

BILL ANALYSIS

Senate Research Center

H.B. 2617
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Criminal Justice
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Engrossed

DIGEST

The Texas Board of Private Investigators and Private Security Agencies (TBPIPSA) was created in 1969 to license businesses and people in the private investigations and security industry. Over time the agency's responsibilities have been expanded to include armed car companies, alarm system companies, guard dog companies, and courier services. Additionally, TBPIPSA commissions security officers to carry firearms and to perform criminal history checks on all applicants, as well as establishing standards for licensure, commission, and registration; developing material for minimum required training or competency; approving schools and instructors to teach relevant courses; and administering examinations to qualified applicants. Eight members compose TBPIPSA, which will be abolished on September 1, 1999, unless continued by the legislature. As a result of its review of the board, the Sunset Advisory Commission recommended continuation of the agency and several statutory modifications.

PURPOSE

As proposed, H.B. 2617 continues the Texas Board of Private Investigators and Private Security Agencies as the Texas Commission on Private Security.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Commission on Private Security in SECTIONS 10, 22, 25, 26, and 33 (Sections 10B, 17A, 20(l), 20A, and 46A, Article 4413(29bb), V.T.C.S. (Private Investigators and Private Security Agencies Act)) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1, Article 4413(29bb), V.T.C.S. (Private Investigators and Private Security Agencies Act), to authorize this Act to be cited as the Private Security Act and to provide that any reference in law to the Private Investigators and Private Security Agencies Act is a reference to the Private Security Act.

SECTION 2. Amends Section 2, Article 4412(29bb), by amending Subdivision (1), (4), (5), and (33), and by adding Subdivision (37), to redefine "board," "guard company," "alarm systems company," and "detection device," and to define "extra job coordinator."

SECTION 3. Amends Section 3, Article 4412(29bb), V.T.C.S., to set forth individuals to whom this act does not apply including certain job coordinators, persons who ascertain the reliability of insurance information, licensed professional engineers, nonprofit organizations for missing children, security personnel of a higher education institution, and peace officers for a private institution of higher education. Establishes, however, that this Act is applicable to individuals who work at a location that is open to the public and in the course of employment come into contact with the public and wear certain uniforms. Deletes text that exempts certain expert witnesses from this Act. Makes conforming and nonsubstantive changes.

SECTION 4. Amends Section 4(d), Article 4413(29bb), V.T.C.S., to continue the Texas Commission on Security (board), rather than the Texas Board of Private Investigators and Private Security Agencies (TBPIPSA), until September 1, 2003, rather than September 1, 1999.

SECTION 5. Amends Subchapter B, Article 4413(29bb), V.T.C.S., by adding Section 4A and by amending Section 5, as follows:

Sec. 4A. NAME CHANGE. Changes the name of the Texas Board of Private Investigators and Private Security Agencies to the name of the Texas Commission on Private Security and provides that a reference in this Act to TBPIPSA means the board.

Sec. 5. New heading: COMMISSION MEMBERSHIP. Composes the board of an ex officio member and nine members with a certain make-up and who are appointed by the governor with the advice and consent of the senate. Requires the appointments to be made without regard to certain discriminations, and to be representatives of the general public. Prohibits a public member from being involved in certain activities and businesses of private security. Deletes text that sets forth the makeup of the board, and the definition for "trade association." Makes conforming and nonsubstantive changes.

SECTION 6. Amends Subchapter B, Article 4413, V.T.C.S., by adding Sections 5A, 5B, and 5C, as follows:

Sec. 5A. EX OFFICIO BOARD MEMBER. Provides that the director of the Texas Department of Public Safety (DPS) serves as an ex officio member of the board during the director's term of office and has the same powers and duties as other board members, and may delegate to a personal representative from DPS the duty to represent the director.

Sec. 5B. MEMBERSHIP AND EMPLOYEE RESTRICTIONS. Defines "Texas trade association." Prohibits certain persons from being a board member, particularly an agency employee, an individual in a "bona fide executive, administrative, or professional capacity," or certain lobbyists.

Sec. 5C. TRAINING REQUIREMENTS. Prohibits a board member from voting, deliberating, or counting as a member in attendance until the member completes certain training programs outlined in this section. Entitles a person attending the training programs to certain reimbursements for travel.

SECTION 7. Amends Section 7, Article 4412(29bb), V.T.C.S., to specify that the terms of three, rather than two, board members expire by a certain date. Deletes a provision that directs certain public officials from serving on the board.

SECTION 8. Amends Section 10, Article 4412(29bb), V.T.C.S., by amending Subsections (d) and (e) and adding Subsection (f), to require the director to provide to board members and to agency employees information regarding the requirements for office or employment. Authorizes the board to commission investigators as peace officers in order to assist the board in certain investigations. Makes conforming and nonsubstantive changes.

SECTION 9. Amends Section 10A, Article 4412(29bb), V.T.C.S., as follows:

Sec. 10A. New heading: EQUAL EMPLOYMENT OPPORTUNITY; REPORT. Amends existing language to conform with standard Sunset language regarding equal opportunity and policy statements.

SECTION 10. Amends Subchapter B, Article 4412(29bb), V.T.C.S., by adding Section 10B, as follows:

Sec. 10B. RULES AND POLICIES. Requires the board to adopt rules and general policies to guide the agency in the administration of this Act that must be consistent with this Act and other board rules adopted under this Act and with any other applicable law, state rule, or federal regulation.

SECTION 11. Amends Sections 11(d) and (e), Article 4412(29bb), V.T.C.S., to require the board to recognize, prepare, or administer continuing education programs for licensees, commissioned security officers, and registrants, rather than private investigators, regulated by the board, who must participate in the board's programs to retain the license, commission, or registration. Provides that the continuing education requirements of this section do not apply to a noncommissioned officer. Makes conforming and nonsubstantive changes.

SECTION 12. Amends Section 11B, Article 4413(29bb), V.T.C.S., to require the board to refuse to

renew a registration, license, or commission if certain violations of law or board policy have occurred, including a Class B misdemeanor, except as provided by Section 11E. Entitles a person against whom adverse action has been taken by the board to a hearing before the State Office of Administrative Hearings. Authorizes the board to place on probation a person with a suspended license, and requires the person to meet certain conditions of the probation. Deletes violations that are cause for suspension or removal of a license, including an act of moral turpitude. Makes conforming and nonsubstantive changes.

SECTION 13. Amends Subchapter B, Article 4413(29bb), V.T.C.S., by adding Section 11E, as follows:

Sec. 11E. **REVOCATION OR REFUSAL FOR CERTAIN OFFENSES.** Requires the board to revoke or refuse to renew a registration, license, or commission if the applicant commits a Class A or certain Class B misdemeanors.

SECTION 14. Amends Subchapter B, Article 4413(29bb), V.T.C.S., by adding Section 11F, as follows:

Sec. 11F. **CONVICTION OF CERTAIN CRIMES.** Sets forth conditions under which this subchapter considers a person to be convicted of a Class B misdemeanor offense.

SECTION 15. Amends Section 12(b), Article 4413(29bb), V.T.C.S., to make nonsubstantive changes.

SECTION 16. Amends Section Subchapter B, Article 4413(29bb), V.T.C.S., by adding Section 12B, as follows:

Sec. 12B. **PUBLIC ACCESS TO CERTAIN RECORDS OF DISCIPLINARY ACTIONS.** Requires the board to make available to the public through certain media certain information about an individual regulated by the board for whom the board has taken certain disciplinary action, in an impartial and easily understood manner. Requires the board to update the information monthly and to maintain the confidentiality of the identification of a complainant.

SECTION 17. Amends Section 13, Article 4413(29bb), V.T.C.S., by adding Subsection (d), to prohibit a political subdivision from offering alarm system sales, service, installation, or monitoring, except under certain conditions.

SECTION 18. Amends Section 14, Article 4413(29bb), V.T.C.S., by amending Subsection (a) and adding Subsection (a-1), to authorize the board to deny an application for a license if the applicant has been convicted of certain Class B misdemeanors unless the person has been granted a full pardon. Makes conforming and nonsubstantive changes.

SECTION 19. Amends Section 15, Article 4413(29bb), V.T.C.S., by amending Subsections (a) and (c) and adding Subsection (g), to require two, rather than one, classifiable sets of fingerprints from an applicant. Requires, rather than authorizes, the board to require an applicant to demonstrate certain qualifications regarding the person's license, including knowledge of applicable state law and board rules. Requires the board to develop material containing all applicable state law and board rules. Makes conforming and nonsubstantive changes.

SECTION 20. Amends Subchapter C, Article 4413(29bb), V.T.C.S., by adding Sections 15A, 15B, 15C, and 15D, as follows:

Sec. 15A. **EXAMINATION RESULTS.** Requires the board to notify a person of the results of the licensing examination, by a certain date. Sets forth a notification procedure if the examination is graded or reviewed by a testing service. Authorizes the board to require the service to notify a person of the results of the person's examination. Requires the board to furnish the person with an analysis of the person's performance on the examination, if requested by a person who fails a licensing examination.

Sec. 15B. **RECIPROCAL LICENSE FOR CERTAIN FOREIGN APPLICANTS.** Authorizes the board to waive any prerequisites to obtaining a license for an applicant who holds a license issued by another jurisdiction with which the state has a reciprocity agreement. Authorizes the board to make such agreements with other states, subject to the approval of the governor.

Sec. 15C. **PROVISIONAL LICENSE.** Authorizes the board to issue a provisional license to an

applicant currently licensed in another jurisdiction who seeks an equivalent license in this state. Sets forth conditions the person must meet before the board offers a provisional license. Provides that the provisional license is valid until the board approves or denies the application. Sets forth criteria of which if met the board must issue a license to the provisional license holder. Requires the board to deny or approve the provisional license application by a certain date, but may extend the date if the results of the examination have not been received. Authorizes the board to establish a fee for provisional licenses to recover the costs of issuing the license.

Sec. 15D. PROVISIONAL REGISTRATION. Authorizes the board to issue a provisional registration to an applicant currently licensed in another jurisdiction who seeks an equivalent registration in this state. Sets forth conditions the person must meet before the board offers a provisional registration. Provides that the provisional registration is valid until the board approves or denies the application. Sets forth criteria that if met the board must issue a license to the provisional registration holder. Requires the board to deny or approve the provisional registration application by a certain date, but may extend the date if the results of the examination have not been received. Authorizes the board to establish a fee for provisional registrations to recover the costs of issuing the registration.

SECTION 21. Amends Sections 17(a) and (d), Article 4413(29bb), V.T.C.S., to provide for a renewal fee for noncommissioned security officers. Provides that registration for a noncommissioned officer is two years, rather than four years, from the date of registration. Deletes text that excepts from certain license requirements certain alarm systems installers or security sales persons.

SECTION 22. Amends Subchapter C, Article 4413(29bb), V.T.C.S., by adding Section 17A, as follows:

Sec. 17A. PAYMENT OF FEES AND FINES. Authorizes the board to adopt rules regarding the method of payment of a fee or a fine under this Act. Permits the rules to authorize electronic funds transfer or certain credit cards, and to require the payment of a discount or a reasonable service charge for a credit card payment in addition to the fee or the fine.

SECTION 23. Amends Section 18(b), Article 4413(29bb), V.T.C.S., to make conforming and nonsubstantive changes.

SECTION 24. Amends Section 19(1), Article 4413(29bb), V.T.C.S., to authorize a holder of a security officer commission to transfer the commission to a new employer if, not later than the 14th day, rather than the 10th day, after the date on which the holder begins new employment, the new employer notifies the board of the transfers of employment.

SECTION 25. Amends Section 20, Article 4413(29bb), V.T.C.S., to set forth minimum requirements for a course for commissioned security officers. Requires the general security officer training portion of the course to include certain instructions regarding board rules, rather than familiarity with firearms and this Act. Requires the commissioned security officer training manual to contain applicable state laws and board rules. Prohibits the board from issuing the commission if the applicant has not achieved a minimum score, rather than satisfied his firearm training instructor with a certain marksmanship. Sets forth certain objective standards and other requirements for the handgun proficiency course and exam. Requires the board to establish, by rule, minimum standards for handgun proficiency that meet certain stringency levels. Deletes a requirement that the board require the officers and other applicants to demonstrate certain proficiencies with firearms. Makes conforming changes.

SECTION 26. Amends Subchapter C, Article 4413(29bb), V.T.C.S., by adding Sections 20A and 20B, as follows:

Sec. 20A. CONTINUING EDUCATION COURSE IN HANDGUN PROFICIENCY. Requires the board to develop, by rule, a continuing education course in handgun proficiency. Provides that only a board-approved instructor may administer the course. Sets forth proficiency requirements for the course.

Sec. 20B. HANDGUN PROFICIENCY EXAMINATION. Authorizes only a board-approved instructor to administer the handgun course, and sets forth requirements for the course. Makes conforming changes.

SECTION 27. Amends Section 36, Article 4413(29bb), V.T.C.S., as follows:

Sec. 36. New heading: POCKET CARD. Deletes text requiring certain notification for a pocket card. Makes conforming changes.

SECTION 28. Amends Subchapter C, Article 4413(29bb), V.T.C.S., by adding Section 36A, as follows:

Sec. 36A. REGISTRATION RENEWAL. Authorizes certain persons to renew an unexpired registration by paying a renewal fee to the board before the expiration date of the registration. Prohibits a person whose registration has expired from engaging in activities that require a registration until the registration has been renewed. Sets forth registration and fee requirements for other persons who have an expired registration, except for those with a registration expired for more than one year, who are prohibited from registering. Authorizes the person to obtain a new registration, including those who were registered in another state, by complying with certain requirements and procedures. Requires the board to send written notice of the impending registration to the person by a certain date.

SECTION 29. Amends Section 37, Article 4413(29bb), V.T.C.S., as follows:

Sec. 37. New heading: POCKET CARD TRANSFER. Deletes a requirement that certain persons return their pocket cards to their employer upon termination of their employment with that employer. Makes conforming changes.

SECTION 30. Amends Subchapter C, Article 4413(29bb), V.T.C.S., by adding Section 39A, as follows:

Sec. 39A. CRIMINAL HISTORY CHECK. Requires the board to conduct a criminal history check on the applicants. Provides that an applicant is disqualified if the check reveals the applicant committed certain acts that constitute grounds for the disqualification. Requires the applicant to include two sets of fingerprints. Requires the person to be approved by the board based on the results of the background check, prior to being employed as an officer or re-employed. Conditions the issuance of the licenses and other certifications by the board upon the receipt of the criminal history information.

SECTION 31. Amends Section 44, Article 4413(29bb), V.T.C.S., by adding Subsections (h) and (i), to provide that a person commits an offense if the person contracts with a bondsman, except under certain conditions, which is a state jail felony.

SECTION 32. Amends Subchapter D, Article 4413(29bb), V.T.C.S., by adding Section 45A, as follows:

Sec. 45A. LICENSE RENEWAL. Authorizes a person to renew an unexpired license by paying the requisite fee before the expiration date. Prohibits a person with an expired license from engaging in activities that require a license to be renewed. Sets forth registration and fee requirements for other persons who have an expired license except for those with a registration expired for more than one year because they are prohibited from registering. Authorizes the person to obtain a new license, including those who were registered in another state, by complying with certain requirements and procedures. Requires the board to send written notice of the impending registration to the person by a certain date.

SECTION 33. Amends Subchapter D, Article 4413(29bb), V.T.C.S., by adding Section 46A, as follows:

Sec. 46A. STAGGERED RENEWAL; PRORATION OF LICENSE FEE. Require the board to adopt, by rule, a system under which licenses expire on various date during the year. Requires the board to perform certain proration of license fees on a monthly basis, where the total fee is payable on the renewal of the license on the new expiration date.

SECTION 34. Amends Section 49, Article 4413(29bb), V.T.C.S., as follows:

Sec. 49. New heading: NOTIFICATION OF CONVICTION FOR CERTAIN OFFENSES. Makes conforming changes.

SECTION 35. Amends Section 50A, Article 4413(29bb), V.T.C.S., to require the board to maintain a

file on each written complain filed with the board, and that the file must include certain information. Requires the board to provide to the person filing the complaint a copy of the board's policies and procedures regarding the complaint process. Requires the board to provide to each person who is the subject of the complaint a copy of the board's complaint policies and processes, and to notify them of the status of the investigation at least quarterly. Deletes a provision requiring the board to notify the parties of the complaint in the event notification may jeopardize an undercover investigation.

SECTION 36. Amends Article 4413(29bb), V.T.C.S., by adding Subchapter E, as follows:

SUBCHAPTER E. ADMINISTRATIVE PENALTY

Sections 61-73. Sets forth standard Sunset language regarding the imposition of an administrative penalty on a person who violates this Act or a rule or order adopted under this Act. Sets forth standard Sunset language regarding the payment and collection of the administrative penalty, and the ability of the penalized person to petition for administrative judicial review.

SECTION 37. Amends Article 2.12, Code of Criminal Procedure, to provide that board investigators commissioned by the board under Section 10(f), Article 4413(29bb), V.T.C.S., are peace officers.

SECTION 38. Amends Section 411.042(b), Code of Criminal Procedure, to require the bureau of identification and records to maintain a list of all previous background checks for applicants for any position regulated under Article 4413(29bb), V.T.C.S., who have undergone a criminal history background check under Section 411.119, if the check indicates a Class B misdemeanor or equivalent offense or a greater offense. Makes conforming changes.

SECTION 39. Amends Section 411.119, Government Code, as follows:

Sec. 411.119. New heading: ACCESS TO CRIMINAL HISTORY RECORD INFORMATION: TEXAS COMMISSION ON PRIVATE SECURITY. Authorizes the board to obtain criminal records for certain purposes. Makes conforming changes.

SECTION 40. (a) Provides that the board is a criminal justice agency for the sole purpose of directly obtaining criminal history records maintained by the Federal Bureau of Investigation (FBI).

(b) Requires the directors of the board to request from the U.S. Department of Justice a determination letter as to whether the board is recognized as a criminal justice agency for the purpose of obtaining criminal histories maintained by the FBI.

(c) Requires the director to give the letter to the secretary of state for publication in the Texas Register, upon receipt of the response.

(d) Establishes that if the letter grants recognition as a criminal justice agency, the board shall directly request the FBI rather than making the request through the Department of Public Safety. Provides that this section has no effect if the letter does not grant recognition as criminal justice agency.

SECTION 41. (a) Requires the governor to appoint certain members to the board. Sets forth the composition and terms of office of the members the governor appoints.

SECTION 42. Sets forth procedures for the governor to appoint vacancies to the board.

SECTION 43. Makes application of this Act prospective.

SECTION 44. Provides that the State Office of Administrative Hearings shall assume responsibility for the hearings on and after January 1, 2000, and the chief administrative law judge may agree to a transfer of contested cases pending before the board before January 1, 2000. Provides that this Act does not require a transfer of any personnel from the board to the Office of Administrative Hearings.

SECTIONS 45-53. Makes application of this Act prospective.

SECTION 54. Repealers: Sections 15(e) and (f); 19(g), (h), and (j); 33(c) and (d); 38; 39; 41; 43; 45(c)-

(i); and 46, Article 4413(29bb), V.T.C.S. (Private Investigators and Private Security Agencies Act).

SECTION 55. Effective date: September 1, 1999.

SECTION 56. Emergency clause.