

SUBJECT: Continuing the Board of Private Investigators and Private Security Agencies

COMMITTEE: Public Safety — committee substitute recommended

VOTE: 8 ayes — B. Turner, Keel, Berman, Carter, Gutierrez, Hupp, P. King, Najera
0 nays
1 absent — Driver

WITNESSES: For — Dennis Bryant; Caryl Bunton, Ed Clendenin, Bailey W. Elkin, ASSIST; Gary Groppe, Infolink Services Group; Karen Hewitt, Texas Association of Licensed Investigators; Joan Neuhaus; David Pellham, North Texas Private Investigators Association; Malcolm Reed; John Benfer, Greater San Antonio Alarm Association; Dennis Bryant; Leroy Burlison, Greater Fort Worth Alarm Association; Charles Neuenschwander, Capitol Area Burglar and Fire Alarm Association, Travis and Williamson Counties; Richard Via

Against — None

On — George Craig, Jay Kimbrough, Ben Nix, Richard Rose, Texas Board of Private Investigators and Private Security Agencies; Ash Hamid, Sunset Advisory Commission

BACKGROUND: The Legislature created the Texas Board of Private Investigators and Private Security Agencies in 1969 to license businesses and people in the private investigations and security industries and to protect the public from illegal activities of licensed and unlicensed operators. Its primary duty is to regulate armored-car companies, alarm-system companies, guard-dog companies, and courier services. It also commissions security officers to carry firearms and to perform criminal-history checks. The board establishes standards for licensure, commission, and registration, approves training schools and instructors, and administers tests to qualified applicants. The board sanctions persons who do not comply with the requirements of the Private Investigators and Private Security Agencies Act.

The agency issues more than 30 types of licenses. It licenses, registers, or commissions about 160,000 people and 4,000 companies each year. The

agency has 40 employees and a budget of \$4.5 million for fiscal 1998-99.

The agency's board includes eight members. Six are members of the general public appointed by the governor, and two are ex-officio representatives of the Department of Public Safety (DPS) and the Office of the Attorney General (OAG).

The agency last underwent sunset review in 1987. It will be abolished September 1, 1999, unless continued by the Legislature.

DIGEST:

CSHB 2617 would change the name of the Texas Board of Private Investigators and Private Security Agencies to the Private Security Commission and would continue the agency until September 1, 2003. It would rename the statute the Private Security Act.

The bill would increase the number of board members from eight to ten by adding two public members, removing the OAG representative, and broadening industry representation. All hearings that previously would have been brought before the board would be heard by an administrative law judge at the State Office of Administrative Hearings.

CSHB 2617 would designate the Private Security Commission as a criminal justice agency and would authorize it to commission investigators for the purpose of investigating violations of board rules or of the Private Security Act. It would add these commissioned investigators to the list of peace officers in the Code of Criminal Procedure, art. 2.12.

The bill would require the commission to conduct a background check through the Federal Bureau of Investigation (FBI) on every applicant for a license, registration, commission, letter of approval, permit, or certification. Information constituting grounds for denial would disqualify the applicant. For purposes of the background check, each applicant would have to submit two sets of fingerprints and the required fee. The bill would require the board to revoke or refuse to renew the registration, license, or commission of an applicant if the person had been convicted of a Class A misdemeanor or an equivalent or greater offense or of a Class B misdemeanor or equivalent offense committed within the preceding five years.

A person against whom the board took action would be entitled to a hearing

unless the cause for the action was a criminal offense. The board could place on probation a person whose license was suspended. The person could be required to report regularly to the board about the subject of the probation, to limit practice to areas prescribed by the board, or to continue to receive professional education to the board's satisfaction. The bill also would eliminate a provision that allows a person to pay a civil penalty instead of facing license suspension.

CSHB 2617 would eliminate the requirement that the agency solicit a letter of objection regarding a license applicant from the police and sheriff's departments in the city and county where the applicant resides. The agency would be required only to obtain from DPS a report on the applicant's record of Class B misdemeanors or greater offenses.

The bill would reduce the duration of a noncommissioned security officer's registration from four years to two and would reduce the registration renewal fee from \$50 to \$25. It also would require that a pocket card be issued directly to the license holder.

The new employer of a commissioned security officer who transferred from one employer to another would have to notify the commission of the transfer within 14 days, instead of within 10 days as under current law. An officer would not have to return his or her card to the commission when it expired.

The bill would require the commission to make rules updating requirements for applicants' handgun proficiency to meet or exceed the minimum requirements of the concealed handgun law (Government Code, sec. 411.188). Only a board-approved instructor could administer the required proficiency exam. The bill also would require continuing education in handgun proficiency for the renewal of a security officer commission. Only a board-approved instructor could conduct this training.

The bill would allow only peace officers, licensed investigators, and commissioned security officers employed by a licensed guard company to contract with a bail-bond agent to locate or apprehend a person who had jumped bail. A violation would be a state jail felony.

The bill would define an “extra job coordinator” as a peace officer who works full-time for a political subdivision and, without receiving compensation from anyone other than the political subdivision, schedules full-time peace officers to provide outside services in a private capacity. Extra job coordinators would not be subject to the act.

The bill would extend the Private Security Commission’s regulation to uniformed in-house security personnel who work in public places, such as those employed by malls and hotels. It would state explicitly that full-time peace officers employed by private institutions of higher education are subject to the same exemption from the act as are officers of public institutions. Attorneys would be exempt from the act while practicing law.

The bill would require the agency to notify parties to a complaint of the status of the complaint investigation at least quarterly, until the case was closed.

The bill would add standard sunset provisions governing membership of the commission, conflict of interest, appointee qualifications, appointment of board members, grounds for removal of a board member, standards of conduct, training, policies that separate the functions of agency staff and the policymaking body, and complaints. It also would add standard sunset provisions on licensing, including delinquent renewal, staggered renewal of licenses, notice of examination results, licensing of persons licensed in other jurisdictions, penalties, and continuing education.

CSHB 2617 would take effect September 1, 1999. All changes would apply only to causes of action on or after the effective date.

**SUPPORTERS
SAY:**

CSHB 2617 would continue the licensing agency for private investigators and private security agencies under a new name and an expanded mission, with several needed improvements to more effectively protect the public.

All applicants should undergo both state and federal background checks to ensure public safety, which is a primary reason why the reorganized Private Security Commission needs to be recognized as a criminal justice agency. Currently, all license applicants except for noncommissioned officers undergo only a background check conducted by DPS. As the agency is not recognized as a criminal justice agency, the FBI does not grant it access to federal background checks. This means that armed security officers could receive a

license from the agency even if they had committed a federal crime or a crime in another state.

Similarly, the agency should be allowed to commission investigators to look into possible crimes committed by license holders or applicants. The agency has had difficulty obtaining information from district and county clerks on applicants undergoing background checks or investigations because it is not recognized as a criminal justice agency. Allowing it to commission investigators and designate them as peace officers would provide more support for its status as a criminal justice agency.

The commission should be able to revoke or refuse to renew the license of persons convicted of Class B misdemeanors or greater offenses. The nature of private security work allows access to privileged information and into individuals' homes or businesses. The current statute does not empower the board to ensure that no one with a criminal history background is put in a position to endanger public safety.

The commission should not have to solicit letters of objection from local law enforcement for every applicant. This process is lengthy and unnecessary and allows local law enforcement officials to stall an application on the basis of personal prejudice.

The minimum requirements for handgun proficiency and training should be updated. The current standards date to the 1960s and 1970s, before the more stringent license requirements for concealed handguns took effect.

Only peace officers, licensed investigators, and commissioned security officers should be authorized to attempt to locate or apprehend people who have jumped bail. Putting this requirement in statute would curb the actions of unlicensed "bounty hunters."

Uniformed in-house security personnel should be regulated like all other security officers. Since these people work in public places and wear badges and uniforms like other officers, members of the public trust them as they would other peace officers. The public should be confident that these people have been subject to background checks and an application process.

The bill should not prohibit municipalities from providing alarm-monitoring

services. In rural areas, municipalities are sometimes the only providers of these services, so prohibiting municipalities from providing them could make the services unavailable to some people.

OPPONENTS
SAY:

The Private Security Commission should not be designated a criminal justice agency. Businesses regulated by the agency are private, for-profit ventures, and people should not associate them with government law enforcement operations.

The agency should be required to solicit letters of objection from local law enforcement about license applicants. These agencies have knowledge about and insight into applicants' backgrounds, and they should have the option to register an opinion.

Making all in-house security personnel in the state undergo licensing as of September 1, 1999, might overwhelm the commission. There is no reliable count of these officers, although estimates range from 10,000 to 90,000. If all of these security guards were to come under commission regulation at one time, the commission would need to hire additional full-time employees to process the applications.

The Private Security Act should prohibit municipalities from providing alarm-monitoring services, as they are doing with increasing frequency. Municipalities offer these services to imply that their customers will receive faster police response than customers who contract with a private alarm company. Also, these municipalities charge private companies' customers for false alarms without charging their own customers.

The statute also should provide explicit definitions of security system consultants and security system salespersons. Both of these groups must be licensed, but some may misrepresent themselves to customers since their roles are not defined explicitly.

The original application fee for noncommissioned officers should be reduced to \$25 just as the renewal fee would be reduced. Since new applicants for the first time would be paying an additional \$25 for FBI fingerprinting, their application fee should be reduced to help offset this cost.

NOTES:

The committee substitute would change the name of the agency and designate investigators commissioned by the agency as peace officers. It would include commissioned security officers among those for whom the board would require continuing education. It also added the provisions:

- ! requiring new employers to notify the commission of a transferred employee within 14 days;
- ! updating language relating to handgun proficiency;
- ! requiring that a pocket card be issued directly to the license holder;
- ! limiting who could attempt to locate or apprehend a bail jumper; and
- ! defining “extra job coordinator.”

The companion bill, SB 373 by Harris, has been referred to the Senate Criminal Justice Committee.