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Bill Analysis
Legislative Service Commission

H.B. 312

125th General Assembly
(As Introduced)

Reps. Flowers, McGregor, Price, Collier, Ujvagi, Setzer

BILL SUMMARY

- Creates the Commission on Electronic Security System Regulation in the Department of Commerce and establishes requirements for membership, appointment, and terms of office.
- Charges the Commission with advising the Director of Commerce, maintaining a registry system, and hearing appeals from the Director's disciplinary decisions.
- Requires licensure of companies and employees who perform electronic security system services.
- Provides procedures and requirements for the issuance of company, operator, salesperson, operator supervisor, and technician licenses; temporary permits; training school and program certificates; and training school and program instructor certificates.
- Sets minimum education requirements for licensure and continuing education requirements for license renewal.
- Requires the Director of Commerce to adopt rules, establish certification standards, issue licenses, permits, and certificates, determine offenses, and provide an annual report to the Governor and the General Assembly.
- Provides exemptions from the bill's provisions for specified persons and entities.

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CONTENT AND OPERATION

Overview

The bill provides for the regulation of persons and companies engaged in the electronic security system business, which includes systems such as fire alarms and burglar alarms. The bill includes requirements for licensure, training, and continuing education, as well as provisions for certifying education providers and instructors. The bill establishes the Commission on Electronic Security System Regulation in the Department of Commerce to advise the Director of Commerce, to maintain a registry system, and hear appeals of the Director's decisions on disciplinary matters. The Director of Commerce is responsible for adopting rules and issuing licenses pursuant to those rules. Penalties are provided for failure to comply with the bill's provisions.

Licensure requirements

Company requirements

The bill requires a person to have a valid electronic security system company license in order to perform services, advertise services, or otherwise act as an electronic security system company. A company may hire only persons licensed or holding a temporary permit issued pursuant to the bill to act as an electronic security system operator, salesperson, operator supervisor, or technician. (Sec. 4749.22(A) and (B).)

Individual requirements

An individual must hold a valid license or temporary permit to perform services, advertise services, or otherwise act as an electronic security system operator, salesperson, operator supervisor, or technician. An electronic security system operator must at all times work under the supervision of an electronic security system operator supervisor. (Sec. 4749.22(C).)

Training school and instructor

To operate or advertise as an electronic security system training school or program, a school or program must hold a valid electronic security system training

school certificate. In addition, an instructor in a school or program must have a valid electronic security system instructor certificate to perform services, advertise services, or otherwise act as an electronic security system instructor. (Sec. 4749.22(D) and (E).)

Commission on Electronic Security System Regulation

Creation and members

The bill creates the Commission on Electronic Security System Regulation in the Department of Commerce. The Commission is comprised of six members who are appointed by the Governor, with the advice and consent of the Senate. Generally, three of the members must have a minimum of five years experience in the electronic security system industry and be licensed to provide at least one of the types of electronic security system service that the bill covers (initial appointees to the Commission, however, do not have to be licensed electronic security system personnel); one member must be from the Ohio Consumer Protection Association and have experience and direct involvement with electronic security systems; one member must be from the Ohio Chamber of Commerce and have experience and direct involvement with electronic security systems; and one member must be a person who is responsible for false alarm prevention in any municipality in Ohio. (Sec. 4749.23(A) and Section 4 of the bill.)

The Governor must appoint the initial Commission members within 90 days after the bill's effective date. Of the initial appointments, two members must be appointed for a term of two years, two members must be appointed for a term of three years, and two members must be appointed for a term of four years. Thereafter, the terms of office for all appointees will be for four years, with each term ending on the same day of the same month four years after the term it succeeds. (Sec. 4749.23(B) and Section 5 of the bill.)

After the expiration of a term, a member will continue to serve until a successor is appointed, or for a period of 60 days, whichever occurs first. Vacancies will be filled in the same manner as regular appointments to the Commission and are limited to the unexpired portion of the remaining term. No member may be appointed for more than two consecutive terms, and the Governor may remove any commissioner pursuant to removal provisions contained in existing law. (Sec. 4749.23(B).)

Members of the Commission must receive reimbursement for actual expenses reasonably incurred in the performance of their duties (sec. 4749.23(C)).

Duties of Commission

Duties related to Director of Commerce. The Commission must advise the Director of Commerce on standards and rules for the operation of electronic security system companies and regarding rules, procedures, and fees established to carry out the licensure required under the bill. The Commission also must hear appeals from decisions that the Director makes under the bill related to disciplinary measures. (Sec. 4749.23(D)(1), (2), and (3).)

Maintain registry system. The Commission must maintain a registry of all electronic security system license and permit holders and applicants for a license or a permit. The system must not include criminal history information, but must contain the person's name, address, and date of birth, the type of permit, certificate, or license issued to the person, any disciplinary actions taken against the person, the person's employer, and any other information the Commission considers appropriate. (Sec. 4749.23(D)(4).)

Duties and discretionary powers of Director of Commerce

Rules

The bill requires the Director of Commerce to establish reasonable rules in accordance the Administrative Procedure Act to carry out the bill's provisions (sec. 4947.24(A)(1)).

Licenses and permits

The Director must issue electronic security system company licenses; branch office certificates; nonresident electronic security system monitoring permits; electronic security system operator, operator supervisor, salesperson, and technician licenses; and specified temporary permits under the bill (sec. 4749.24(A)(2) and (3)).

Certification standards

The Director also must establish certification standards for electronic security system instructors, including instructors who are not Ohio residents. The standards may reference the appropriate instructor certification used by the National Burglar and Fire Alarm Association. The Director also must certify electronic security system schools, training programs, instructors, and nonresident instructors as required by the bill. (Sec. 4749.24(A)(4) and (A)(5).)

Applicant registry

The Director must compare annually information in the registry of applicants, permittees, and licensees with the state crime registry (sec. 4749.24(A)(6)).

Fee structure

The Director must hold hearings biennially to determine a fee structure to carry out the bill's provisions. The fees must include a single fee for applicants who apply for multiple licenses or permits and must not exceed the prorated direct costs of administering and enforcing the bill's provisions. (Sec. 4749.24(A)(7).)

Determine offenses

The Director must determine the types of offenses, in addition to those listed in the bill, that constitute disqualifying offenses for which the Director must deny or revoke a license or temporary permit (sec. 4749.24(A)(8)).

Annual report

With the advice of the Commission, the Director must submit an annual report to the Governor and the General Assembly. The annual report must include the cost of administering the bill's provisions, an evaluation of the effectiveness of the bill's provisions in protecting the public interest, the length of time it takes to conduct criminal background checks under the bill, the number and type of each "permit" issued, information regarding enforcement actions taken with respect to the bill's provisions, and any other relevant information. (Sec. 4749.24(A)(9).)

Discretionary powers

Under the bill, the Director may adopt and enforce reasonable rules relative to the exercise of the Director's powers and authority, and proper rules to govern the Director's proceedings and to regulate the manner of investigations and hearings. The Director may amend and modify any of the rules and may employ, consistent with the Civil Service Law, persons as needed to administer the bill's provisions. (Sec. 4749.24(B).)

License application procedures and requirements

Procedures

Under the bill, applicants for electronic security system operator, operator supervisor, salesperson, and technician licenses must be affiliated with an

electronic security system company. A person may apply for more than one type of license for a single fee. (Sec. 4749.25(A)(1).)

To apply for a license, an applicant must submit to the Director of Commerce a fully completed, signed, and sworn application on a form prescribed by the Director; two sets of classifiable fingerprints; two passport size photographs; the application fee; a written statement from the applicant's employer or prospective employer that states that the employer has made a reasonable effort to verify the work history information of the applicant; and a written statement by a certified electronic security system instructor or school verifying that the applicant has successfully completed training and passed an examination required for each type of licensure that the applicant is requesting. (Sec. 4749.25(A)(1).)

Classroom training requirements

An applicant for an electronic security system license must have completed minimum training requirements. Any classroom training that is required must be in a program approved by the Director. The number of hours and content of training programs varies depending on the type of licensure sought, as follows:

Technician license: 18 hours of classroom training that covers regulation overview, industry overview, basic electricity, standards, detectors and sensors, controls, communications, job planning, false alarm prevention, and job safety (sec. 4749.25(A)(2)).

Salesperson license: ten hours of classroom training that includes regulation overview, industry overview, problem identification and needs analysis, presentation, site survey, sensors, control panels, communications, and false alarm prevention (sec. 4749.25(A)(3)).

Operator supervisor license: seven hours of classroom training that covers regulation, industry, and electronic security system overviews, signal types, standards, central station systems and procedures, and false alarm prevention. In addition, the person must be at least 18 years of age (sec. 4749.25(A)(4)).

System operator license: eight hours of on-the-job training under the direct supervision of a licensed electronic security system operator supervisor (sec. 4749.25(A)(5)).

Director's duties in application process

Upon receipt of a completed application, the Director must submit a fingerprint card of the applicant to the Bureau of Criminal Identification and Investigation and to the Federal Bureau of Investigation to obtain criminal background checks. The Director may receive all background information

directly. Upon receipt of the background information, the Director must issue a license to the applicant if that information does not disqualify the applicant as determined by rules adopted pursuant to the bill (and presumably if the applicant satisfies the bill's other requirements). (Sec. 4749.25(A)(6).)

Any issued license must contain the licensee's photograph and identify the electronic security system services the licensee may perform. The licensee must carry the license in a manner the Director prescribes. (Sec. 4749.25(C).)

Temporary permits and certifications

Temporary permits

The bill provides procedures for the Director of Commerce to issue temporary permits, which are valid for two years and nonrenewable, to enable a person to act as an electronic security system operator, operator supervisor, salesperson, or technician. An applicant must apply to the Director for a temporary permit within 60 days of the person's first day of work with an electronic security system company. The applicant has to submit all of the information required of persons for licensure except for the statement attesting that the person has completed the requisite training. And, the applicant may apply for more than one type of permit. The Director must follow the procedure prescribed for granting a license in determining whether to issue a permit. (Sec. 4749.25(B).)

Any temporary permit issued under the bill must contain a photograph of the permittee and identify the electronic security system services that person may perform. The permittee must carry the temporary permit in a manner prescribed by the Director. (Sec. 4749.25(C).)

Certification of schools, programs, and instructors

Electronic security training schools and programs must receive certification from the Director. The Director must certify an applicant that applies for certification on forms provided by the Director, requires all of its electronic security system instructors to be certified, submits proof that each of the officers of the entity applying for certification, or the named director of a program applying for certification, holds at least one type of license established under the bill, and provides for its students or trainees a curriculum sufficient to meet the training standards required for each type of electronic security system license. (Sec. 4749.26(A).)

The bill requires any person acting as an instructor in a certified training school or program to be certified as an instructor. Applications for certification as an electronic security system instructor must be filed on forms provided by the

Director and include information on work history, instructor experience, and other relevant training. The Director must certify all qualified applicants as determined by rules adopted under the bill. If the Director does not issue a certificate to an applicant, the Director must provide the applicant with a written explanation for the decision. (Sec. 4749.26(B).)

The Director must establish, by rule, the length of time that an instructor certification or a training school (or presumably program) certification remains valid and the procedures for the renewal of the certifications (sec. 4749.26(C)).

Electronic security system company requirements

License

The bill requires an electronic security system company to obtain a license to conduct business. An applicant for that license must submit to the Director of Commerce an application on a form provided by the Director, together with a certificate of insurance that provides evidence that the applicant complies with the insurance requirements of the bill (see "Insurance," below). (Sec. 4749.27(A).)

After any investigation or further inquiry considered necessary, the Director must issue a license to an applicant if it meets the licensure standards established by rule. The license must include the licensee's name, a license number, the expiration date of the license, the functions that the electronic security system company is licensed to perform, and any other information the Director determines necessary. (Sec. 4749.27(B).)

The license must be displayed at all times in the company's place of business, in clear and unobstructed public view. And, the licensee may not conduct business activities governed by the bill under any name unless that name is listed on its license. All forms of advertising and all written bids or offers to provide services must include the license number of the company. (Sec. 4749.27(B).)

Branch office certificate

The bill requires that each branch office of an electronic security system company be listed on its license application. Upon payment by the company of the applicable fee, the Director must issue a branch office certificate for each branch office. The branch office certificate must be displayed at all times and in clear and unobstructed public view in the branch office. (Sec. 4749.27(C).)

Insurance

A licensed electronic security system company must file and maintain with the Director a certificate of general liability insurance coverage of not less than \$1 million. The bill explicitly states that nothing in it affects the rights of the insured to negotiate contract limitations with third parties, including customers of the insured. (Sec. 4749.27(D).)

The Director must be named as the certificate holder on insurance policies for notification of cancellation or amendment purposes. Upon receipt of information from a policy holder's insurance company that will adversely affect the insured, the Director must forward that information to the insured by mail. (Sec. 4749.27(D).)

Supervision

The bill requires any electronic security system company that provides electronic security operation, dispatching, or monitoring services to have at least one operator supervisor who physically supervises electronic security system operators any time that monitoring takes place (sec. 4749.27(E)).

Access to information

The Commission on Electronic Security System Regulation must allow any electronic security system company with a current, valid license timely access to an individual licensee's name, date of birth, Social Security number, license number, employment history, and status of license as contained in the registry of individual licensees maintained by the Commission, subject to rules the Director establishes (sec. 4749.27(F)).

Non-licensed employees

The bill requires any person employed by an electronic security system company who is not required to be licensed or to hold a permit, but who has access to security information in the course of business, to submit to and pass a criminal background check as required for licensees (sec. 4749.27(G)).

Duty to provide information

A licensed company must notify the Director in writing within 60 days after any change in the information contained on its application for licensure. And, within 30 days of the date of a hire or termination, a licensed company must notify the Director of the name and license or permit number of each licensee or permit holder who has been hired or terminated. (Sec. 4749.27(H) and (I).)

Further, within 30 days after a licensed company receives information that adversely affects a licensee's or permittee's eligibility to hold a license (or presumably a permit), the company must notify the Director of the name and license number of the licensee or the name and number of the permittee, and of the information that adversely affects the person's eligibility (sec. 4749.27(J)).

Finally, within 30 days after a licensed company ceases to perform as an electric security system company on a regular basis, it must send the Director, by certified mail, a notification that it has ceased business as an electronic security service company. The notice must contain information on all electronic security service company licenses and branch certificates that are affected by that cessation of business. (Sec. 4749.27(K).)

Nonresident licensure and monitoring permits

A person who is not a resident of Ohio and who is licensed as an electronic security system trainer, operator, salesperson, technician, or the equivalent in another state may *apply for a license* under the bill. The Director of Commerce must waive the education and examination requirements for licenses for nonresident applicants if the state in which they are licensed has licensure requirements similar to Ohio's. A nonresident must apply to the Director on a form provided by the Director, provide satisfactory proof that licensure in the nonresident's state is similar to licensing in Ohio, and pay the requisite fee. (Sec. 4749.28(A).)

The Director may issue a nonresident electronic security system *monitoring permit* to allow persons with no physical monitoring presence in Ohio to conduct electronic security system monitoring in this state. The Director may issue a permit to a person who notifies the Director of the person's monitoring activities, demonstrates completion of the training required by the bill or equivalent training, adheres to insurance requirements, and pays the requisite fee. (Sec. 4749.28(B).)

Validity of licenses, their renewal, and continuing education requirements

Under the bill, licenses of an electronic security system operator, operator supervisor, salesperson, or technician are valid for two years from the date of issue or renewal unless the Director of Commerce suspends or revokes the license pursuant to procedures in the bill. If the Director finds that an applicant is in compliance with the bill's requirements (including the continuing education requirements discussed below), the Director *must renew* the applicant's license in accordance with the standard license renewal procedure contained in current law, upon payment of the renewal fee. If a licensee fails to renew a license prior to its expiration date, a new license must be obtained under the bill's procedures for new license applications. (Sec. 4749.29(A).)

The bill requires that these licensed persons complete specified amounts of continuing education as a condition for license renewal. To renew a license, a licensee must have completed in the preceding two-year period at a certified training school or in a certified training program, not less than 18 hours to renew a license as an electronic security system technician, and not less than eight hours to renew a license as an electronic security system salesperson, operator, or operator supervisor. (Sec. 4749.29(B).)

Validity of electronic security system company licenses and their renewal

A license issued to conduct business as an electronic security system company is valid for five years from the date of issuance or renewal unless suspended or revoked. If the Director of Commerce finds an applicant is in compliance with the bill's requirements, the Director must renew the applicant's license in accordance with the standard license renewal procedure set forth in current law, upon payment of the requisite fee. If an electronic security system company fails to renew its license prior to the expiration date, that company must obtain a new license in accordance with the bill's procedure for new license applications. (Sec. 4749.29(C)(1).)

All branch company certificates affiliated with an electronic security system company's license expire under the bill at the same time as the company's license, but may be renewed according to the bill's procedures for obtaining a branch certificate (sec. 4749.29(C)(2)).

Disciplinary measures and prohibited acts

In general

The Director of Commerce, pursuant to the Administrative Procedure Act, may impose any of the following disciplinary measures on any certificate holder, permittee, or licensee that is found to have committed any act that is prohibited by the bill: issue a reprimand; deny, suspend, or revoke a certificate, permit, or license; impose probationary conditions; or impose a fine not to exceed \$1,000 for each offense (sec. 4749.30(A)).

A person commits a *prohibited act* under the bill if the person commits fraud or misrepresentation in applying for a license, permit, or certificate; is convicted of a crime directly related to the performance of holding a license, permit, or certificate, including any crime involving dishonesty or corruption; engages in the unauthorized release of security information in violation of rules; commits fraud, deceit, or material and repeated misconduct related to electronic security services; fails to maintain insurance as required; fails or refuses to cooperate with an authorized representative of the Director of Commerce engaged

in an official investigation under the bill; fails to adequately supervise electronic security system personnel so that the public health or safety is at risk; interferes with an investigation or disciplinary proceeding by willful misrepresentation of facts or by the use of threats or harassment; or fails to return to an electronic security system employer, in a timely manner, uniforms, tools, or other equipment belonging to the employer upon the employer's request (sec. 4749.30(B)).

Suspension of license, certificate, or permit

The Director is required to immediately suspend any permit, certificate, or license of a person whose record indicates a conviction for a disqualifying offense, pending the final disposition of the matter by a hearing under the Administrative Procedure Act (sec. 4749.30(C)).

Investigations

The Director, on the Director's own initiative or on complaints submitted in writing, may investigate alleged violations of any provision of the bill or the rules adopted under it. In conducting any investigation, the Director may compel, by subpoena, witnesses to testify in relation to any matter over which the Director has jurisdiction and may require the production of any book, record, or other document pertaining to the matter. If a person fails to file any statement or report, obey any subpoena, give testimony, produce any book, record, or other document as required by the subpoena, or permit photocopying of any book, record, or other document subpoenaed, the court of common pleas of any county, on application made to it by the Director, must compel obedience by attachment proceedings for contempt. (Sec. 4749.31(A) and (C).)

If the Director determines, upon an investigation, that there is reason to believe a violation occurred, the Director must prepare a statement of charges and serve that statement on the person investigated and that person's employer. The statement must include a notice that the person may request a hearing under the Administrative Procedure Act within 30 days of receipt of the statement. Failure to so request a hearing results in default, but a hearing must be scheduled no fewer than 30 days after the receipt of a timely request for one. An appeal of the results of that hearing must be made in writing to the Commission on Electronic Security System Regulation no later than ten days after a decision is rendered by the Director. (Sec. 4749.31(A).)

Injunctive relief and cease and desist orders

The Director may apply to the court of common pleas for an order enjoining any violation of a provision of the bill or the rules adopted under it. Upon a showing by the Director that a person has committed or is about to commit

a violation, the court must grant an injunction, restraining order, or other appropriate relief (sec. 4749.31(B)).

Alternatively, if the Director determines that a person is engaged in, or is believed to be engaged in, activities that constitute a violation of the provisions of the bill or the rules adopted under it, the Director, after notice and a hearing conducted in accordance with the Administrative Procedure Act, may issue a cease and desist order, which is enforceable in the court of common pleas (sec. 4749.31(D)).

Exemptions from bill's provisions

The provisions of the bill do not apply to any of the following (sec. 4749.32):

- An officer or an employee of the United States, this state, or any political subdivision, while that person is performing official duties;
- Equipment manufacturers not providing direct sales, monitoring, installation, or service of electronic security systems to users;
- Equipment distributors not providing direct sales, monitoring, installation, or service of electronic security systems to users;
- Persons licensed under Ohio law as an architect, a professional engineer, or a professional surveyor, who do not provide direct sales, monitoring, installation, or service of electronic security systems to users;
- Telephone installers or dealers who do not provide direct sales, monitoring, installation, or service of electronic security systems to users;
- Telemarketing personnel who do not provide direct sales, monitoring, installation, or service of electronic security systems to users and who are limited to telemarketing and scheduling appointments;
- Electrical contractors licensed under Ohio law or general contractors who provide direct sales, monitoring, installation, or service of electronic security systems to users;
- Locksmiths who do not provide direct sales, monitoring, installation, or service of electronic security systems to users but who may

provide single point alarm functions at an entrance or exit that are not part of an electronic security system provided by the locksmith;

- Retail merchants or catalog sales operations not offering or providing consultation, electronic security system site visits, installation, or service of electronic security systems;
- Individual property owners or renters of residential property who personally install an alarm system within their residence or other building not open to the public;
- Hospitals or hospital affiliates monitoring or performing minor maintenance of alarm systems solely for the hospital's own use;
- Hospitals or hospital affiliates providing medical alert or medical monitoring services.

Fees and fines

The bill requires the Director of Commerce to deposit all fees and fines collected under it into the Electronic Security Systems Fund, which the bill creates in the state treasury. The Director must use the fund solely for the administration and enforcement of the bill. (Sec. 4749.33.)

Penalties

Unless exempt, any person who violates the provisions of the bill or the rules adopted under it is guilty of a misdemeanor of the first degree (sec. 4749.99(C)). And, any person who fails to comply with a sanction imposed by the Director of Commerce under the bill as a disciplinary measure must pay a criminal penalty, as determined by a court of competent jurisdiction, of not more than \$25,000, be imprisoned for up to one year, or be both so fined and imprisoned (sec. 4749.99(D)).

Definitions

The bill includes the following definitions (sec. 4749.21):

"Electronic security system" means an assembly of electronic equipment and devices, which may include access control and closed circuit television, that for its main purpose detects threats, intrusions, or security violations that jeopardize the safety of life or property.

"Electronic security system company" means any sole proprietor, partnership, association, limited liability company, limited liability partnership, or

corporation that sells, leases, rents, designs, plans, installs, monitors, maintains, repairs, tests, inspects, or investigates electronic security alarms or provides any combination of those services related to electronic security systems.

"Electronic security system operator" means an individual who monitors, receives, and retransmits information from an electronic security system.

"Electronic security system operator supervisor" means an individual who supervises electronic security system operators.

"Electronic security system salesperson" means an individual who provides sales, leasing, or rental of electronic security system applications at the premises of the consumer.

"Electronic security system technician" means an individual who performs installation and repair of electronic security systems.

"Person" means an individual, corporation, partnership, association, limited liability partnership, or limited liability corporation.

"Security information" means information specific to a customer's account or a customer's site monitored by an electronic security company, including, but not limited to, a password or passcode, wiring diagrams, and the type of security system installed at the customer's site.

Effective date

The bill takes effect January 1, 2005 (Section 3 of the bill).

HISTORY

ACTION	DATE	JOURNAL ENTRY
Introduced	10-23-03	p. 1145

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