

SUMMARY OF PROPOSED RULE

37 Tex. Admin. Code § 217.7. *Reporting Appointment and Separation of a Licensee.*

This proposed amendment would require all applicants and licensees to be fingerprinted and subjected to a criminal background check before being appointed by a law enforcement agency.

RESUMEN DE LA NORMA PROPUESTA

37 Tex. Admin. Code § 217.7. *Informar sobre nombramiento y separación de un licenciario.*

Esta enmienda propuesta requeriría que a todos los solicitantes y licenciarios se les tomen las huellas digitales y se les someta a una verificación de antecedentes penales antes de ser designados por una agencia de aplicación de la ley.

PUBLICATION IN *TEXAS REGISTER*

The Texas Commission on Law Enforcement (Commission) proposes amended 37 Texas Administrative Code §217.7, Reporting Appointment and Separation of a Licensee. This proposed amended rule conforms with the recommendations made by an advisory committee and approved by the Commission in the Hiring Procedures Model Policy. The proposed amended rule would require all applicants and licensees to be fingerprinted and subjected to a criminal background check before being appointed by a law enforcement agency.

Mr. John P. Beauchamp, General Counsel, has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no foreseeable fiscal implications to state or local governments as a result of enforcing or administering the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be a positive benefit to the public by conforming with the Hiring Procedures Model Policy. There will be minimal anticipated economic costs to persons required to comply with the proposed amendment due to increases in the number of times an individual may be fingerprinted.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no adverse economic effects to small businesses, microbusinesses, or rural communities as a result of implementing the proposed amendment.

Mr. Beauchamp has determined that for each year of the first five years this proposed amended rule will be in effect, there will be no effects to a local economy as a result of implementing the proposed amendment.

Mr. Beauchamp has determined the following:

- (1) the proposed rule does not create or eliminate a government program;
- (2) implementation of the proposed rule does not require the creation of new employee positions or the elimination of existing employee positions;
- (3) implementation of the proposed rule does not require an increase or decrease in future legislative appropriations to the agency;

- (4) the proposed rule does not require an increase or decrease in fees paid to the agency;
- (5) the proposed rule does not create a new regulation;
- (6) the proposed rule does expand an existing regulation by requiring fingerprinting prior to every appointment of a licensee;
- (7) the proposed rule does not increase or decrease the number of individuals subject to the rule's applicability; and
- (8) the proposed rule does not positively or adversely affect this state's economy.

The Commission will accept comments regarding the proposed amended rule. The comment period will last 30 days following the publication of this proposal in the *Texas Register*. Comments may be submitted electronically to public.comment@tcole.texas.gov or in writing to Mr. John P. Beauchamp, General Counsel, Texas Commission on Law Enforcement, 6330 E. Highway 290, Suite 200, Austin, Texas 78723-1035.

The amended rule is proposed pursuant to Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.303, License Application; Duties of Appointing Entity, and §1701.451, Preemployment Procedure. Texas Occupations Code §1701.151 authorizes the Commission to adopt rules for the administration of Occupations Code Chapter 1701. Texas Occupations Code §1701.303 requires an agency to have a licensee's criminal history record information and to have a licensee fingerprinted to disclose any criminal record if there has been a 180 break in service. Texas Occupations Code §1701.451 requires an agency to obtain and review criminal history record information before appointing a licensee.

The amended rule as proposed affects or implements Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority, §1701.303, License Application; Duties of Appointing Entity, and §1701.451, Preemployment Procedure. No other code, article, or statute is affected by this proposal.

The proposed amended rule has been reviewed by legal counsel and has been found to be within the Commission's authority to adopt.

§217.7. Reporting Appointment and Separation of a Licensee.

- (a) Before a law enforcement agency may appoint a person licensed or seeking a license as a peace officer, county jailer, or telecommunicator the agency head or designee must:
 - (1) obtain the person's written consent for the agency to view the person's employment records;
 - (2) obtain a copy of the Personal Status Report (PSR) maintained by the commission;
 - (3) obtain a completed, signed, and notarized Personal History Statement (PHS);
 - (4) obtain a Computerized Criminal History (CCH) from TCIC and NCIC;
 - (5) obtain proof of eligibility after separation from the military, if applicable;
 - (6) conduct and document a background investigation;
 - (7) for peace officers, obtain proof of weapons qualification within the 12 months preceding appointment;
 - (8) for current licensees, electronically request and obtain the F-5 Return (F5R) from the commission, contact each of the person's previous law enforcement employers, and document the contact on the F5 return;[-and]

(9) obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;

(10) in addition to the requirements listed in this section:

(A) For a licensee with more than 180 days since their last appointment:

(i) obtain a new declaration of psychological and emotional health (L3 Form); and

(ii) obtain a new declaration of the lack of any drug dependency or illegal drug use (L2 Form);

and

~~[(iii) obtain new proof that the licensee has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record.]~~

(B) For a person's initial appointment:

(i) obtain proof of meeting educational requirements;

(ii) obtain proof of meeting U.S. citizenship requirements;

~~[(iii) obtain new proof that the person has been fingerprinted and subjected to a search of local, state and U.S. national records and fingerprint files to disclose any criminal record;~~

~~(iv)]~~ obtain a new declaration of psychological and emotional health (L3 Form), if more than 180 days from the graduation of the basic licensing course;

~~(iv)]~~~~(v)]~~ obtain a new declaration of medical eligibility and lack of any drug dependency or illegal drug use (L2 Form), if more than 180 days from the graduation of the basic licensing course; and

~~(v)]~~~~(vi)]~~ submit an appointment application (L1 Form) and receive an approval of the application before the person discharges any duties related to the license sought; and~~[-]~~

~~(11)]~~~~(10)]~~ For current licensees, submit an~~[a Statement of]~~ Appointment Application (L1 Form) within 7 days of the appointment.

(b) When a person licensed by the commission separates from an agency, the agency shall, within 7 business days:

(1) submit a Separation report (Form F5) to the commission; and

(2) provide a copy to the licensee in a manner prescribed by Texas Occupations Code section 1701.452.

(c) A law enforcement agency that is given a signed consent form shall make the person's employment records available to a hiring law enforcement agency as authorized by Texas Occupations Code section 1701.451.

(d) An agency must retain records kept under this section while the person is appointed and for a minimum of five years after the licensee's separation date with that agency. The records must be maintained under the control of the agency head or designee in a format readily accessible to the commission.

(e) The effective date of this section is May 1, 2025~~[February 1, 2020]~~.