

By: Gallego

H.B. No. 1578

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the continuation and functions of the Board of Law  
3 Examiners.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

5 SECTION 1. Sections 82.001(b) and (c), Government Code, are  
6 amended to read as follows:

7 (b) The supreme court [~~biennially~~] shall appoint the  
8 members of the board for staggered six-year [~~two-year~~] terms, with  
9 the terms of one-third of the members expiring [~~that expire~~] August  
10 31 of each odd-numbered year. A member is subject to removal by the  
11 supreme court as provided by Section 82.0021.

12 (c) Appointments to the board shall be made without regard  
13 to the race, color, disability, [~~creed,~~] sex, religion, age, or  
14 national origin of the appointees.

15 SECTION 2. Section 82.002, Government Code, is amended to  
16 read as follows:

17 Sec. 82.002. CONFLICT OF INTEREST. (a) In this section,  
18 "Texas trade association" means a cooperative and voluntarily  
19 joined statewide association of business or professional  
20 competitors in this state designed to assist its members and its  
21 industry or profession in dealing with mutual business or  
22 professional problems and in promoting their common interest.

23 (b) A person may not be a member of the Board of Law  
24 Examiners and may not be a board employee employed in a "bona fide

1 executive, administrative, or professional capacity," as that  
2 phrase is used for purposes of establishing an exemption to the  
3 overtime provisions of the federal Fair Labor Standards Act of 1938  
4 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, if:

5 (1) the person is an officer, employee, or paid  
6 consultant of a Texas trade association in the field of board  
7 interest; or

8 (2) the person's spouse is an officer, manager, or paid  
9 consultant of a Texas trade association in the field of board  
10 interest.

11 (c) A person may not be a member of the board or act as the  
12 general counsel to the board if the person is required to register  
13 as a lobbyist under Chapter 305 because of the person's activities  
14 for compensation on behalf of a profession related to the operation  
15 of the board.

16 (d) A member of the board [Board of Law Examiners] who has a  
17 financial interest, other than a remote financial interest, in a  
18 decision pending before the board is disqualified from  
19 participating in the decision.

20 ~~[(b) A member or employee of the board may not be an employee~~  
21 ~~or paid consultant of a trade association in the field of board~~  
22 ~~interest.~~

23 ~~[(c) A person who is required to register as a lobbyist~~  
24 ~~under Chapter 305 may not act as general counsel to the board or~~  
25 ~~serve as a member of the board.]~~

26 SECTION 3. Sections 82.0021(a) and (c), Government Code,  
27 are amended to read as follows:

1 (a) It is a ground for removal from the Board of Law  
2 Examiners that [~~if~~] a member:

3 (1) does not have, at the time of taking office  
4 [~~appointment~~], the qualifications required by Section 82.001;

5 (2) does not maintain during service on the board the  
6 qualifications required by Section 82.001;

7 (3) is ineligible for membership under [~~violates a~~  
8 ~~prohibition established by~~] Section 82.002;

9 (4) cannot, because of illness or disability,  
10 discharge the member's duties for a substantial part of the member's  
11 term [~~for which the member is appointed because of illness or~~  
12 ~~disability~~];

13 (5) is absent from more than half of the regularly  
14 scheduled board meetings that the member is eligible to attend  
15 during [~~in~~] a calendar year without an excuse approved [~~unless the~~  
16 ~~absence is excused~~] by a majority vote of the board;

17 (6) is incompetent; or

18 (7) is inattentive to the member's duties.

19 (c) If the executive director of the board has knowledge  
20 that a potential ground for removal exists, the executive director  
21 shall notify the presiding officer [~~chairman~~] of the board of the  
22 potential ground. The presiding officer [~~chairman~~] shall then  
23 notify the supreme court that a potential ground for removal  
24 exists. If the potential ground for removal involves the presiding  
25 officer, the executive director shall notify the next highest  
26 ranking officer of the board, who shall then notify the supreme  
27 court that a potential ground for removal exists.

1 SECTION 4. Section 82.003, Government Code, is amended by  
2 amending Subsections (a) and (c) and adding Subsections (d) and (e)  
3 to read as follows:

4 (a) Except as provided by this section [~~Subsections (b) and~~  
5 ~~(e)~~], the Board of Law Examiners is subject to Chapter 552[~~7~~] and  
6 Chapter 551.

7 (c) Board deliberations, hearings, and determinations  
8 [~~Deliberations~~] relating to moral character and fitness of an  
9 applicant shall [~~may~~] be closed to the public, and records relating  
10 to these subjects are confidential [~~exempt from disclosure~~]. On  
11 the written request of an applicant, however, the applicant is  
12 entitled to:

13 (1) have the applicant's character and fitness hearing  
14 open to persons designated by the applicant; or

15 (2) have disclosed to the applicant records relating  
16 to the applicant's own moral character and fitness unless the  
17 person who supplied the information has requested that it not be  
18 disclosed.

19 (d) The board shall not inquire of a person who supplies  
20 information relating to an applicant's moral character and fitness  
21 whether the person objects to disclosure nor inform the person of  
22 the right to object.

23 (e) Board deliberations, hearings, and determinations  
24 relating to a request by an applicant who has a disability for  
25 testing accommodations under Section 82.0272 on the bar examination  
26 shall be closed to the public, and records relating to that subject  
27 are confidential.

1 SECTION 5. Section 82.006, Government Code, is amended to  
2 read as follows:

3 Sec. 82.006. SUNSET PROVISION. The Board of Law Examiners  
4 is subject to Chapter 325 (Texas Sunset Act). Unless continued in  
5 existence as provided by that chapter, the board is abolished  
6 September 1, 2015 [~~2003~~].

7 SECTION 6. Subchapter A, Chapter 82, Government Code, is  
8 amended by amending Section 82.007 and adding Sections 82.0071,  
9 82.0072, and 82.0073 to read as follows:

10 Sec. 82.007. CAREER LADDER; ANNUAL PERFORMANCE EVALUATIONS  
11 [~~PERSONNEL~~]. (a) The executive director of the Board of Law  
12 Examiners or the executive director's designee shall develop an  
13 intraagency career ladder program. The program shall require  
14 intraagency postings of all nonentry level positions concurrently  
15 with any public posting.

16 (b) The executive director or the executive director's  
17 designee shall develop a system of annual performance evaluations.  
18 All merit pay for board employees must be based on the system  
19 established under this subsection.

20 [~~(c) The board shall provide to its members and employees,~~  
21 ~~as often as necessary, information regarding their qualifications~~  
22 ~~for office or employment under this subchapter and their~~  
23 ~~responsibilities under applicable laws relating to standards of~~  
24 ~~conduct for state officers or employees.~~

25 [~~(d) The board shall develop and implement policies that~~  
26 ~~clearly define the respective responsibilities of the board and the~~  
27 ~~staff of the board.]~~

1           Sec. 82.0071. EQUAL EMPLOYMENT OPPORTUNITY

2 POLICY. (a) [~~e~~] The executive director of the Board of Law  
3 Examiners or the executive director's designee shall prepare and  
4 maintain a written policy statement that implements [~~to assure~~  
5 ~~implementation of~~] a program of equal employment opportunity to  
6 ensure that all personnel decisions [~~under which all personnel~~  
7 ~~transactions~~] are made without regard to race, color, disability  
8 [~~handicap~~], sex, religion, age, or national origin.

9           (b) The policy statement must include:

10                   (1) personnel policies, including policies relating  
11 to recruitment, evaluation, selection, [~~appointment,~~] training,  
12 and promotion of personnel, that show the intent of the board to  
13 avoid the unlawful employment practices described by Chapter 21,  
14 Labor Code; and

15                   (2) an analysis of the extent to which the composition  
16 of the board's personnel is in accordance with state and federal law  
17 and a description of reasonable methods to achieve compliance with  
18 state and federal law.

19           (c) The policy statement must be:

20                   (1) updated annually;

21                   (2) reviewed by the Commission on Human Rights for  
22 compliance with Subsection (b)(1); and

23                   (3) filed with the governor's office and the supreme  
24 court [↗

25                   [~~(2) a comprehensive analysis of the board's work~~  
26 ~~force that meets federal and state guidelines,~~

27                   [~~(3) procedures by which a determination can be made~~

1 ~~of significant underutilization in the board's work force of all~~  
2 ~~persons for whom federal or state guidelines encourage a more~~  
3 ~~equitable balance, and~~

4 ~~[(4) reasonable methods to appropriately address~~  
5 ~~those areas of significant underutilization.~~

6 ~~[(f) A policy statement prepared under Subsection (e) must~~  
7 ~~cover an annual period, be updated at least annually, and be filed~~  
8 ~~with the supreme court and the governor's office.~~

9 ~~[(g) The governor's office shall deliver a biennial report~~  
10 ~~to the legislature based on the information received under~~  
11 ~~Subsection (f). The report may be made separately or as a part of~~  
12 ~~other biennial reports made to the legislature].~~

13 Sec. 82.0072. STANDARDS OF CONDUCT. The executive  
14 director of the Board of Law Examiners or the executive director's  
15 designee shall provide to members of the board and to board  
16 employees, as often as necessary, information regarding the  
17 requirements for office or employment under this chapter, including  
18 information regarding a person's responsibilities under applicable  
19 laws relating to standards of conduct for state officers or  
20 employees.

21 Sec. 82.0073. SEPARATION OF RESPONSIBILITIES. The Board  
22 of Law Examiners shall develop and implement policies that clearly  
23 separate the policymaking responsibilities of the board and the  
24 management responsibilities of the executive director and the staff  
25 of the board.

26 SECTION 7. Subchapter A, Chapter 82, Government Code, is  
27 amended by adding Sections 82.010-82.013 to read as follows:

1       Sec. 82.010. TRAINING PROGRAM REQUIRED. (a) A person who  
2 is appointed to and qualifies for office as a member of the Board of  
3 Law Examiners may not vote, deliberate, or be counted as a member in  
4 attendance at a meeting of the board until the person completes a  
5 training program that complies with this section.

6       (b) The training program must provide the person with  
7 information regarding:

8               (1) the legislation that created the board;

9               (2) the programs operated by the board;

10              (3) the role and functions of the board;

11              (4) the rules of the board, with an emphasis on the  
12 rules that relate to disciplinary and investigatory authority;

13              (5) the current budget for the board;

14              (6) the results of the most recent formal audit of the  
15 board;

16              (7) the requirements of:

17                      (A) the open meetings law, Chapter 551;

18                      (B) the public information law, Chapter 552;

19                      (C) the administrative procedure law, Chapter  
20 2001; and

21                      (D) other laws relating to public officials,  
22 including conflict-of-interests laws; and

23              (8) any applicable ethics policies adopted by the  
24 board or the Texas Ethics Commission.

25       Sec. 82.011. WRITTEN COMPLAINTS. (a) The Board of Law  
26 Examiners shall maintain a file on each written complaint filed  
27 with the board. The file must include:



- 1           (1) the name of the person who filed the complaint;  
2           (2) the date the complaint was received by the board;  
3           (3) the subject matter of the complaint;  
4           (4) the name of each person contacted in relation to  
5 the complaint;  
6           (5) a summary of the results of the review or  
7 investigation of the complaint; and  
8           (6) an explanation of the reason the file was closed,  
9 if the board closed the file without taking action other than to  
10 investigate the complaint.

11           (b) The board shall provide to the person filing the  
12 complaint and to each person who is a subject of the complaint a  
13 copy of the board's policies and procedures relating to complaint  
14 investigation and resolution.

15           (c) The board, at least quarterly until final disposition of  
16 the complaint, shall notify the person filing the complaint and  
17 each person who is a subject of the complaint of the status of the  
18 investigation unless the notice would jeopardize an undercover  
19 investigation.

20           Sec. 82.012. STATE EMPLOYEE INCENTIVE PROGRAM. The  
21 executive director of the Board of Law Examiners or the executive  
22 director's designee shall provide to board employees information  
23 and training on the benefits and methods of participation in the  
24 state employee incentive program.

25           Sec. 82.013. EFFECTIVE USE OF TECHNOLOGY. The Board of Law  
26 Examiners shall develop and implement a policy requiring the  
27 executive director and board employees to research and propose

1 appropriate technological solutions to improve the board's ability  
2 to perform its functions. The technological solutions must:

3 (1) ensure that the public is able to easily find  
4 information about the board on the Internet;

5 (2) ensure that persons who want to use the board's  
6 services are able to:

7 (A) interact with the board through the Internet;  
8 and

9 (B) access any service that can be provided  
10 effectively through the Internet; and

11 (3) be cost effective and developed through the  
12 board's planning processes.

13 SECTION 8. Section 82.027, Government Code, is amended by  
14 adding Subsections (c) and (d) to read as follows:

15 (c) On a showing of good cause or to prevent hardship, the  
16 board may permit an applicant to file an application with the board  
17 not later than the 60th day after the deadline prescribed by  
18 Subsection (a) on payment of applicable late fees.

19 (d) The filing deadlines and late fees do not apply to an  
20 applicant who failed the preceding bar examination. Any such  
21 applicant may take the next examination administered on filing an  
22 application with the board and paying the required examination fees  
23 not later than the date established by supreme court rule.

24 SECTION 9. Subchapter B, Chapter 82, Government Code, is  
25 amended by adding Section 82.0272 to read as follows:

26 Sec. 82.0272. TESTING ACCOMMODATIONS FOR APPLICANTS WITH  
27 DISABILITIES. An applicant who has a physical, mental, or

1 developmental disability may request that the Board of Law  
2 Examiners provide testing accommodations on the bar examination.  
3 An applicant whose request is denied may appeal the decision to a  
4 committee appointed by, and composed of three or more members of,  
5 the board.

6 SECTION 10. Section 82.030, Government Code, is amended by  
7 amending Subsection (f) and adding Subsection (g) to read as  
8 follows:

9 (f) In this section, "treatment [+

10 [~~(1) "Chemical dependency" has the meaning assigned by~~  
11 ~~Section 82.038.~~

12 [~~(2) "Treatment~~] facility" has the meaning assigned by  
13 Section 462.001, Health and Safety Code.

14 (g) Subject to supreme court approval, the board by rule  
15 shall define "chemical dependency."

16 SECTION 11. Section 82.034, Government Code, is amended to  
17 read as follows:

18 Sec. 82.034. USE OF FUNDS. Fees received by the Board of  
19 Law Examiners shall be deposited in the general revenue fund [~~a fund~~  
20 ~~established by the supreme court. The fund may be used only to~~  
21 ~~administer the functions of the supreme court and the board~~  
22 ~~relating to the licensing of lawyers. The fund shall be used as~~  
23 ~~directed by the supreme court and under supreme court rules].~~

24 SECTION 12. Section 82.038, Government Code, is amended by  
25 amending Subsection (i) and adding Subsection (j) to read as  
26 follows:

27 (i) On request, the board in coordination with the State Bar

1 of Texas shall inform a member of the public whether a particular  
2 person holds a probationary license. Any information that forms  
3 the basis for the issuance of the probationary license is  
4 confidential.

5 (j) In this section:

6 (1) "Chemical dependency" has the meaning provided by  
7 board rule adopted under Section 82.030 ~~[means:~~

8 ~~[(A) the abuse of alcohol or a controlled~~  
9 ~~substance;~~

10 ~~[(B) a pathological use of alcohol or a~~  
11 ~~controlled substance that chronically impairs the applicant's~~  
12 ~~ability to competently provide legal advice or services; or~~

13 ~~[(C) a physiological or physical dependence on~~  
14 ~~alcohol or a controlled substance].~~

15 (2) "Controlled substance," "treatment facility," and  
16 "treatment" have the meanings assigned by Section 462.001, Health  
17 and Safety Code.

18 SECTION 13. Sections 82.031 and 82.032, Government Code,  
19 are repealed.

20 SECTION 14. (a) The changes in law made by this Act to  
21 Section 82.034, Government Code, apply only to fees received by the  
22 Board of Law Examiners on or after September 1, 2003. However, for  
23 fees received during the state fiscal biennium beginning September  
24 1, 2003, those changes in law apply only if a specific  
25 appropriation for the board is provided by the General  
26 Appropriations Act, Acts of the 78th Legislature, Regular Session,  
27 2003. If a specific appropriation is not provided by that Act, fees

1 received by the board during that biennium are governed by Section  
2 82.034, Government Code, as that section existed immediately before  
3 the effective date of this Act, and the former law is continued in  
4 effect for that purpose.

5 (b) Not later than the 15th day after the effective date of  
6 this Act, the Texas Supreme Court shall transfer to the comptroller  
7 all money remaining in the fund established under Section 82.034,  
8 Government Code, as that section existed immediately before the  
9 effective date of this Act. The comptroller shall deposit the money  
10 in the general revenue fund. However, if the General  
11 Appropriations Act, Acts of the 78th Legislature, Regular Session,  
12 2003, does not provide a specific appropriation for the Board of Law  
13 Examiners, the supreme court shall make that transfer during the  
14 first 15 days of the fiscal biennium beginning September 1, 2005.

15 SECTION 15. In appointing the members of the Board of Law  
16 Examiners for terms beginning September 1, 2003, the Texas Supreme  
17 Court shall appoint three persons to terms expiring August 31,  
18 2005, three persons to terms expiring August 31, 2007, and three  
19 persons to terms expiring August 31, 2009.

20 SECTION 16. Section 82.038(i), Government Code, as amended  
21 by this Act, applies only to a probationary license to practice law  
22 issued on or after September 1, 2003.

23 SECTION 17. This Act takes effect September 1, 2003.