

By: Kolkhorst

H.B. No. 2033

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of polygraph examiners by the Texas
3 Department of Licensing and Regulation and the abolition of the
4 Polygraph Examiners Board.

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

6 SECTION 1. Section 1703.003, Occupations Code, is amended
7 by amending Subdivisions (1), (2), and (5) and adding Subdivision
8 (1-a) to read as follows:

9 (1) "Commission" means the Texas Commission of
10 Licensing and Regulation.

11 (1-a) "Committee" [~~"Board"~~] means the Polygraph
12 Advisory Committee [~~Examiners Board~~].

13 (2) "Department" means the Texas Department of
14 Licensing and Regulation [~~Public Safety of the State of Texas~~].

15 (5) "Polygraph examiner internship" means a course of
16 study of polygraph examinations and of the administration of
17 polygraph examinations by a trainee under the personal supervision
18 and control of a polygraph examiner as prescribed by the department
19 [~~board~~] at the beginning of the internship.

20 SECTION 2. The heading to Subchapter B, Chapter 1703,
21 Occupations Code, is amended to read as follows:

22 SUBCHAPTER B. POLYGRAPH ADVISORY COMMITTEE [~~EXAMINERS BOARD~~]

23 SECTION 3. The heading to Section 1703.051, Occupations
24 Code, is amended to read as follows:

1 Sec. 1703.051. COMMITTEE [~~BOARD~~] MEMBERSHIP.

2 SECTION 4. Sections 1703.051(a), (d), and (e), Occupations
3 Code, are amended to read as follows:

4 (a) The Polygraph Advisory Committee [~~Examiners Board~~]
5 consists of five [~~seven~~] members appointed by the presiding officer
6 of the commission, with the approval of the commission, [~~governor~~
7 ~~with the advice and consent of the senate~~] as follows:

8 (1) two polygraph examiner members who are qualified
9 polygraph examiners for a governmental law enforcement agency;

10 (2) two polygraph examiner members who are qualified
11 polygraph examiners in the commercial field; and

12 (3) one member [~~three members~~] who represents
13 [~~represent~~] the public.

14 (d) Two committee [~~board~~] members may not be employed by the
15 same person.

16 (e) Appointments to the committee [~~board~~] shall be made
17 without regard to the race, color, disability [~~creed~~], sex,
18 religion, or national origin of the appointee.

19 SECTION 5. Section 1703.054, Occupations Code, is amended
20 to read as follows:

21 Sec. 1703.054. TERMS; VACANCY. (a) Committee [~~Board~~]
22 members serve staggered six-year terms.

23 (b) If a vacancy occurs on the committee [~~board~~], the
24 presiding officer of the commission, with the commission's
25 approval, [~~governor~~] shall appoint a successor to fill the
26 unexpired term.

27 SECTION 6. Section 1703.055, Occupations Code, is amended

1 to read as follows:

2 Sec. 1703.055. PRESIDING OFFICER [~~OFFICERS~~]. The presiding
3 officer of the commission, with the commission's approval, [board]
4 shall appoint a member of the committee to serve as [elect from
5 among its members a] presiding officer of the committee for a
6 two-year term [, assistant presiding officer, and secretary].

7 SECTION 7. Subchapter B, Chapter 1703, Occupations Code, is
8 amended by adding Section 1703.058 to read as follows:

9 Sec. 1703.058. COMMITTEE POWERS AND DUTIES. (a) The
10 committee may propose rules and standards for adoption by the
11 commission relating to the regulation of polygraph examiners.

12 (b) The committee shall advise the commission on:

13 (1) educational requirements for a polygraph
14 examiner;

15 (2) the contents of a licensing examination;

16 (3) technical issues related to a polygraph
17 examination;

18 (4) the specific offenses for which a conviction would
19 constitute grounds for the department to take action under Section
20 53.021; and

21 (5) administering and enforcing this chapter.

22 SECTION 8. Section 1703.202, Occupations Code, is amended
23 to read as follows:

24 Sec. 1703.202. LICENSE APPLICATION. An application for a
25 polygraph examiner license must:

26 (1) be made to the department [~~board's secretary~~] in
27 writing [~~under oath~~] on a form prescribed by the department

1 ~~[board]~~;

2 (2) be accompanied by the required nonrefundable fee;
3 and

4 (3) include any information the department ~~[board]~~
5 considers necessary to evaluate the applicant's qualifications.

6 SECTION 9. Section 1703.203, Occupations Code, is amended
7 to read as follows:

8 Sec. 1703.203. QUALIFICATIONS FOR LICENSE. (a) A person
9 is qualified for a polygraph examiner license if the person:

10 (1) has not been convicted of an offense that directly
11 relates to the duties and responsibilities of a polygraph examiner
12 ~~[a misdemeanor involving moral turpitude or a felony]~~;

13 (2) either:

14 (A) holds a baccalaureate degree from a college
15 or university accredited by an organization designated by the
16 commission ~~[board]~~ that the commission ~~[board]~~ determines has
17 accreditation standards ensuring a high level of student
18 scholarship; or

19 (B) has active investigative experience during
20 the five years preceding the date of application;

21 (3) either:

22 (A) is a graduate of a commission-approved
23 ~~[board-approved]~~ polygraph examiners course and has satisfactorily
24 completed at least six months of a polygraph examiner internship;
25 or

26 (B) has satisfactorily completed at least 12
27 months of a polygraph examiner internship; and

1 (4) has passed an examination conducted by or under
2 the supervision of the department [~~board~~] to determine the person's
3 competency for a license.

4 (b) The commission [~~board~~] by rule shall establish:

5 (1) the specific offenses that disqualify an applicant
6 under Subsection (a)(1); and

7 (2) the criteria by which the department [~~board~~]
8 evaluates an applicant's compliance with the active investigative
9 experience requirement established by Subsection (a)(2)(B).

10 (c) The department [~~board~~] shall provide for an examination
11 under this chapter to be administered in three-month intervals.

12 SECTION 10. Section 1703.205, Occupations Code, is amended
13 to read as follows:

14 Sec. 1703.205. ISSUANCE OF LICENSE; SURETY BOND OR
15 INSURANCE POLICY REQUIREMENT. (a) Before a polygraph examiner
16 license is issued, the person to whom the license is to be issued
17 must provide to the department [~~board~~] evidence of a surety bond or
18 insurance policy that:

19 (1) is in the amount of \$5,000; and

20 (2) requires the obligor on the bond or policy to pay,
21 to the extent of the face amount of the bond or policy, all
22 judgments recovered against the license holder for any wrongful or
23 illegal act committed by the license holder in the course of
24 administering a polygraph examination.

25 (b) Each license must be signed by the executive director of
26 the department [~~board members~~] and issued by [~~under~~] the department
27 [~~board seal~~].

1 SECTION 11. Sections 1703.206(a) and (c), Occupations Code,
2 are amended to read as follows:

3 (a) An applicant for the issuance or renewal of a polygraph
4 examiner license who is not a resident of this state, in addition to
5 meeting all other requirements for a license, must file with the
6 department [~~board~~] an irrevocable consent to have:

7 (1) an action against the applicant filed in a court of
8 a county or municipality of this state in which:

9 (A) the plaintiff resides; or

10 (B) a part of the transaction out of which the
11 alleged cause of action arose occurred; and

12 (2) process in the action served on the applicant by
13 leaving two copies of the process with the department [~~board's~~
14 ~~secretary~~].

15 (c) The department [~~board's secretary~~] shall immediately
16 send by registered or certified mail a copy of the process to the
17 applicant at the address shown on department [~~board~~] records.

18 SECTION 12. Section 1703.207, Occupations Code, is amended
19 to read as follows:

20 Sec. 1703.207. APPLICANT WITH OUT-OF-STATE LICENSE. The
21 department [~~board~~] may waive any license requirement for an
22 applicant who holds a license from another state that has license
23 requirements substantially equivalent to those of this state.

24 SECTION 13. Sections 1703.208(b), (c), and (d), Occupations
25 Code, are amended to read as follows:

26 (b) The department may [~~On board approval, the secretary of~~
27 ~~the board shall~~] issue a polygraph examiner internship license to

1 an applicant who applies for the license and pays the required fee
2 at least 10 days before the date the internship begins. The
3 application must contain any information required by the department
4 [~~board~~].

5 (c) A polygraph examiner internship license expires on the
6 first anniversary of the date of issuance. On good cause shown to
7 the department [~~board~~], the license may be extended or renewed for
8 not more than six months.

9 (d) After the expiration of the original term of a polygraph
10 examiner internship license and any extension or renewal of that
11 license granted by the department [~~board~~], a trainee may not hold
12 another internship license before the first anniversary of the date
13 the trainee's previous internship license expired.

14 SECTION 14. Section 1703.252(a), Occupations Code, is
15 amended to read as follows:

16 (a) The commission [~~board~~] by rule may adopt a system under
17 which polygraph examiner licenses expire on various dates during
18 the year.

19 SECTION 15. Section 1703.254(b), Occupations Code, is
20 amended to read as follows:

21 (b) A person eligible for license renewal under Subsection
22 (a) must, before the second anniversary of the date the service,
23 training, or education terminates, pay to the department [~~board~~]
24 the required renewal fee and provide to the department [~~board~~] an
25 affidavit stating that:

26 (1) the person was engaged in the service, training,
27 or education; and

1 (2) termination of the service, training, or education
2 occurred under an honorable condition.

3 SECTION 16. Section 1703.255(a), Occupations Code, is
4 amended to read as follows:

5 (a) The department [~~board~~] may recognize, prepare, or
6 implement continuing education programs for polygraph examiners
7 and trainees.

8 SECTION 17. Section 1703.301, Occupations Code, is amended
9 to read as follows:

10 Sec. 1703.301. LICENSE HOLDER INFORMATION. (a) A
11 polygraph examiner shall notify the department [~~secretary of the~~
12 ~~board~~] in writing of a change in the examiner's principal business
13 location not later than the 30th day after the date the change is
14 made.

15 (b) Failure to notify the department [~~secretary~~] as
16 required by Subsection (a) results in automatic suspension of the
17 examiner's license.

18 SECTION 18. Section 1703.306(b), Occupations Code, is
19 amended to read as follows:

20 (b) The department [~~board~~] or any other governmental agency
21 that acquires information from a polygraph examination under this
22 section shall maintain the confidentiality of the information.

23 SECTION 19. Subchapter G, Chapter 1703, Occupations Code,
24 is amended by adding Section 1703.307 to read as follows:

25 Sec. 1703.307. INFORMATION INCLUDED IN CONTRACT FOR
26 SERVICES AND WAIVER OF LIABILITY. A written contract for a
27 polygraph examiner's services and a waiver of liability signed by

1 the subject of a polygraph examination must:

2 (1) inform the subject of the procedures to file a
3 complaint against the examiner with the department; and

4 (2) contain the name, mailing address, and telephone
5 number of the department.

6 SECTION 20. Section 1703.351, Occupations Code, is amended
7 to read as follows:

8 Sec. 1703.351. LICENSE DENIAL AND DISCIPLINARY ACTION. (a)

9 The department [~~board~~] shall take action authorized under
10 Subsection (b) against an applicant or license holder who:

11 (1) wilfully violates this chapter or a rule adopted
12 under this chapter;

13 (2) violates Section 1703.306(a);

14 (3) wilfully aids or abets another to violate this
15 chapter or a rule adopted under this chapter;

16 (4) allows the person's license issued under this
17 chapter to be used by an unlicensed person in violation of this
18 chapter;

19 (5) makes a material misstatement in an application
20 for the issuance or renewal of a license;

21 (6) makes a wilful misrepresentation or false promise
22 or causes the printing of a false or misleading advertisement to
23 directly or indirectly obtain business or trainees;

24 (7) fails to inform a subject to be examined:

25 (A) of the nature of the examination; and

26 (B) that the subject's participation in the
27 examination is voluntary;

1 (8) fails to inform the subject of an examination of
2 the examination results on request;

3 (9) violates Section 51.151, Family Code;

4 (10) wilfully makes a false report concerning an
5 examination for polygraph examination purposes;

6 (11) fails to provide within a reasonable time
7 information requested by the department [~~board's secretary~~] as the
8 result of a formal complaint to the department [~~board~~] alleging a
9 violation of this chapter;

10 (12) demonstrates unworthiness or incompetency to act
11 as a polygraph examiner;

12 (13) is convicted of an offense that directly relates
13 to the duties and responsibilities of a polygraph examiner [~~a~~
14 ~~misdemeanor involving moral turpitude or a felony~~]; or

15 (14) is found to be incapacitated as provided by the
16 Probate Code.

17 (b) On determining that an applicant or license holder has
18 engaged in an act listed in Subsection (a), the department [~~board~~]
19 shall:

20 (1) refuse to issue a license to the applicant;

21 (2) revoke or suspend the person's license; or

22 (3) reprimand the person.

23 (c) The department [~~board~~] may probate a license
24 suspension.

25 SECTION 21. Section 1703.353, Occupations Code, is amended
26 to read as follows:

27 Sec. 1703.353. SURRENDER OF LICENSE. (a) A license holder

1 whose license is suspended or revoked shall immediately surrender
2 the license to the department [~~board's secretary~~].

3 (b) The department [~~board's secretary~~] shall restore a
4 suspended or revoked license to the license holder on the
5 department's [~~board's written~~] recommendations.

6 SECTION 22. Section 1703.354, Occupations Code, is amended
7 to read as follows:

8 Sec. 1703.354. EFFECT OF VIOLATION ON EMPLOYER. If a
9 polygraph examiner or trainee engages in an unlawful act or a
10 violation of this chapter, the department [~~board~~] may not revoke
11 the license of the polygraph examiner who employed the examiner or
12 trainee unless the department [~~board~~] is satisfied that the
13 employer wilfully or negligently aided or abetted the examiner or
14 trainee in the unlawful act or violation.

15 SECTION 23. Section 1703.355, Occupations Code, is amended
16 to read as follows:

17 Sec. 1703.355. JUDICIAL REVIEW. (a) A person may appeal
18 an action of the department [~~board~~], including the refusal to issue
19 a license to the person or the suspension or revocation of the
20 person's license, by timely filing a petition in a district court in
21 the county in which the person resides or in Travis County.

22 (b) The standard of review is under the substantial evidence
23 rule.

24 (c) An appeal of a department [~~board~~] action is governed by
25 Chapter 2001, Government Code.

26 SECTION 24. Section 1703.401(a), Occupations Code, is
27 amended to read as follows:

1 (a) If a person violates this chapter, the department,
2 [~~board's secretary, on direction of a majority of the board and~~]
3 through the attorney general, shall apply in the state's name in
4 district court for an order to enjoin the violation of or to enforce
5 compliance with this chapter.

6 SECTION 25. Section 411.122(d), Government Code, is amended
7 to read as follows:

8 (d) The following state agencies are subject to this
9 section:

10 (1) Texas Appraiser Licensing and Certification
11 Board;

12 (2) Texas Board of Architectural Examiners;

13 (3) Texas Board of Chiropractic Examiners;

14 (4) State Board of Dental Examiners;

15 (5) Texas Board of Professional Engineers;

16 (6) Texas Funeral Service Commission;

17 (7) Texas Board of Professional Geoscientists;

18 (8) Department of State Health Services, except as
19 provided by Section 411.110, and agencies attached to the
20 department, including:

21 (A) Texas State Board of Examiners of Dietitians;

22 (B) Texas State Board of Examiners of Marriage
23 and Family Therapists;

24 (C) Midwifery Board;

25 (D) Texas State Board of Examiners of
26 Perfusionists;

27 (E) Texas State Board of Examiners of

- 1 Professional Counselors;
- 2 (F) Texas State Board of Social Worker Examiners;
- 3 (G) State Board of Examiners for Speech-Language
- 4 Pathology and Audiology;
- 5 (H) Advisory Board of Athletic Trainers;
- 6 (I) State Committee of Examiners in the Fitting
- 7 and Dispensing of Hearing Instruments;
- 8 (J) Texas Board of Licensure for Professional
- 9 Medical Physicists; and
- 10 (K) Texas Board of Orthotics and Prosthetics;
- 11 (9) Texas Board of Professional Land Surveying;
- 12 (10) Texas Department of Licensing and Regulation,
- 13 except as provided by Section 411.093;
- 14 (11) Texas Commission on Environmental Quality;
- 15 (12) Texas Board of Occupational Therapy Examiners;
- 16 (13) Texas Optometry Board;
- 17 (14) Texas State Board of Pharmacy;
- 18 (15) Texas Board of Physical Therapy Examiners;
- 19 (16) Texas State Board of Plumbing Examiners;
- 20 (17) Texas State Board of Podiatric Medical Examiners;
- 21 (18) [~~Polygraph Examiners Board,~~
- 22 [~~(19)~~] Texas State Board of Examiners of
- 23 Psychologists;
- 24 (19) [~~(20)~~] Texas Real Estate Commission;
- 25 (20) [~~(21)~~] Board of Tax Professional Examiners;
- 26 (21) [~~(22)~~] Texas Department of Transportation;
- 27 (22) [~~(23)~~] State Board of Veterinary Medical

1 Examiners;

2 (23) [~~(24)~~] Texas Department of Housing and Community
3 Affairs;

4 (24) [~~(25)~~] secretary of state;

5 (25) [~~(26)~~] state fire marshal;

6 (26) [~~(27)~~] Texas Education Agency; and

7 (27) [~~(28)~~] Department of Agriculture.

8 SECTION 26. Section 2054.352(a), Government Code, is
9 amended to read as follows:

10 (a) The following licensing entities shall participate in
11 the system established under Section 2054.353:

12 (1) Texas Board of Chiropractic Examiners;

13 (2) Court Reporters Certification Board;

14 (3) State Board of Dental Examiners;

15 (4) Texas Funeral Service Commission;

16 (5) Texas Board of Professional Land Surveying;

17 (6) Texas Medical Board;

18 (7) Texas Board of Nursing;

19 (8) Texas Optometry Board;

20 (9) Department of Agriculture, for licenses issued
21 under Chapter 1951, Occupations Code;

22 (10) Texas State Board of Pharmacy;

23 (11) Executive Council of Physical Therapy and
24 Occupational Therapy Examiners;

25 (12) Texas State Board of Plumbing Examiners;

26 (13) Texas State Board of Podiatric Medical Examiners;

27 (14) Board of Tax Professional Examiners;

- 1 (15) [~~Polygraph Examiners Board,~~
2 [~~(16)~~] Texas State Board of Examiners of
3 Psychologists;
4 (16) [~~(17)~~] State Board of Veterinary Medical
5 Examiners;
6 (17) [~~(18)~~] Texas Real Estate Commission;
7 (18) [~~(19)~~] Texas Appraiser Licensing and
8 Certification Board;
9 (19) [~~(20)~~] Texas Department of Licensing and
10 Regulation;
11 (20) [~~(21)~~] Texas State Board of Public Accountancy;
12 (21) [~~(22)~~] State Board for Educator Certification;
13 (22) [~~(23)~~] Texas Board of Professional Engineers;
14 (23) [~~(24)~~] Department of State Health Services;
15 (24) [~~(25)~~] Texas Board of Architectural Examiners;
16 (25) [~~(26)~~] Texas Racing Commission;
17 (26) [~~(27)~~] Commission on Law Enforcement Officer
18 Standards and Education; and
19 (27) [~~(28)~~] Texas Private Security Board.

20 SECTION 27. The following laws are repealed:

- 21 (1) Section 1703.005, Occupations Code;
22 (2) Section 1703.052, Occupations Code;
23 (3) Section 1703.053, Occupations Code;
24 (4) Section 1703.056, Occupations Code;
25 (5) Section 1703.057, Occupations Code;
26 (6) Subchapters C and D, Chapter 1703, Occupations
27 Code;

1 (7) Section 1703.204, Occupations Code;

2 (8) Section 1703.253, Occupations Code; and

3 (9) Section 1703.352, Occupations Code.

4 SECTION 28. As soon as possible after the effective date of
5 this Act, the presiding officer of the Texas Commission of
6 Licensing and Regulation shall appoint the members of the Polygraph
7 Advisory Committee in accordance with Chapter 1703, Occupations
8 Code, as amended by this Act. In making the initial appointments,
9 the presiding officer shall designate two members for terms
10 expiring February 1, 2011, two members for terms expiring February
11 1, 2013, and one member for a term expiring February 1, 2015.

12 SECTION 29. (a) The Polygraph Examiners Board is abolished
13 but continues in existence until January 1, 2010, for the sole
14 purpose of transferring obligations, property, full-time
15 equivalent positions, rights, powers, and duties to the Texas
16 Department of Licensing and Regulation. The department assumes all
17 of the obligations, property, full-time equivalent positions,
18 rights, powers, and duties of the board as it exists immediately
19 before the effective date of this Act. All unexpended funds
20 appropriated to the board are transferred to the department. The
21 transfer of the obligations, property, full-time equivalent
22 positions, rights, powers, and duties of the board to the
23 department must be completed not later than January 1, 2010.

24 (b) All rules of the Polygraph Examiners Board are continued
25 in effect as rules of the Texas Commission of Licensing and
26 Regulation until superseded by a rule of the commission. A license
27 issued by the board is continued in effect as provided by the law in

1 effect immediately before the effective date of this Act. A
2 complaint, investigation, contested case, or other proceeding
3 pending on the effective date of this Act is continued without
4 change in status after the effective date of this Act. An activity
5 conducted by the board is considered to be an activity conducted by
6 the department.

7 (c) A reference in another law or an administrative rule to
8 the Polygraph Examiners Board means the Texas Department of
9 Licensing and Regulation.

10 (d) Before October 1, 2009, the Department of Public Safety
11 of the State of Texas and the Texas Department of Licensing and
12 Regulation shall develop and enter into a memorandum of
13 understanding relating to the transfer of functions relating to
14 polygraph examiners from the Department of Public Safety to the
15 Texas Department of Licensing and Regulation as provided by this
16 Act. The memorandum must include a transition plan with a timetable
17 with specific steps and deadlines needed to complete the transfer.

18 SECTION 30. This Act takes effect September 1, 2009.