

## **BILL ANALYSIS**

Senate Research Center  
83R5603 BEF-F

S.B. 562  
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As Filed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

The Texas Department of Licensing and Regulation (TDLR) began regulating polygraph examiners in 2009 pursuant to S.B. 1005, which was enacted by the 81st Legislature, Regular Session. Prior to 2009, polygraph examiners were regulated by the Polygraph Examiners Board, which was housed within the Department of Public Safety of the State of Texas. S.B. 1005 abolished the Polygraph Examiners Board and transferred its duties to TDLR.

In order to conduct polygraph examinations in the state, a person must obtain a license from TDLR. To qualify for a polygraph examiner license, an individual must satisfy criminal history, experience, and examination requirements as outlined in Section 1703.203 (Qualifications for License), Occupations Code.

TDLR recently reviewed the polygraph examiner statute and identified problematic and outdated language. S.B. 562 is designed to correct these findings and to codify best practices with regard to this particular regulatory program. S.B. 562 clarifies the definition of "instrument" and the specific tasks that require a license; revises the qualification provisions to ensure that education requirements are a license prerequisite; expands the authority of the executive director of TDLR to waive license requirements in recognition of comparable education or experience; makes continuing education programs mandatory and ensures that such programs are only offered to licensed examiners; instructs the Texas Commission of Licensing and Regulation (TCLR) to adopt rules establishing continuing education requirements; grants TCLR authority to adopt rules to identify other instruments and instrumentation requirements that are acceptable in the state so that TDLR can respond to new technology as it is deployed; and prohibits the use of a voice stress analyzer, which lacks legitimacy as a reliable polygraph instrument.

As proposed, S.B. 562 amends current law relating to the license qualifications and continuing education requirements for polygraph examiners.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTION 5 (Section 1703.255, Occupations Code), SECTION 6 (Section 1703.305, Occupations Code), and SECTION 7 of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Section 1703.003(3), Occupations Code, to redefine "instrument."

SECTION 2. Amends Section 1703.201(a), Occupations Code, to prohibit a person from using or offering to use, for compensation or for a law enforcement purpose, an instrument, including a polygraph, to detect deception or verify the truth of a statement unless the person is licensed under this chapter (Polygraph Examiners).

SECTION 3. Amends Section 1703.203(a), Occupations Code, to provide that a person is qualified for a polygraph examiner license if the person meets certain criteria, including if the person has completed an acceptable polygraph examiner course of study taught by a school recognized by the Texas Department of Licensing and Regulation (TDLR) and has satisfactorily completed at least six months of a polygraph examiner internship, rather than if the person either

is a graduate of a TDLR-approved polygraph examiners course and has satisfactorily completed at least six months of a polygraph examiner internship, or has satisfactorily completed at least 12 months of a polygraph examiner internship.

SECTION 4. Amends Section 1703.207, Occupations Code, as follows:

Sec. 1703.207. New heading: WAIVER OF LICENSE REQUIREMENTS FOR APPLICANT WITH OUT-OF-STATE LICENSE OR OTHER RECOGNIZED EDUCATION OR EXPERIENCE. Authorizes the executive director of TDLR (executive director) to waive any license requirement for an applicant who:

- (1) holds a license from another state that has license requirements substantially equivalent to those of this state;
- (2) 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;
- (3) has verified service, training, or experience in using an instrument to detect deception or verify the truth of a statement while employed by the federal government; or
- (4) has a combination of education and experience the executive director determines to be substantially equivalent to that required under Section 1703.203 (Qualifications for License).

SECTION 5. Amends Section 1703.255, Occupations Code, as follows:

Sec. 1703.255. CONTINUING EDUCATION. (a) Authorizes TDLR to recognize, prepare, or implement continuing education programs for polygraph examiners, rather than for polygraph examiners and trainees.

- (b) Provides that participation in a continuing education program is mandatory, rather than participation in a program is voluntary.
- (c) Requires the Texas Commission of Licensing and Regulation (TCLR) by rule to provide continuing education requirements for license holders.

SECTION 6. Amends Section 1703.305, Occupations Code, as follows:

Sec. 1703.305. New heading: INSTRUMENTS AND MINIMUM INSTRUMENTATION REQUIREMENTS. (a) Authorizes TCLR, except as provided by Subsection (c), to adopt rules to identify other instruments and instrumentation requirements that are acceptable for use in this state.

- (b) Provides that a polygraph examiner who uses an instrument that does not comply with the instrumentation requirements of Subsection (a) or TCLR rule is subject to penalties and may be enjoined in the manner provided by this chapter
- (c) Prohibits a person, for compensation or for a law enforcement purpose, from using a voice stress analyzer or similar device to detect deception or verify the truth of a statement.

SECTION 7. Requires TCLR, not later than January 1, 2014, to adopt rules necessary to implement the changes in law made by this Act.

SECTION 8. (a) Makes application of Section 1703.203(a), Occupations Code, as amended by this Act, prospective to March 1, 2014.

(b) Makes application of Section 1703.207, Occupations Code, as amended by this Act, prospective to January 1, 2014.

(c) Provides that Section 1703.255, Occupations Code, as amended by this Act, and the rules adopted under Section 1703.255(c), Occupations Code, as added by this Act, apply only to the renewal of a license that expires on or after December 1, 2014. Provides that 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. Effective date: September 1, 2013.