

## **BILL ANALYSIS**

C.S.S.B. 562  
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Homeland Security & Public Safety  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

A few years ago, the Texas Legislature abolished the Polygraph Examiners Board within the Department of Public Safety and transferred the board's duties with respect to regulating polygraph examiners to the Texas Department of Licensing and Regulation (TDLR). In order to conduct polygraph examinations in Texas, a person must obtain a license from TDLR, for which an applicant must first demonstrate certain qualifications relating to the applicant's criminal history, education or equivalent experience, and passage of a licensing examination. Interested parties report that TDLR recently reviewed the polygraph examiner statutes and identified problematic and outdated language. C.S.S.B. 562 seeks to address these findings and to codify best practices with regard to the licensing and regulation of polygraph examiners.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 5, 6, and 7 of this bill.

### **ANALYSIS**

C.S.S.B. 562 amends the Occupations Code to specify that the prohibition against a person using an instrument, including a polygraph, to detect deception or verify the truth of a statement unless the person holds a polygraph examiner license applies with respect to the use of such an instrument for compensation or for a law enforcement purpose and to extend the prohibition to include an offer to use as well as the actual use of an instrument in that manner without a license. The bill specifies that a person is qualified for such a license if the person, among other requirements, has completed an acceptable polygraph examiner course of study taught by a school recognized by the Texas Department of Licensing and Regulation (TDLR) and at least six months of a polygraph examiner internship, rather than if the person is a graduate of a TDLR-approved polygraph examiners course and has completed that minimum internship period, and removes the alternative of satisfactorily completing at least 12 months of a polygraph examiner internship in lieu of completing such a course and minimum six-month internship. The bill's license qualification provisions apply only to an initial license application that is submitted to TDLR on or after March 1, 2014.

C.S.S.B. 562 authorizes the executive director of TDLR, for an initial license application that is submitted to TDLR on or after January 1, 2014, to waive any license requirement for an applicant who has verified service, training, or experience in using an instrument to detect deception or verify the truth of a statement while serving in the military or while employed by the federal government, or has a combination of education and experience the executive director determines to be substantially equivalent to the statutorily required qualifications for a polygraph examiner license.

C.S.S.B. 562 removes the authorization for TDLR to recognize, prepare, or implement continuing education programs for polygraph trainees; makes participation in a continuing education program mandatory, rather than voluntary, for polygraph examiners; and requires the

Texas Commission of Licensing and Regulation by rule to provide continuing education requirements for polygraph examiner license holders. The bill's continuing education-related provisions and the rules adopted by the commission regarding continuing education requirements apply only to the renewal of a license that expires on or after December 1, 2014. The bill authorizes the commission to adopt rules to identify other instruments and instrumentation requirements that are acceptable for use by a polygraph examiner in Texas.

C.S.S.B. 562 requires the Texas Commission of Licensing and Regulation, not later than January 1, 2014, to adopt rules necessary to implement the bill's provisions.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.S.B. 562 may differ from the engrossed version in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the engrossed and committee substitute versions of the bill.

SENATE ENGROSSED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Subdivision (3), Section 1703.003, Occupations Code, is amended.	SECTION 1. Same as engrossed version.
SECTION 2. Subsection (a), Section 1703.201, Occupations Code, is amended.	SECTION 2. Same as engrossed version.
SECTION 3. Subsection (a), Section 1703.203, Occupations Code, is amended.	SECTION 3. Same as engrossed version.
SECTION 4. Section 1703.207, Occupations Code, is amended.	SECTION 4. Same as engrossed version.
SECTION 5. Section 1703.255, Occupations Code, is amended.	SECTION 5. Same as engrossed version.
SECTION 6. Section 1703.305, Occupations Code, is amended to read as follows: Sec. 1703.305. <u>INSTRUMENTS AND MINIMUM INSTRUMENTATION REQUIREMENTS.</u> (a) An instrument used by a polygraph examiner, in addition to recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns, may also record patterns of other physiological changes. <u>Except as provided by Subsection (c), the commission may adopt rules to identify other instruments and instrumentation requirements that are acceptable for use in this state.</u> (b) A polygraph examiner who uses an instrument that does not comply with the	SECTION 6. Section 1703.305, Occupations Code, is amended to read as follows: Sec. 1703.305. <u>INSTRUMENTS AND MINIMUM INSTRUMENTATION REQUIREMENTS.</u> (a) An instrument used by a polygraph examiner, in addition to recording visually, permanently, and simultaneously a subject's cardiovascular and respiratory patterns, may also record patterns of other physiological changes. <u>The commission may adopt rules to identify other instruments and instrumentation requirements that are acceptable for use in this state.</u> (b) A polygraph examiner who uses an instrument that does not comply with the

instrumentation requirements of Subsection (a) or commission rule is subject to penalties and may be enjoined in the manner provided by this chapter.

(c) A person may not, for compensation or for a law enforcement purpose, use a voice stress analyzer or similar device to detect deception or verify the truth of a statement.

SECTION 7. Not later than January 1, 2014, the Texas Commission of Licensing and Regulation shall adopt rules necessary to implement the changes in law made by this Act.

SECTION 8. (a) Subsection (a), Section 1703.203, Occupations Code, as amended by this Act, applies only to an initial license application that is submitted to the Texas Department of Licensing and Regulation on or after March 1, 2014. An initial license application that is submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(b) Section 1703.207, Occupations Code, as amended by this Act, applies only to an initial license application that is submitted to the Texas Department of Licensing and Regulation on or after January 1, 2014. An initial license application that is submitted before that date is governed by the law in effect on the date the application was submitted, and the former law is continued in effect for that purpose.

(c) Section 1703.255, Occupations Code, as amended by this Act, and the rules adopted under Subsection (c), Section 1703.255, Occupations Code, as added by this Act, apply only to the renewal of a license that expires on or after December 1, 2014. The renewal of a license that expires before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 9. This Act takes effect September 1, 2013.

instrumentation requirements of Subsection (a) or commission rule is subject to penalties and may be enjoined in the manner provided by this chapter.

SECTION 7. Same as engrossed version.

SECTION 8. Same as engrossed version.

SECTION 9. Same as engrossed version.