

AN ACT

relating to the regulation of polygraph examiners by the Texas Department of Licensing and Regulation and the abolition of the Polygraph Examiners Board.

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

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

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

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

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

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

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

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

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

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

2 SECTION 4. Subsections (a), (c), (d), and (e), Section
3 1703.051, Occupations 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 (c) A polygraph examiner member must [+

15 [~~(1)~~] be actively engaged as a polygraph examiner on
16 the date of appointment[~~, and~~

17 [~~(2) have been engaged as a polygraph examiner for at~~
18 ~~least five consecutive years before the date of appointment~~].

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

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

24 SECTION 5. Section 1703.054, Occupations Code, is amended
25 to read as follows:

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

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

5 SECTION 6. Section 1703.055, Occupations Code, is amended
6 to read as follows:

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

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

14 Sec. 1703.058. COMMITTEE DUTIES. The committee shall
15 advise the commission on:

16 (1) educational requirements for a polygraph
17 examiner;

18 (2) the contents of a licensing examination;

19 (3) technical issues related to a polygraph
20 examination;

21 (4) the specific offenses for which a conviction would
22 constitute grounds for the department to take action under Section
23 53.021; and

24 (5) administering and enforcing this chapter.

25 SECTION 8. Section 1703.202, Occupations Code, is amended
26 to read as follows:

27 Sec. 1703.202. LICENSE APPLICATION. An application for a

1 polygraph examiner license must:

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

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

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

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

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

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

15 (2) either:

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

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

23 (3) either:

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

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

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

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

7 (1) the specific offenses that disqualify an applicant
8 under Subsection (a)(1); and

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

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

14 SECTION 10. Section 1703.205, Occupations Code, is amended
15 to read as follows:

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

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

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

27 (b) Each license must be ~~[signed by the board members and]~~

1 issued by [~~under~~] the department [~~board seal~~].

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

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

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

10 (A) the plaintiff resides; or

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

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

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

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

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

25 SECTION 13. Subsections (b), (c), and (d), Section
26 1703.208, Occupations Code, are amended to read as follows:

27 (b) The department may [~~On board approval, the secretary of~~

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

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

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

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

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

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

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

27 (1) the person was engaged in the service, training,

1 or education; and

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

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

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

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

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

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

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

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

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

26 Sec. 1703.307. INFORMATION INCLUDED IN CONTRACT FOR
27 SERVICES AND WAIVER OF LIABILITY. A written contract for a

1 polygraph examiner's services and a waiver of liability signed by
2 the subject of a polygraph examination must:

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

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

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

9 Sec. 1703.351. LICENSE DENIAL AND DISCIPLINARY ACTION.

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

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

14 (2) violates Section 1703.306(a);

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

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

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

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

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

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

27 (B) that the subject's participation in the

1 examination is voluntary;

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

4 (9) violates Section 51.151, Family Code;

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

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

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

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

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

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

21 (1) deny [~~refuse to issue~~] a license to the applicant;

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

23 (3) reprimand the person.

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

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

1 Sec. 1703.353. SURRENDER OF LICENSE. [~~(a)~~] A license
2 holder whose license is suspended or revoked shall immediately
3 surrender the license to the department [~~board's secretary~~].

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

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

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

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

18 Sec. 1703.355. ADMINISTRATIVE PROCEDURE [~~JUDICIAL REVIEW~~].
19 The administrative procedures under Sections 51.310, 51.353, and
20 51.354 apply to a disciplinary action taken under this chapter.

21 [~~(a) A person may appeal an action of the board, including the~~
22 ~~refusal to issue a license to the person or the suspension or~~
23 ~~revocation of the person's license, by timely filing a petition in a~~
24 ~~district court in the county in which the person resides or in~~
25 ~~Travis County.~~

26 ~~[(b) An appeal of a board action is governed by Chapter~~
27 ~~2001, Government Code.]~~

1 SECTION 24. Subchapter H, Chapter 1703, Occupations Code,
2 is amended by adding Section 1703.356 to read as follows:

3 Sec. 1703.356. APPEAL. (a) An appeal of a department
4 action under this chapter is governed by Chapter 2001, Government
5 Code.

6 (b) The standard of review is under the substantial evidence
7 rule.

8 SECTION 25. Subsection (a), Section 1703.401, Occupations
9 Code, is amended to read as follows:

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

15 SECTION 26. Subsection (d), Section 411.122, Government
16 Code, is amended to read as follows:

17 (d) The following state agencies are subject to this
18 section:

- 19 (1) Texas Appraiser Licensing and Certification
20 Board;
- 21 (2) Texas Board of Architectural Examiners;
- 22 (3) Texas Board of Chiropractic Examiners;
- 23 (4) State Board of Dental Examiners;
- 24 (5) Texas Board of Professional Engineers;
- 25 (6) Texas Funeral Service Commission;
- 26 (7) Texas Board of Professional Geoscientists;
- 27 (8) Department of State Health Services, except as

1 provided by Section 411.110, and agencies attached to the
2 department, including:

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

4 (B) Texas State Board of Examiners of Marriage
5 and Family Therapists;

6 (C) Midwifery Board;

7 (D) Texas State Board of Examiners of
8 Perfusionists;

9 (E) Texas State Board of Examiners of
10 Professional Counselors;

11 (F) Texas State Board of Social Worker Examiners;

12 (G) State Board of Examiners for Speech-Language
13 Pathology and Audiology;

14 (H) Advisory Board of Athletic Trainers;

15 (I) State Committee of Examiners in the Fitting
16 and Dispensing of Hearing Instruments;

17 (J) Texas Board of Licensure for Professional
18 Medical Physicists; and

19 (K) Texas Board of Orthotics and Prosthetics;

20 (9) Texas Board of Professional Land Surveying;

21 (10) Texas Department of Licensing and Regulation,
22 except as provided by Section 411.093;

23 (11) Texas Commission on Environmental Quality;

24 (12) Texas Board of Occupational Therapy Examiners;

25 (13) Texas Optometry Board;

26 (14) Texas State Board of Pharmacy;

27 (15) Texas Board of Physical Therapy Examiners;

- 1 (16) Texas State Board of Plumbing Examiners;
2 (17) Texas State Board of Podiatric Medical Examiners;
3 (18) [~~Polygraph Examiners Board,~~
4 [~~(19)~~] Texas State Board of Examiners of
5 Psychologists;
6 (19) [~~(20)~~] Texas Real Estate Commission;
7 (20) [~~(21)~~] Board of Tax Professional Examiners;
8 (21) [~~(22)~~] Texas Department of Transportation;
9 (22) [~~(23)~~] State Board of Veterinary Medical
10 Examiners;
11 (23) [~~(24)~~] Texas Department of Housing and Community
12 Affairs;
13 (24) [~~(25)~~] secretary of state;
14 (25) [~~(26)~~] state fire marshal;
15 (26) [~~(27)~~] Texas Education Agency; and
16 (27) [~~(28)~~] Department of Agriculture.

17 SECTION 27. Subsection (a), Section 2054.352, Government
18 Code, is amended to read as follows:

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

- 21 (1) Texas Board of Chiropractic Examiners;
22 (2) Court Reporters Certification Board;
23 (3) State Board of Dental Examiners;
24 (4) Texas Funeral Service Commission;
25 (5) Texas Board of Professional Land Surveying;
26 (6) Texas Medical Board;
27 (7) Texas Board of Nursing;

- 1 (8) Texas Optometry Board;
- 2 (9) Department of Agriculture, for licenses issued
- 3 under Chapter 1951, Occupations Code;
- 4 (10) Texas State Board of Pharmacy;
- 5 (11) Executive Council of Physical Therapy and
- 6 Occupational Therapy Examiners;
- 7 (12) Texas State Board of Plumbing Examiners;
- 8 (13) Texas State Board of Podiatric Medical Examiners;
- 9 (14) Board of Tax Professional Examiners;
- 10 (15) [~~Polygraph Examiners Board,~~
- 11 [~~(16)~~] Texas State Board of Examiners of
- 12 Psychologists;
- 13 (16) [~~(17)~~] State Board of Veterinary Medical
- 14 Examiners;
- 15 (17) [~~(18)~~] Texas Real Estate Commission;
- 16 (18) [~~(19)~~] Texas Appraiser Licensing and
- 17 Certification Board;
- 18 (19) [~~(20)~~] Texas Department of Licensing and
- 19 Regulation;
- 20 (20) [~~(21)~~] Texas State Board of Public Accountancy;
- 21 (21) [~~(22)~~] State Board for Educator Certification;
- 22 (22) [~~(23)~~] Texas Board of Professional Engineers;
- 23 (23) [~~(24)~~] Department of State Health Services;
- 24 (24) [~~(25)~~] Texas Board of Architectural Examiners;
- 25 (25) [~~(26)~~] Texas Racing Commission;
- 26 (26) [~~(27)~~] Commission on Law Enforcement Officer
- 27 Standards and Education; and

1 (27) [~~(28)~~] Texas Private Security Board.

2 SECTION 28. The following laws are repealed:

3 (1) Section 1703.005, Occupations Code;

4 (2) Section 1703.052, Occupations Code;

5 (3) Section 1703.053, Occupations Code;

6 (4) Section 1703.056, Occupations Code;

7 (5) Section 1703.057, Occupations Code;

8 (6) Subchapters C and D, Chapter 1703, Occupations
9 Code;

10 (7) Section 1703.204, Occupations Code;

11 (8) Section 1703.253, Occupations Code; and

12 (9) Section 1703.352, Occupations Code.

13 SECTION 29. As soon as possible after the effective date of
14 this Act, the presiding officer of the Texas Commission of
15 Licensing and Regulation shall appoint the members of the Polygraph
16 Advisory Committee in accordance with Chapter 1703, Occupations
17 Code, as amended by this Act. In making the initial appointments,
18 the presiding officer shall designate two members for terms
19 expiring February 1, 2011, two members for terms expiring February
20 1, 2013, and one member for a term expiring February 1, 2015.

21 SECTION 30. (a) The Polygraph Examiners Board is abolished
22 but continues in existence until January 1, 2010, for the sole
23 purpose of transferring obligations, property, full-time
24 equivalent positions, rights, powers, and duties to the Texas
25 Department of Licensing and Regulation. The department assumes all
26 of the obligations, property, full-time equivalent positions,
27 rights, powers, and duties of the board as it exists immediately

1 before the effective date of this Act. All unexpended funds
2 appropriated to the board are transferred to the department. The
3 transfer of the obligations, property, full-time equivalent
4 positions, rights, powers, and duties of the board to the
5 department must be completed not later than January 1, 2010.

6 (b) All rules of the Polygraph Examiners Board are continued
7 in effect as rules of the Texas Commission of Licensing and
8 Regulation until superseded by a rule of the commission. A license
9 issued by the board is continued in effect as provided by the law in
10 effect immediately before the effective date of this Act. A
11 complaint, investigation, contested case, or other proceeding
12 pending on the effective date of this Act is continued without
13 change in status of the parties after the effective date of this
14 Act. An activity conducted by the board is considered to be an
15 activity conducted by the department.

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

19 (d) Before July 15, 2009, the Department of Public Safety of
20 the State of Texas and the Texas Department of Licensing and
21 Regulation shall develop and enter into a memorandum of
22 understanding relating to the transfer of functions relating to
23 polygraph examiners from the Department of Public Safety to the
24 Texas Department of Licensing and Regulation as provided by this
25 Act. The memorandum must include a transition plan with a timetable
26 with specific steps and deadlines needed to complete the transfer.

27 SECTION 31. This Act takes effect immediately if it

1 receives a vote of two-thirds of all the members elected to each
2 house, as provided by Section 39, Article III, Texas Constitution.
3 If this Act does not receive the vote necessary for immediate
4 effect, this Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 1005 passed the Senate on April 2, 2009, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 18, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1005 passed the House, with amendment, on May 13, 2009, by the following vote: Yeas 137, Nays 0, one present not voting.

Chief Clerk of the House

Approved:

Date

Governor