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:
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Sec. 1703.051. COMMITTEE [BOARD] MEMBERSHIP.

SECTION 4. Subsections (a), (c), (d), and (e), Section 1703.051, Occupations Code, are amended to read as follows:

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

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

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

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

(c) A polygraph examiner member must[+ [±] be actively engaged as a polygraph examiner on the date of appointment[± and [±]

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

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

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

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

Sec. 1703.054. TERMS; VACANCY. (a) Committee [Board] members serve staggered six-year terms.
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(b) If a vacancy occurs on the committee, the presiding officer of the commission, with the commission's approval, shall appoint a successor to fill the unexpired term.

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

Sec. 1703.055. PRESIDING OFFICER [OFFICERS]. The presiding officer of the commission, with the commission's approval, shall appoint a member of the committee to serve as presiding officer of the committee for a two-year term, assistant presiding officer, and secretary.

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

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

(1) educational requirements for a polygraph examiner;

(2) the contents of a licensing examination;

(3) technical issues related to a polygraph examination;

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

(5) administering and enforcing this chapter.

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

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

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

(2) be accompanied by the required nonrefundable fee;

and

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

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

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

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

(2) either:

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

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

(3) either:

(A) is a graduate of a department-approved [board-approved] polygraph examiners course and has satisfactorily completed at least six months of a polygraph examiner internship; or
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(B) has satisfactorily completed at least 12 months of a polygraph examiner internship; and

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

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

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

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

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

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

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

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

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

(b) Each license must be [signed by the board members and]
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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-
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
20 SECTION 12. Section 1703.207, Occupations Code, is amended
21 to read as follows:
22 Sec. 1703.207. APPLICANT WITH OUT-OF-STATE LICENSE. The
23 executive director [board] may waive any license requirement for an
24 applicant who holds a license from another state that has license
25 requirements substantially equivalent to those of this state.
26
27 SECTION 13. Subsections (b), (c), and (d), Section
28 1703.208, Occupations Code, are amended to read as follows:
29 (b) The department may [on board approval], the secretary of
the board shall] issue a polygraph examiner internship license to an applicant who applies for the license and pays the required fee [at least 10 days before the date the internship begins]. The application must contain any information required by the department [board].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Sec. 1703.307. INFORMATION INCLUDED IN CONTRACT FOR
SERVICES AND WAIVER OF LIABILITY. A written contract for a
polygraph examiner's services and a waiver of liability signed by
the subject of a polygraph examination must:

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

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

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

Sec. 1703.351. LICENSE DENIAL AND DISCIPLINARY ACTION.
(a) The department may [board shall] take action authorized under
Subsection (b) against an applicant or license holder who:

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

(2) violates Section 1703.306(a);

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

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

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

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

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

(A) of the nature of the examination; and

(B) that the subject's participation in the
(8) fails to inform the subject of an examination of the examination results on request;
(9) violates Section 51.151, Family Code;
(10) wilfully makes a false report concerning an examination for polygraph examination purposes;
(11) fails to provide within a reasonable time information requested by the department [board's secretary] as the result of a formal complaint to the department [board] alleging a violation of this chapter;
(12) demonstrates unworthiness or incompetency to act as a polygraph examiner;
(13) is convicted of an offense that directly relates to the duties and responsibilities of a polygraph examiner [a misdemeanor involving moral turpitude or a felony]; or
(14) is found to be incapacitated as provided by the Probate Code.
(b) On determining that an applicant or license holder has engaged in an act listed in Subsection (a), the department [board] shall:
(1) deny [refuse to issue] a license to the applicant;
(2) revoke or suspend the person's license; or
(3) reprimand the person.
(c) The department [board] may probate a license suspension.

SECTION 21. Section 1703.353, Occupations Code, is amended to read as follows:
Sec. 1703.353. SURRENDER OF LICENSE. [(a) A license holder whose license is suspended or revoked shall immediately surrender the license to the board's secretary.]  

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

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

Sec. 1703.354. EFFECT OF VIOLATION ON EMPLOYER. If a polygraph examiner or trainee engages in an unlawful act or a violation of this chapter, the department may not revoke the license of the polygraph examiner who employed the examiner or trainee unless the department is satisfied that the employer wilfully or negligently aided or abetted the examiner or trainee in the unlawful act or violation.  

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

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

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

[(b) An appeal of a board action is governed by Chapter 2001, Government Code.]
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SECTION 24. Subchapter H, Chapter 1703, Occupations Code, is amended by adding Section 1703.356 to read as follows:

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

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

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

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

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

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

(1) Texas Appraiser Licensing and Certification Board;

(2) Texas Board of Architectural Examiners;

(3) Texas Board of Chiropractic Examiners;

(4) State Board of Dental Examiners;

(5) Texas Board of Professional Engineers;

(6) Texas Funeral Service Commission;

(7) Texas Board of Professional Geoscientists;

(8) Department of State Health Services, except as
provided by Section 411.110, and agencies attached to the
department, including:
   (A) Texas State Board of Examiners of Dietitians;
   (B) Texas State Board of Examiners of Marriage
and Family Therapists;
   (C) Midwifery Board;
   (D) Texas State Board of Examiners of
Perfusionists;
   (E) Texas State Board of Examiners of
Professional Counselors;
   (F) Texas State Board of Social Worker Examiners;
   (G) State Board of Examiners for Speech-Language
Pathology and Audiology;
   (H) Advisory Board of Athletic Trainers;
   (I) State Committee of Examiners in the Fitting
and Dispensing of Hearing Instruments;
   (J) Texas Board of Licensure for Professional
Medical Physicists; and
   (K) Texas Board of Orthotics and Prosthetics;
(9) Texas Board of Professional Land Surveying;
(10) Texas Department of Licensing and Regulation,
except as provided by Section 411.093;
(11) Texas Commission on Environmental Quality;
(12) Texas Board of Occupational Therapy Examiners;
(13) Texas Optometry Board;
(14) Texas State Board of Pharmacy;
(15) Texas Board of Physical Therapy Examiners;
Texas State Board of Plumbing Examiners;
Texas State Board of Podiatric Medical Examiners;
P[olygraph Examiners Board];
Texas State Board of Examiners of Psychologists;
Texas Real Estate Commission;
Board of Tax Professional Examiners;
Texas Department of Transportation;
State Board of Veterinary Medical Examiners;
Texas Department of Housing and Community Affairs;
secretary of state;
state fire marshal;
Texas Education Agency; and
Department of Agriculture.
SECTION 27. Subsection (a), Section 2054.352, Government Code, is amended to read as follows:
(a) The following licensing entities shall participate in the system established under Section 2054.353:
Texas Board of Chiropractic Examiners;
Court Reporters Certification Board;
State Board of Dental Examiners;
Texas Funeral Service Commission;
Texas Board of Professional Land Surveying;
Texas Medical Board;
Texas Board of Nursing;
Texas Optometry Board;
(9) Department of Agriculture, for licenses issued
under Chapter 1951, Occupations Code;
(10) Texas State Board of Pharmacy;
(11) Executive Council of Physical Therapy and
Occupational Therapy Examiners;
(12) Texas State Board of Plumbing Examiners;
(13) Texas State Board of Podiatric Medical Examiners;
(14) Board of Tax Professional Examiners;
(15) Polygraph Examiners Board;
(16) Texas State Board of Examiners of
Psychologists;
(17) State Board of Veterinary Medical
Examiners;
(18) Texas Real Estate Commission;
(19) Texas Appraiser Licensing and
Certification Board;
(20) Texas Department of Licensing and
Regulation;
(21) Texas State Board of Public Accountancy;
(22) State Board for Educator Certification;
(23) Texas Board of Professional Engineers;
(24) Department of State Health Services;
(25) Texas Board of Architectural Examiners;
(26) Texas Racing Commission;
(27) Commission on Law Enforcement Officer
Standards and Education; and
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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 Code;

9 (7) Section 1703.204, Occupations Code;

10 (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 this Act, the presiding officer of the Texas Commission of Licensing and Regulation shall appoint the members of the Polygraph Advisory Committee in accordance with Chapter 1703, Occupations Code, as amended by this Act. In making the initial appointments, the presiding officer shall designate two members for terms expiring February 1, 2011, two members for terms expiring February 1, 2013, and one member for a term expiring February 1, 2015.

21 SECTION 30. (a) The Polygraph Examiners Board is abolished but continues in existence until January 1, 2010, for the sole purpose of transferring obligations, property, full-time equivalent positions, rights, powers, and duties to the Texas Department of Licensing and Regulation. The department assumes all of the obligations, property, full-time equivalent positions, rights, powers, and duties of the board as it exists immediately
before the effective date of this Act. All unexpended funds
appropriated to the board are transferred to the department. The
transfer of the obligations, property, full-time equivalent
positions, rights, powers, and duties of the board to the
department must be completed not later than January 1, 2010.

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

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

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

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.

David Dewhurst
President of the Senate

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.

Nate Paul
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.

Robert Haney
Chief Clerk of the House

Approved:

27 May '09
Date

Rick Perry
Governor

FILED IN THE OFFICE OF THE
SECRETARY OF STATE
27 May 2009

Gregg Hildreth
Secretary of State