

BILL ANALYSIS

C.S.H.B. 3033

By: Solis

Licensing & Administrative Procedures
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, the Texas Board of Law Examiners, through rulemaking authority, limits the number of times the Texas Bar can be taken to 5 times. This is inconsistent with other states where 31 out of 50 have no limit on the number of times the Bar Examination can be taken.

Supreme Court rules governing admission to the Bar of Texas prohibit an attorney from being reinstated without retaking the Bar Examination. Attorneys seeking reinstatement have already been penalized by the loss of their license for five years and should not have to study for and sit through the examination again.

Additionally, the Board discriminates between the requirements for an attorney from another jurisdiction to become licensed in Texas. An attorney from another jurisdiction who has been practicing five of the last seven years and who has taken the bar exam in Texas and failed is ineligible to become a licensed attorney without re-taking the Bar Examination in Texas and passing. However, if the above mentioned attorney has never taken the Texas Bar Examination, they would be eligible to become an attorney without ever taking or passing the Bar Examination.

C.S.H.B. 3033 eliminates the rule imposing a five time limit on the number of times the Bar Examination can be taken in Texas. In addition, the bill will allow attorneys who have been disbarred to be reinstated without taking the Bar Examination if they have practiced 20 years in good standing in Texas prior to disbarment. The bill offers an incentive to graduates of Texas Law Schools to be able to return to the state in as little as three years if they have never taken the Texas Bar Examination and to become licensed without examination; furthermore, lawyers practicing law five of the past seven years in another jurisdiction can become a licensed attorney, regardless of if they have taken the Texas Bar Examination or not.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Supreme Court in SECTION 2 (Section 82.026, Government Code), SECTION 3 (Section 82.036, Government Code), and SECTION 4 (Section 82.026 and 82.036, Government Code) of this bill.

ANALYSIS

SECTION 1. Amends Section 82.024, Government Code, by prohibiting the supreme court from adopting rules that prohibit an applicant from taking the examination for a license to practice law after failing a specified number of previous examinations.

SECTION 2. Amends Subchapter B, Chapter 82, Government Code, by adding Section 82.026, as follows:

Sec. 82.026. EXEMPTION FROM EXAMINATION FOR CERTAIN APPLICANTS FOLLOWING DISBARMENT. Requires rules adopted by the supreme court, relating to the reinstatement of the license of a disbarred attorney, allow an attorney to be reinstated without having to take the bar examination if the court with jurisdiction over the proceeding finds that the attorney was licensed in this state for at least 20 years before disbarment and was in good standing for that period.

SECTION 3. Amends Section 82.036, Government Code, as follows:

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(b) Requires the rules adopted under this section allow an attorney licensed to practice law in another jurisdiction to be admitted to practice law in this state without examination if the attorney:

- (1) completed the law study requirements for admission at an approved law school in this state;
- (2) has been actively and substantially engaged in the practice of law in the other jurisdiction for:
 - (A) at least three of the last seven years immediately preceding the date the attorney filed the application for a license in Texas, of the attorney has never taken and failed the Texas bar examination; or
 - (B) at least five of the last seven years immediately preceding the date the attorney filed the application for a license in Texas, if the attorney failed the last Texas bar examination taken by the attorney; and
- (3) is otherwise eligible for admission to practice law without examination.

SECTION 4. Requires the Supreme Court to adopt rules to implement Section 82.026 and Section 82.036, Government Code, as soon as practicable, as amended by this Act.

SECTION 5. Provides that Sections 82.024 and 82.036, Government Code, as amended, apply only to a person who files an application for admission to the State Bar of Texas on or after September 1, 2005.

SECTION 6. Provides that Section 82.026, Government Code, as amended, applies only to applications pending on or filed on or after September 1, 2005.

SECTION 7. Effective date: September 1, 2005.

EFFECTIVE DATE

September 1, 2005.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 3033 modifies the original by requiring supreme court rules to allow attorneys to be reinstated without retaking the bar if they have been in good standing for 20 years prior to disbarment.

The substitute adds language to the original requiring the Texas Supreme Court to adopt rules for the implementation of Section 82.026, Government Code, as amended.

The substitute modifies the original by providing that Section 82.026, Government Code, applies only to applications pending on or filed on or after September 1, 2005.