

- (6) an investigative demand or inquiry from the attorney general of this state as authorized by law other than the procedural law governing discovery in civil cases.

RULE §35.41 Company Name

- (a) No entity regulated by Chapter 1702 may use a name that contains the phrase "law enforcement," or substantially similar terms; or any other terms, name or combination of names, or a name for which the acronym is intended to or could reasonably give the impression that the entity is in any way associated with a governmental body or agency, or a branch or political subdivision of any government.

RULE §35.42 Disqualifying Class B Misdemeanor Offenses

- (a) Pursuant to the requirement of Section 1702.113(b), the following Class B misdemeanor offenses (as reflected in the Texas Penal Code) are disqualifying for five years from the date of conviction:

- 22.01 Assault (by threat or offensive contact with sports participant)
- 25.04 Enticing a child from lawful custody
- 31.03 Theft (\$50 to \$500)
- 32.41 Issuance of bad check (for child support)
- 32.45 Misapplication of fiduciary property
- 32.46 Securing execution of a document by deception
- 37.08 False report to police officer
- 37.12 False identification as peace officer
- 39.02 Abuse of official capacity
- 39.05 Failure to report death of prisoner
- 42.01 Disorderly conduct (firearm in public place)
- 42.02 Riot
- 42.061 Silent or Abuse Calls to 911 Service

- (b) Pursuant to the requirement of Section 1702.113(b), the following Class B misdemeanors (as reflected in the Texas Penal Code) are disqualifying for five years from the date of conviction, subject to the discretionary authority of the Manager (as delegated by the Board) to consider mitigating circumstances:

- 21.08 Indecent exposure
- 22.07 Terroristic Threat
- 28.03 Criminal Mischief (\$50-\$500)
- 30.05 Criminal Trespass (not habitation)
- 31.12 Theft of or tampering with multichannel video or information services (and conviction)
- 32.52 Fraudulent, Substandard or Fictitious Degree
- 33.02 Breach of computer security
- 33.A.02 Unauthorized use of telecommunications service (less than \$500)
- 33.A.04 Theft of telecommunications service (less than \$500)
- 38.02 Failure to identify (if a fugitive)
- 38.04 Evading arrest or detention
- 42.07 Harassment

- (c) Class B misdemeanors not listed in subsections (a) or (b) are not disqualifying under Section 1702.113, except that:

- (1) Any unlisted offense that is substantially similar in elements to a listed offense is disqualifying in the same manner as the corresponding listed offense;
- (2) Any unlisted Class B misdemeanor offense that was an "attempted" Class A offense is disqualifying, subject to the discretionary review by the Bureau Manager;

- (3) Any unlisted offense that is classified as a Class B misdemeanor as a result of a reduction from a Class A misdemeanor is disqualifying, subject to the discretionary review by the Bureau Manager;
- (4) Subject to review by the Board at the next, regularly scheduled, public meeting, any unlisted offense in which either the elements of the offense or the circumstances surrounding the commission of the offense are such that the Bureau Manager reasonably and in good faith believes that the Board would conclude that the offense should be disqualifying.

RULE §35.43 Military Discharges

Pursuant to the requirement of Section 1702.113(a), individuals who are discharged from the United States Armed Services under other than honorable conditions or who receive “bad conduct discharges” are disqualified from receiving a license, commission, or registration for the following time periods:

- (a) for five years after the date of discharge if the discharge was based on a criminal offense equivalent to a Class B misdemeanor that would have been disqualifying under Rule 35.42;
- (b) for five years after the date of discharge if the discharge was based on a criminal offense equivalent to a Class A misdemeanor that would have been disqualifying under Rule 35.46;
- (c) for ten years after the date of discharge if the discharge was based on a criminal offense equivalent to a felony that would have been disqualifying under Rule 35.46 (unless subject to subsection (d), below);
- (d) permanently, if the discharge was based on a criminal offense equivalent to an offense that would be permanently disqualifying under Rule 35.46; and
- (e) for five years after the date of discharge if the discharge was for any other reason relating to the occupation for which a license is sought, subject to the discretion of the department.

RULE §35.45 Sex Offender Registrants

Pursuant to the requirement of Section 1702.3615(c) of the Occupations Code, the following factors will be employed in the Board’s determinations under that provision:

- (1) The age of the applicant at the time of the offense giving rise to the registration requirement;
- (2) The classification of the offense;
- (3) Evidence of rehabilitation or recidivism;
- (4) The amount of time that has passed since the commission of the offense;
- (5) The relationship between the offense and the occupation for which the individual seeks a license, including whether licensure will facilitate the commission of a similar offense.

RULE §35.46 Guidelines for Disqualifying Convictions

The private security industry is in a position of trust; it provides services to members of the public that involve access to confidential information, to private property, and to the more vulnerable and defenseless persons within our society. By virtue of their licenses, security professionals are provided with greater opportunities to engage in fraud, theft, or related property crimes. In addition, licensure provides those with predispositions to commit assaultive or sexual crimes with greater opportunities to engage in such conduct and to escape detection or prosecution.

Therefore, the Private Security Board has determined that offenses of the following types directly relate to the duties and responsibilities of those who are licensed under the Private Security Act. Such offenses include those crimes under the laws of another state or the United States, if the offense contains elements that are substantially similar to the elements of an offense under the laws of this state. Such offenses also include those “aggravated” or otherwise enhanced versions of the listed offenses.

The following list is intended to provide guidance only, and is not exhaustive of either the offenses that may relate to a particular regulated occupation or of those that are independently disqualifying under Occupations Code Section 53.021(a)(2)-(4). The listed offenses are general categories that include all specific offenses within the corresponding chapter of the Texas Penal Code. In addition, after due consideration of the circumstances of the criminal act and its relationship to the position of trust involved in the particular licensed occupation, the Board may find that a conviction not described below also renders a person unfit to hold a license.

- Arson
- Assault of any type if classified as a Class A misdemeanor or greater under the Texas Penal Code, or similar law of another state
- Blackmail
- Bribery
- Burglary
- Counterfeiting
- Damage to Property
- Embezzlement
- Extortion
- False pretenses
- Forgery
- Fraud- any offense under Penal Code Chap. 32
- Harboring a fugitive from justice
- Kidnapping
- Larceny
- Mail fraud
- Manslaughter - Voluntary
- Murder
- Obstructing Governmental Operation- any offense under Penal Code Chap. 38
- Perjury
- Rape, or Sexual Assault
- Receiving stolen goods
- Robbery
- Sexual Offenses under Penal Code Chap. 21
- Tax evasion (willful)
- Theft
- Transporting stolen property or smuggling

In addition:

- An attempt to commit a crime listed above
- Aiding and abetting in the commission of a crime listed above
- Being an accessory (before or after the fact) to a crime listed above

A felony conviction for one of the above described offenses not also listed in Section 3g, Article 42.12, Code of Criminal Procedure and not a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure, is disqualifying for ten years from the date of the completion of the sentence.

A Class A misdemeanor offense for one of the above listed offenses is disqualifying for five years from the date of completion of the sentence.

Conviction for a felony or Class A offense that does not relate to the occupation for which license is sought is disqualifying for five years from the date of commission, pursuant to Occupations Code Section 53.021(a)(2).

Independently of whether the offense is otherwise described or listed above, a conviction for an offense listed in Section 3g, Article 42.12, Code of Criminal Procedure, or that is a sexually violent offense, as defined by Article 62.001, Code of Criminal Procedure, or a conviction for burglary of a habitation, is permanently disqualifying.

In determining the fitness to perform the duties and discharge the responsibilities of the licensed occupation of a person who has been convicted of a crime, the department may consider the following:

- the extent and nature of the person's past criminal activity;
- the age of the person when the crime was committed;
- the amount of time that has elapsed since the person's last criminal activity;
- the conduct and work activity of the person before and after the criminal activity;
- evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release; and
- any other evidence of the person's fitness provided by the person, including letters of recommendation from:
 - (a) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;
 - (b) the sheriff or chief of police in the community where the person resides;
 - (c) any other person in contact with the convicted person; and
- any other evidence considered by the department to be relevant to the person's fitness for the license sought.

In addition to the above documentation, the applicant shall furnish proof in the form required by the Bureau that the applicant has:

- maintained a record of steady employment;
- supported the applicant's dependents;
- maintained a record of good conduct; and
- paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

The failure to provide the above information in a timely manner may result in the proposed action being taken against the application or license.

The provisions of this rule are authorized by Section 1702.004(b) of the Occupations Code, and are intended to comply with the requirements of Occupation Code Chapter 53. The disqualifying offenses provided herein are applicable to all eligibility determinations involving Class A misdemeanors or felonies (previously made under Section 1702.113 of the Occupations Code, prior to the 81st Leg. R.S.), and all related licensing actions arising under Sections 1702.361 or 1702.364 of the Occupations Code.