANCE OF TECHNICIANS AT HEARING. (a) Authorizes the person who requested a hearing, not later than the fifth day before the date of a scheduled hearing, to apply to the State Office of Administrative Hearings (SOAH) to issue a subpoena for the attendance of the operator who took the specimen of the person's breath to determine alcohol concentration or the certified supervisor responsible for maintaining and directing the operation of the breath test instrument used to analyze the specimen of the person's breath, or both. Requires SOAH to issue the subpoena only on a showing of good cause. Deletes existing text requiring each requested person, notwithstanding Section 524.038, if not later than the fifth day before the date of a scheduled hearing DPS receives from the person who requested the hearing written notice, including a facsimile

transmission, requesting the presence at the hearing of the operator or the supervisor, to appear at the hearing.

(b) Authorizes DPS to reschedule a hearing once not less than 48 hours before the hearing if a person subpoenaed, rather than the person requested to attend, under Subsection (a) is unavailable. Makes conforming changes.

#### ARTICLE 4. CHANGES TO PRIVATE SECURITY ACT

SECTION 4.01. Amends Section 1702.002, Occupations Code, by amending Subdivisions (2), (3), (5), (11), (12), (13), (17), (19)-(21) and adding Subdivision (6-b), as follows:

(2) Redefines "branch office" to include a place other than the principal place of business as shown in Texas Private Security Board (board) records, rather than Texas Commission on Private Security (TCPS) records.

(3) Makes a conforming change.

(5) Makes a conforming change.

(6-b) Defines "endorsement."

(11) Makes a conforming change.

(12) Makes a conforming change.

(13) Makes a conforming change.

(17) Defines "personal protection officer endorsement," rather than "personal protection officer authorization." Makes a conforming change.

(19)-(21) Makes conforming changes.

SECTION 4.02. Amends Section 1702.004, Occupations Code, as follows:

Sec. 1702.004. GENERAL SCOPE OF REGULATION. (a) Sets forth certain duties of the board to include endorsing certain individuals and regulating endorsement holders. Makes a conforming and a nonsubstantive change.

(b) Requires the board to adopt rules necessary to comply with Chapter 53 (Consequences of Criminal Conviction) and in its rules under this section, to list the specific offenses for each category of regulated persons for which a conviction would constitute grounds for the board to take action under Section 53.021 (Authority to Revoke, Suspend, or Deny License). Deletes existing text providing that Chapter 53 does not apply to this chapter or to any licensing, regulatory, or disciplinary determinations made under this chapter.

SECTION 4.03. Amends the heading to Subchapter B, Chapter 1702, Occupations Code, to read as follows:

#### SUBCHAPTER B. TEXAS PRIVATE SECURITY BOARD

SECTION 4.04. Amends Section 1702.021, Occupations Code, to make conforming changes.

SECTION 4.05. Amends Section 1702.023, Occupations Code, to make conforming changes.

SECTION 4.06. Amends Sections 1702.024(b) and (c), Occupations Code, to make conforming changes.

SECTION 4.07. Amends Section 1702.027, Occupations Code, to make conforming changes.

SECTION 4.08. Amends Section 1702.028, Occupations Code, as follows:

Sec. 1702.028. PER DIEM; REIMBURSEMENT. (a) Makes conforming changes.

(b) Entitles a board member to reimbursement for travel, rather than transportation, expenses incurred while conducting board business, including expenses for transportation, meals, and lodging, as prescribed by the General Appropriations Act. Deletes existing text prohibiting a member from receiving compensation for travel expenses, including expenses for meals and lodging, other than transportation expenses.

SECTION 4.09. Amends Section 1702.029, Occupations Code, to make conforming changes.

SECTION 4.10. Amends Section 1702.030, Occupations Code, to make conforming changes.

SECTION 4.11. Amends Section 1702.041, Occupations Code, to make conforming changes.

SECTION 4.12. Amends Section 1702.042, Occupations Code, to make a conforming change.

SECTION 4.13. Amends Section 1702.043, Occupations Code, to make conforming changes.

SECTION 4.14. Amends Section 1702.044, Occupations Code, to make a conforming change.

SECTION 4.15. Amends Section 1702.045(b), Occupations Code, to make a conforming change.

SECTION 4.16. Amends Section 1702.046(a), Occupations Code, to make conforming changes.

SECTION 4.17. Amends the heading to Subchapter D, Chapter 1702, Occupations Code, to make a conforming change.

SECTION 4.18. Amends Section 1702.061, Occupations Code, as follows:

Sec. 1702.061. New heading: GENERAL POWERS AND DUTIES OF BOARD. (a)-(c) Makes conforming changes.

(d) Provides that the board has certain powers and duties, including to determine the qualifications of license holders, registrants, endorsement holders, and commissioned security officers.

(e)-(f) Makes conforming changes.

SECTION 4.19. Amends Subchapter D, Chapter 1702, Occupations Code, by adding Section 1702.0612, as follows:

Sec. 1702.0612. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the board to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 (Negotiated Rulemaking), Government Code, for the adoption of board rules and appropriate alternative dispute resolution procedures under Chapter 2009 (Alternative Dispute Resolution for Use by Governmental Bodies), Government Code, to assist in the resolution of internal and external disputes under the board's jurisdiction.

(b) Requires that the board's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by SOAH for the use of alternative dispute resolution by state agencies.

(c) Requires the board to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a), serve as a resource for any training needed to implement the procedures for negotiated rulemaking or

alternative dispute resolution, and collect data concerning the effectiveness of those procedures, as implemented by the board.

SECTION 4.20. Amends Section 1702.062, Occupations Code, as follows:

Sec. 1702.062. FEES. (a) Requires the board to recommend to the Public Safety Commission, rather than TCPS by rule to establish, reasonable and necessary fees that produce sufficient revenue to administer this chapter. Requires the Public Safety Commission to establish the fee amounts by rule. Prohibits the fees from producing unnecessary fund balances. Deletes existing text prohibiting certain fees from exceeding certain amounts.

(b) Authorizes the board, rather than TCPS, in addition to other fees established under this chapter, to charge a fee each time the board requires a person regulated under this chapter to resubmit a set of fingerprints for processing by the board during the application process for a license, registration, endorsement, or commission. Requires the Public Safety Commission, after receiving a recommendation from the board, to set the fee in an amount that is reasonable and necessary to cover the administrative expenses related to processing the fingerprints. Makes conforming changes.

(c) Makes a conforming change.

SECTION 4.21. Amends the heading to Section 1702.063, Occupations Code, to make a conforming change.

SECTION 4.22. Amends Section 1702.0635, Occupations Code, to make a conforming change.

SECTION 4.23. Amends Section 1702.064, Occupations Code, to make conforming changes.

SECTION 4.24. Amends Section 1702.0645, Occupations Code, to make conforming changes.

SECTION 4.25. Amends Section 1702.066, Occupations Code, to make conforming changes.

SECTION 4.26. Amends Section 1702.067, Occupations Code, to make conforming changes.

SECTION 4.27. Amends Section 1702.068, Occupations Code, to make a conforming change.

SECTION 4.28. Amends Section 1702.069, Occupations Code, to make conforming changes.

SECTION 4.29. Amends Section 1702.081, Occupations Code, to make conforming changes.

SECTION 4.30. Amends Section 1702.082, Occupations Code, as follows:

Sec. 1702.082. COMPLAINTS. (a) Requires the board to maintain a system to promptly and efficiently act on complaints filed with the board, information about parties to the complaint, the subject matters of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition.

(b) Redesignates Subsection (c) as Subsection (b). Requires the board to make information available describing its procedures for complaint investigation and resolution.

(c) Creates this subsection from text of existing Subsection (e). Requires the board to periodically notify the complaint parties of the status of the complaint until final disposition.

Deletes existing text requiring TCPS by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of TCPS for the purpose of directing complaints to TCPS. Deletes existing text authorizing TCPS to provide for that notice in certain ways. Deletes existing text requiring TCPS to

maintain a file on each written complaint filed with TCPS and requiring that the file include the name of the person who filed the complaint, the date the complaint is received by TCPS, the name of each person contacted in relation to the complaint, and an explanation of the reason the file was closed, if the agency closed the file without taking action other than to investigate the complaint. Deletes existing text requiring TCPS to provide to the person filing the complaint a copy of TCPS's policies and procedures relating to complaint investigation and resolution. Deletes existing text requiring TCPS, unless it would jeopardize an undercover investigation, to provide to each person who is a subject of the complaint a copy of TCPS's policies and procedures relating to complaint investigation and resolution. Deletes existing text requiring TCPS, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. Makes nonsubstantive changes.

SECTION 4.31. Amends Section 1702.083, Occupations Code, to make conforming changes.

SECTION 4.32. Amends Section 1702.084, Occupations Code, to make conforming changes.

SECTION 4.33. Amends Section 1702.103, Occupations Code, as follows:

Sec. 1702.103. CLASSIFICATION AND LIMITATION OF LICENSES. (a) Provides that the license classifications include Class F: level III training school license; Class O: alarm level I training school license; Class P: private business letter of authority license; Class X: government letter of authority license; and Class T: telematics license. Deletes existing text providing the license classification of Class D: electronic access control device license, covering operations of an electronic access control device company. Makes nonsubstantive changes.

(b) Provides that a license described by this chapter, rather than a Class A, B, C, or D license, does not authorize the license holder to perform a service for which the license holder has not qualified. Makes a conforming change.

(c)-(d) Makes conforming changes.

(e) Authorizes the board by rule to establish other license classifications for activities expressly regulated by this chapter and to establish qualifications and practice requirements consistent with this chapter for those license classifications.

SECTION 4.34. Amends Section 1702.110, Occupations Code, to require that an application for a license under this chapter be in the form prescribed by the board and include certain information, including a report from the Department of Public Safety of the State of Texas (DPS), rather than the Texas Department of Public Safety, stating the applicant's record of any convictions for a Class B misdemeanor or equivalent offense or a greater offense. Makes conforming changes.

SECTION 4.35. Amends Section 1702.111, Occupations Code, to make conforming changes.

SECTION 4.36. Amends Section 1702.112, Occupations Code, to make a conforming change.

SECTION 4.37. Amends Sections 1702.113(a) and (c), Occupations Code, as follows:

(a) Requires that an applicant for a license, certificate of registration, endorsement, or security officer commission or the applicant's manager be at least 18 years of age and not have certain offenses on their record. Deletes existing text providing that the applicant must not have been convicted in any jurisdiction of two or more felony offenses, unless full pardons have been granted for all convictions for reasons relating to wrongful convictions; have been convicted in any jurisdiction of a single felony or equivalent offense for which the 20th anniversary of the date of conviction has not occurred before the date of application, or a Class A misdemeanor or equivalent offense for which the 10th anniversary of the date of conviction has not occurred before the date of application, unless a full pardon has been granted for reasons relating to a wrongful conviction; or in

the 10 years preceding the date of application, have been adjudicated as having engaged in delinquent conduct violating a penal law of the grade of felony. Makes nonsubstantive changes.

(c) Provides that for purposes of this section, an offense under the laws of this state, another state, or the United States is considered a Class B misdemeanor if the offense is not a felony or Class A misdemeanor and the offense at the time of conviction was designated by a law of this state as a Class B misdemeanor; contains all the elements of an offense designated by a law of this state as a Class B misdemeanor; or provides as a possible punishment confinement in a jail other than a state jail felony facility. Deletes existing text providing that for purposes of this section, an offense under the laws of this state, another state, or the United States is considered a felony if the offense at the time of conviction was designated by a law of this state as a felony, including a state jail felony; contains all the elements of an offense designated by a law of this state as a felony, including a state felony; or is punishable by confinement for one year or more in a penitentiary; or a Class A misdemeanor if the offense is not a felony and the offense at the time of conviction was designated by a law of this state as a Class A misdemeanor; contains all the elements of an offense designated by a law of this state as a Class A misdemeanor; or provides as a possible punishment confinement in a jail other than a state jail felony facility. Makes nonsubstantive changes.

SECTION 4.38. Amends Section 1702.114, Occupations Code, to make conforming changes.

SECTION 4.39. Amends Section 1702.115, Occupations Code, to make conforming changes.

SECTION 4.40. Amends Section 1702.116, Occupations Code, as follows:

Sec. 1702.116. QUALIFICATIONS FOR GUARD DOG COMPANY LICENSE; INSPECTIONS. (a) Makes a conforming change.

(b) Requires the board to adopt rules, after consulting the Department of State Health Services (DSHS), rather than the Texas Department of State Health Services, to ensure that the areas in which a guard dog company houses, exercises, or trains its animals are securely enclosed by a six-foot chain-link fence or made equally secure.

(c) Makes a conforming change.

SECTION 4.41. Amends Sections 1702.117(a), (c), and (d), Occupations Code, as follows:

(a) Requires the board to require an applicant for a commission, license, registration, or endorsement under this chapter or the applicant's manager to demonstrate qualifications in the person's license classification, including knowledge of applicable state laws and board rules, by taking an examination to be determined by the board.

(c) and (d) Makes conforming changes.

SECTION 4.42. Amends Section 1702.118, Occupations Code, to make conforming changes.

SECTION 4.43. Amends Section 1702.1183, Occupations Code, to make conforming changes.

SECTION 4.44. Amends Section 1702.1186, Occupations Code, to make conforming changes.

SECTION 4.45. Amends Section 1702.120(b), Occupations Code, to make a conforming change.

SECTION 4.46. Amends Section 1702.121, Occupations Code, to make conforming changes.

SECTION 4.47. Amends Section 1702.122, Occupations Code, to make a conforming change.

SECTION 4.48. Amends Section 1702.123, Occupations Code, to make conforming changes.

SECTION 4.49. Amends Section 1702.125, Occupations Code, to make conforming changes.

SECTION 4.50. Amends Sections 1702.127(b) and (c), Occupations Code, to make conforming changes.

SECTION 4.51. Amends Section 1702.129, Occupations Code, to make conforming changes.

SECTION 4.52. Amends Section 1702.131, Occupations Code, to make a conforming change.

SECTION 4.53. Amends Section 1702.161(b), Occupations Code, to make a conforming change.

SECTION 4.54. Amends Section 1702.162, Occupations Code, to make conforming changes.

SECTION 4.55. Amends Section 1702.165, Occupations Code, to make conforming changes.

SECTION 4.56. Amends Section 1702.167, Occupations Code, to make conforming changes.

SECTION 4.57. Amends Sections 1702.1675(a)-(f) and (i), Occupations Code, to make conforming changes.

SECTION 4.58. Amends Section 1702.168, Occupations Code, to make conforming changes.

SECTION 4.59. Amends Sections 1702.1685(b) and (d), Occupations Code, to make conforming changes.

SECTION 4.60. Amends Section 1702.171, Occupations Code, to make conforming changes.

SECTION 4.61. Amends Section 1702.183, Occupations Code, to make conforming changes.

SECTION 4.62. Amends the heading to Subchapter I, Chapter 1702, Occupations Code, to make a conforming change.

SECTION 4.63. Amends Section 1702.201, Occupations Code, to make conforming changes.

SECTION 4.64. Amends Section 1702.203, Occupations Code, to make conforming changes.

SECTION 4.65. Amends Section 1702.204, Occupations Code, to make conforming changes.

SECTION 4.66. Amends Section 1702.205(a), Occupations Code, to make a conforming change.

SECTION 4.67. Amends Section 1702.206, Occupations Code, to make conforming changes.

SECTION 4.68. Amends Section 1702.221, Occupations Code, as follows:

Sec. 1702.221. New heading: REGISTRATION AND ENDORSEMENT REQUIRED.  
(a) Requires an individual, before the individual is authorized to perform any activity regulated by this chapter, to register in accordance with the requirements of this chapter and related administrative rules, obtain the proper endorsement under Subsection (b), and be employed by a company licensed under this chapter.

(b) Redesignates Subsection (a) as Subsection (b). Requires an individual to obtain the appropriate endorsement, rather than to register, in accordance with the requirements of this chapter and related administrative rules if the individual is employed in certain professions, including an alarm instructor, a level 3 classroom or firearm instructor, a level 4 personal protection instructor, or an individual whose duties include performing another activity for which an endorsement is required under Subsection (e), or is an owner, officer, partner, or shareholder of a license holder. Makes nonsubstantive changes.

(c) Redesignates Subsection (b) as Subsection (c). Provides that registration and endorsement under this chapter does not preclude an individual from performing additional duties or services authorized by the individual's employer that are not regulated by this chapter. Requires that an individual who performs more than one of the services that required an endorsement under this section to obtain an endorsement for each service.

(d) Requires a person holding a security officer commission, in addition to the services listed in Subsection (a), to also obtain an endorsement for personal protection if the individual performs the services described by Section 1702.202 (Personal Protection Officer).

(e) Authorizes the board by rule to require a person to hold an endorsement for performing other activity expressly regulated by this chapter.

SECTION 4.69. Amends Section 1702.2226(b), Occupations Code, to make a conforming change.

SECTION 4.70. Amends the heading to Subchapter J, Chapter 1702, Occupations Code, to read as follows:

SUBCHAPTER J. REGISTRATION AND ENDORSEMENT REQUIREMENTS;  
DUTIES OF REGISTRANT AND ENDORSEMENT HOLDER

SECTION 4.71. Amends Section 1702.228, Occupations Code, to make a conforming change.

SECTION 4.72. Amends Section 1702.230, Occupations Code, to make conforming changes.

SECTION 4.73. Amends Section 1702.2305, Occupations Code, to make conforming changes.

SECTION 4.74. Amends Section 1702.232, Occupations Code, to require that the pocket card for each registrant under this chapter contain certain information, including to state each endorsement held by the registrant and the date the endorsement expires. Makes substantive and conforming changes.

SECTION 4.75. Amends Section 1702.234, Occupations Code, to make conforming changes.

SECTION 4.76. Amends Section 1702.235, Occupations Code, to make a conforming change.

SECTION 4.77. Amends Section 1702.236, Occupations Code, as follows:

Sec. 1702.236. EXAMINATION AND TRAINING REQUIREMENTS FOR ELECTRONIC ACCESS CONTROL DEVICE INSTALLERS. (a) Requires the board to require an individual who applies for an endorsement, rather than for registration, as an electronic access control device installer to pass an examination given by the board or a person approved by the board. Makes conforming changes.

(b) Authorizes the board by rule, on and after September 1, 2005, to allow an electronic access control device installer to obtain or renew an endorsement, rather than a certificate of registration, by fulfilling the requirements of a board-approved, industry-based education training program. Makes conforming changes.

SECTION 4.78. Amends Sections 1702.239(a), (b), and (d), Occupations Code, to make conforming changes.

SECTION 4.79. Amends Section 1702.240(b), Occupations Code, to make a conforming change.

SECTION 4.80. Amends Subchapter J, Chapter 1702, Occupations Code, by adding Section 1702.241, as follows:

Sec. 1702.241. JURISPRUDENCE EXAMINATION. (a) Authorizes the board to develop and administer at least twice each calendar year a jurisprudence examination to determine the knowledge that an applicant for an endorsement has of this chapter, board rules, and any other applicable laws of this state affecting the applicant's activities regulated under this chapter.

(b) Authorizes the board, before the board is authorized to administer a jurisprudence examination under this section, to adopt rules to implement this section, including rules related to the development and administration of the examination, examination fees, guidelines for reexamination, grading the examination, and providing notice of examination results. Authorizes the board to design different examinations for different types of endorsements.

SECTION 4.81. Amends Section 1702.262, Occupations Code, to make conforming changes.

SECTION 4.82. Amends Section 1702.263, Occupations Code, to make conforming changes.

SECTION 4.83. Amends Section 1702.267, Occupations Code, to make a conforming change.

SECTION 4.84. Amends Sections 1702.282(a), (c), and (e), Occupations Code, to make conforming changes.

SECTION 4.85. Amends Section 1702.283, Occupations Code, to make a conforming change.

SECTION 4.86. Amends Section 1702.285, Occupations Code, to make a conforming change.

SECTION 4.87. Amends Sections 1702.301(c)-(h), Occupations Code, to make conforming changes.

SECTION 4.88. Amends Section 1702.302, Occupations Code, to make conforming changes.

SECTION 4.89. Amends Section 1702.303, Occupations Code, to make a conforming change.

SECTION 4.90. Amends Section 1702.304, Occupations Code, to make a conforming change.

SECTION 4.91. Amends Section 1702.307, Occupations Code, to make conforming changes.

SECTION 4.92. Amends Sections 1702.308(b) and (c), Occupations Code, to make conforming changes.

SECTION 4.93. Amends Section 1702.309(a), Occupations Code, to make conforming changes.

SECTION 4.94. Amends Sections 1702.321(b), (c), and (e), Occupations Code, to make conforming changes.

SECTION 4.95. Amends Sections 1702.361(a) and (b), Occupations Code, as follows:

(a) Makes conforming changes.

(b) Requires DPS to take disciplinary action described by Subsection (a) (relating to disciplinary actions) on proof of that the applicant, license holder, registrant, endorsement holder, or commissioned security officer has performed certain actions, including performed any service for which an endorsement is required under this chapter and either was not employed with a company licensed under this chapter at the time the service was performed or performed the service for a company licensed under this chapter that was not listed on the individual's registration without informing the board of the individual's employment with the company within a reasonable period.

SECTION 4.96. Amends Section 1702.362, Occupations Code, to make conforming changes.

SECTION 4.97. Amends Section 1702.363, Occupations Code, to make a conforming change.

SECTION 4.98. Amends Sections 1702.364(a), (d), (f), and (h), Occupations Code, to make conforming changes.

SECTION 4.99. Amends Section 170.365, Occupations Code, to make conforming changes.

SECTION 4.100. Amends Sections 1702.367(a) and (c)-(e), Occupations Code, to make conforming changes.

SECTION 4.101. Amends Section 1702.368, Occupations Code, to make conforming changes.

SECTION 4.102. Amends Subchapter O, Chapter 1702, Occupations Code, by adding Section 1702.372, as follows:

Sec. 1702.372. RECUSAL OF BOARD MEMBER. (a) Provides that a board member who participated in the investigation of a complaint or in informal settlement negotiations regarding the complaint is prohibited from voting on the matter at a board meeting related to the complaint and is required to state at the meeting the reason for which the member is prohibited from voting on the matter.

(b) Requires that a statement under Subsection (a)(2) (relating to the reason why the member may not vote) be entered into the minutes of the meeting.

SECTION 4.103. Amends Section 1702.381(b), Occupations Code, to make conforming changes.

SECTION 4.104. Amends Section 1702.386(a), Occupations Code, to make conforming changes.

SECTION 4.105. Amends Section 1702.3863(a), Occupations Code, to make a conforming change.

SECTION 4.106. Amends Section 1702.387(a), Occupations Code, to make a conforming changes.

SECTION 4.107. Amends Section 1702.388(b), Occupations Code, to make a conforming change.

SECTION 4.108. Amends Section 1702.402, Occupations Code, by amending Subsection (a) and adding Subsection (c), as follows:

(a) Provides that each day a violation continues or occurs is a separate violation for purposes of imposing a penalty. Prohibits the amount of each separate violation from exceeding \$5,000, rather than \$500.

(c) Requires the board by rule to develop a standardized penalty schedule based on the criteria listed in Subsection (b).

SECTION 4.109. Amends Section 1702.406(b), Occupations Code, to provide that judicial review is under the substantial evidence rule as provided by Subchapter G (Contested Cases: Judicial Review), Chapter 2001 (Administrative Procedure), Government Code.

SECTION 4.110. Repealer: Section 1702.002(4) (relating to the definition of "commission"), Occupations Code.

Repealer: Section 1702.003 (Application of Sunset Act), Occupations Code.

Repealer: Section 1702.065 (Powers and Duties Relating to Alarm Systems Installers; Certificates of Installation), Occupations Code.

Repealer: Section 1702.113(e) (relating to an individual's eligibility under this chapter is not affected by any relationship or lack thereof between the nature of the criminal charge or conviction and the regulated occupation), Occupations Code.

Repealer: Section 1702.364(j) (relating to an individual's eligibility under this section is not affected by any relationship or lack thereof between the nature of the criminal charge or conviction and the regulated occupation), Occupations Code.

SECTION 4.111. (a) Requires the board and DPS, not later than January 1, 2010, to adopt the rules required by or under Sections 1702.062 and 1702.082, Occupations Code, as amended by this article. Provides that the fee schedule in effect under Section 1702.062, Occupations Code, before the effective date of this Act is continued in effect until new fees are adopted under Section 1702.062, Occupations Code, as amended by this article.

(b) Provides that the requirements to pass a jurisprudence examination under Section 1702.241, Occupations Code, as added by this article, applies only to an individual who applies for a registration or endorsement under Chapter 1702 (Private Security), Occupations Code, on or after the date specified by the board in the event the board begins requiring applicants to pass a jurisprudence examination, but not earlier than September 1, 2010.

(c) Provides that the changes in law made by this article related to the filing, investigation, or resolution of a complaint under Chapter 1702, Occupations Code, as amended by this article, apply only to a complaint filed with the board on or after the effective date of this Act. Provides that a complaint filed before the effective date of this Act is governed by the law as it existed immediately before that date, and the former law is continued in effect for that purpose.

(d) Provides that the changes in law made by this article governing the authority of the board and DPS to issue, renew, or revoke a license, registration, endorsement, or commission under Chapter 1702, Occupations Code, apply only to an application for an original or renewal license, registration, endorsement, or commission filed with the board under Chapter 1702, Occupations Code, as amended by this article, on or after the effective date of this Act. Provides that an application filed before the effective date of this Act is governed by the law in effect at the time the application was filed, and the former law is continued in effect for that purpose.

(e) Provides that the change in law made by this article with respect to conduct that is grounds for imposition of a disciplinary sanction applies only to conduct that occurs on or after the effective date of this Act. Provides that conduct that occurs before the effective date of this Act is governed by the law in effect on the date the conduct occurred, and the former law is continued in effect for that purpose.

(f) Provides that Section 1702.372, Occupations Code, as added by this article, applies only to a hearing conducted on or after the effective date of this Act, regardless of the date on which the complaint was filed. Provides that a complaint on which a hearing is conducted before the effective date of this Act is governed by the law in effect on the date the hearing was conducted, and the former law is continued in effect for that purpose.

(g) Requires the holder of a Class D license under Chapter 1702, Occupations Code, as amended by this article, to be considered to hold a Class B license on the effective date of this Act. Authorizes the license holder, on the expiration of the Class D license, to renew the license as a Class B license.

## ARTICLE 5. GENERAL PROVISIONS

SECTION 5.01. Amends Section 411.002, Government Code, by amending Subsection (c) and adding Subsections (d) and (e), as follows:

(c) Provides that unless continued in existence by Chapter 325 (Texas Sunset Act), DPS is abolished and Subsections (a) (relating to the purpose of DPS) and (b) (relating to the DPS having its headquarters in Austin) expire September 1, 2021, rather than September 1, 2009.

(d) Requires the Sunset Advisory Commission, not later than December 1, 2010, to review and prepare a written report for submission to the legislature on DPS's implementation of the recommendations in the 2008 audit of DPS's information technology system and a civilian business model for the operation of the driver's license division that focuses on improving customer service by using best practices in call center technology and monitoring customer service calls; expanding operating hours at driver's license offices; and decreasing the time DPS takes to send a replacement driver's license.

(e) Requires the Sunset Advisory Commission to submit the report required by Subsection (d) not later than February 15, 2011. Provides that this subsection and Subsection (d) expire August 31, 2011.

SECTION 5.02. Amends Section 411.0035, Government Code, as follows:

Sec. 411.0035. MEMBER AND GENERAL COUNSEL RESTRICTION. (a) Defines "Texas trade association."

(b) Prohibits a person from being, rather than serving as, a member of the Public Safety Commission (commission) and from being a DPS employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), if the person is an officer, employee, or paid consultant of a Texas trade association in the field of law enforcement or private security or the person's spouse is an officer, manager, or paid consultant of a Texas trade association in the field of law enforcement or private security.

(c) Prohibits a person from being a member of the commission or acting as the general counsel to the commission if the person is required to register as a lobbyist under Chapter 305 (Registration of Lobbyists) because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

SECTION 5.03. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0042, as follows:

Sec. 411.0042. DIVISION OF RESPONSIBILITIES. Requires the commission to develop and implement policies that clearly separate the policymaking responsibilities of the commission and the management responsibilities of the public safety director (director) and the staff of DPS.

SECTION 5.04. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0043, as follows:

Sec. 411.0043. TECHNOLOGY POLICY. Requires the commission to implement a policy requiring DPS to use appropriate technological solutions to improve DPS's ability to perform its functions. Requires that the policy ensure that the public is able to interact with DPS on the Internet.

SECTION 5.05. Amends Subchapter A, Chapter 411, Government Code, by adding Section 411.0044, as follows:

Sec. 411.0044. NEGOTIATED RULEMAKING AND ALTERNATIVE DISPUTE RESOLUTION. (a) Requires the commission to develop and implement a policy to encourage the use of negotiated rulemaking procedures under Chapter 2008 for the adoption of DPS rules and appropriate alternative dispute resolution procedures under

Chapter 2009 to assist in the resolution of internal and external disputes under DPS's jurisdiction.

(b) Requires that DPS's procedures relating to alternative dispute resolution conform, to the extent possible, to any model guidelines issued by SOAH for the use of alternative dispute resolution by state agencies.

(c) Requires the commission to designate a trained person to coordinate the implementation of the policy adopted under Subsection (a); serve as a resource for any training needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and collect data concerning the effectiveness of those procedures, as implemented by DPS.

SECTION 5.06. Amends Sections 411.0195(a)-(c), Government Code, as follows:

(a) Requires DPS to maintain a system to promptly and efficiently act on complaints filed with DPS and requires DPS to maintain information about parties to the complaint, a summary of the results of the review or investigation of the complaint, and its disposition. Deletes existing text requiring DPS to prepare information of public interest describing the functions of DPS and DPS's procedures by which complaints are filed with and resolved by DPS. Deletes existing text requiring DPS to make the information available to the public and appropriate state agencies.

(b) Requires DPS to make information available describing its procedures for complaint investigation and resolution. Deletes existing text requiring the director by rule to establish methods by which consumers and service recipients are notified of the name, mailing address, and telephone number of DPS for the purpose of directing complaints to DPS.

(c) Requires DPS to periodically notify the complaint parties of the status of the complaint until final disposition. Deletes existing text requiring DPS to maintain a file on each written complaint filed with DPS and requiring that the file include certain information.

SECTION 5.07. Amends Section 411.188, Government Code, by adding Subsection (j), to authorize DPS to offer online, or allow a qualified handgun instructor to offer online, the continuing education instruction course and written section of the proficiency examination required to renew a license.

SECTION 5.08. Amends Sections 411.244(a), (d), and (f), Government Code, as follows:

(a) Requires the commission, rather than the director, to establish the office of internal affairs, which is responsible for acting to prevent and detect criminal conduct with DPS and independently and objectively investigating criminal activity occurring in all divisions of DPS; allegations of wrongdoing by DPS employees; crimes committed on DPS property; and serious breaches of DPS policy.

(d) Provides that commission has direct oversight over the office of internal affairs, including decisions regarding budget and staffing. Requires the commission to establish policies to ensure that the commission continues to oversee the office of internal affairs as required by this subsection and to ensure that the office of internal affairs retains and exercises its original jurisdiction under Subsection (b) (relating to having original departmental jurisdiction over all investigations).

(f) Requires the head of the office of internal affairs to present certain information at each regularly scheduled commission meeting and at other appropriate times, including reports of investigations.

SECTION 5.09. Repealer: Section 411.0195(d) (relating to the requirement of DPS to establish checkpoint procedures), Government Code.

Repealer: Section 411.0195(e) (relating to definitions of "motor vehicle," "vehicle," and "watercraft"), Government Code.

SECTION 5.10. Effective date: September 1, 2009.