

BILL ANALYSIS

Senate Research Center

S.B. 303
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State Affairs
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

S.B. 303 is the Sunset bill for the Texas Board of Law Examiners (board). The board is a small judicial agency that examines applicants' qualifications to practice law and administers the Texas Bar Examination. The Texas Supreme Court (supreme court) appoints members to the board, and the board acts under the court's instructions and rules.

S.B. 303 continues the board for the standard 12-year period, moving the agency's Sunset date from September 1, 2017, to September 1, 2029. In addition, S.B. 303 removes outdated statutory provisions so the board can carry out its work in a more efficient and consistent manner.

For example, S.B. 303 removes specific licensing and examination deadlines from statute and requires the supreme court to adopt deadlines and a schedule of late fees in rule. This mechanism allows for more flexibility, which should benefit applicants and the board. Similarly, S.B. 303 removes the unnecessary requirement that applicants submit a notarized and verified affidavit as opposed to an online application.

S.B. 303 also promotes the fair treatment of applicants by removing an outdated provision that requires applicants to attest that they are not "mentally ill." This change ensures licensing decisions are based on present conditions and comply with the Americans with Disabilities Act. Finally, S.B. 303 requires the board to develop guidelines to help make consistent and fair determinations regarding character and fitness findings, probationary licenses, and waiver requests. (Original Author's /Sponsor's Statement of Intent)

S.B. 303 amends current law relating to the continuation and functions of the Board of Law Examiners.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Supreme Court (supreme court) in SECTION 6 (Section 82.023, Government Code) and SECTION 7 (Section 82.027, Government Code) of this bill.

Rulemaking authority previously granted to the supreme court is modified in SECTION 5 (Section 82.022, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 82.001(b), Government Code, to require the Texas Supreme Court (supreme court) to appoint the members of the Texas Board of Law Examiners (board) for staggered six-year terms, with the terms of one-third of the members expiring May 31, rather than August 31, of each odd-numbered year.

SECTION 2. Amends Section 82.006, Government Code, to provide that the board, unless continued in existence as provided by Chapter 325 (Sunset Law), is abolished September 1, 2029, rather than 2017.

SECTION 3. Amends Section 82.0073, Government Code, as follows:

Sec. 82.0073. New heading: SEPARATION OF RESPONSIBILITIES; DELEGATION.

(a) Creates this subsection from existing text and makes no further changes to this subsection.

(b) Authorizes the board, subject to supreme court rules, to delegate routine decisions to the board's executive director (executive director), including waiver requests.

SECTION 4. Amends Section 82.010, Government Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires that the training program for a person who is appointed to and qualifies for office as a member of the board provide information regarding the law governing board operations; the board's programs, functions, rules, and budget; the results of the most recent formal audit of the board; the requirements of laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest, and other laws applicable to members of a state policymaking body in performing their duties; and any applicable ethics policies adopted by the board or the Texas Ethics Commission. Deletes existing text requiring that the training program for a person who is appointed to and qualifies for office as a member of the board provide information regarding the legislation that created the board; the programs operated by the board; the board's role and functions; the board's rules with an emphasis on the rules that relate to disciplinary and investigatory authority; the board's current budget; and the requirements of the open meetings law, Chapter 551 (Open Meetings); the public information law, Chapter 552 (Public Information); the administrative procedure law, Chapter 2001 (Administrative Procedure); and other laws relating to public officials, including conflict-of-interest laws. Redesignates existing Subdivisions (6), (7), and (8) as Subdivisions (3), (4), and (5).

(c) Requires the executive director to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of the board. Requires, on receipt of the training manual, each member of the board to sign and submit to the executive director a statement acknowledging receipt of the training manual.

SECTION 5. Amends Section 82.022, Government Code, by adding Subsection (a-1), to require the supreme court, in adopting rules on eligibility for examination for a license to practice law, to ensure that no rule violates Chapter 110 (Religious Freedom), Civil Practice and Remedies Code.

SECTION 6. Amends Sections 82.023(b), (c), and (e), Government Code, as follows:

(b) Requires that the form for the declaration of intention to study law clearly identify those conditions of character and fitness, rather than conditions of character and fitness set out in Section 82.027, that the board is authorized to investigate and that may result in the denial of the declarant's application to take the examination.

(c) Requires the board to notify each first-year law student who files the declaration not later than the date established by supreme court rule, rather than who files the declaration on or before January 1 of the year in which the student begins law school, not later than August 1 of the following year, of the board's decision as to the student's acceptable character and fitness. Requires the board to notify all other declarants not later than the date established by supreme court rule, rather than not later than the 270th day after the date the declaration was filed, whether or not it has determined that the declarant has acceptable character and fitness.

(e) Requires the board, if the board determines that an applicant may suffer from chemical dependency, to require the applicant to meet with representatives of the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar and is authorized to require the applicant to submit to evaluation by a licensed mental health professional designated by the board, rather than submit to a treatment facility for

evaluation. Authorizes the board to seek advice and consultation from the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar in designating mental health professionals qualified to conduct evaluations of declarants who may suffer from chemical dependency.

SECTION 7. Amends Sections 82.027(a), (b), and (c), Government Code, as follows:

(a) Requires each applicant to take a bar examination to file an application with the board not later than the date established by supreme court rule and pay the fee established by supreme court rule, rather than file an application with the board not later than the 180th day before the first day of the examination for which the person is applying.

(b) Requires that the application include a statement certifying, rather than provides that the application consists of a verified affidavit stating, that since the filing of the applicant's original declaration of intention to study law, the applicant:

(1) makes no changes to this subdivision;

(2) deletes existing Subdivision (2), relating to the applicant not being mentally ill. Redesignates existing Subdivision (3) as Subdivision (2) and makes no further changes to this subdivision; and

(3) redesignates existing Subdivision (4) as Subdivision (3) and makes no further changes to this subdivision.

(c) Authorizes the board, on a showing of good cause or to prevent hardship, to permit an applicant to file an application with the board not later than the date established by supreme court rule, rather than not later than the 60th day after the deadline prescribed by Subsection (a), on payment of applicable late fees established by supreme court rule.

SECTION 8. Amends Sections 82.030(a) and (c), Government Code, as follows:

(a) Requires the board to assess each applicant's moral character and fitness based on the filing of the application, rather than affidavit, required by Section 82.027 (Application for Examination) and the board's investigation into the accuracy and completeness of the application. Makes a conforming change.

(c) Requires the board, if the board determines that an applicant may suffer from chemical dependency, to require the applicant to submit to evaluation by a licensed mental health professional designated by the board, rather than submit to a treatment facility for evaluation. Authorizes the board to seek advice and consultation from the Lawyers' Assistance Program of the State Bar of Texas or a similar program of the state bar in designating mental health professionals qualified to conduct evaluations of applicants who may suffer from chemical dependency.

SECTION 9. Amends Section 82.033(d), Government Code, to authorize the supreme court to set reasonable fees for additional services provided by the board, but prohibits the fee for any single additional service, other than the late fee for an examination application, from exceeding \$150.

SECTION 10. Amends Subchapter B, Chapter 82, Government Code, by adding Section 82.039, as follows:

Sec. 82.039. LICENSING GUIDELINES. (a) Requires the board, to assist the board in making consistent and fair determinations related to the licensing of attorneys in this state, to develop specific guidelines for determining the moral character and fitness of license applicants, overseeing probationary license holders, and granting waiver requests.

(b) Requires the board to develop the guidelines required under Subsection (a) based on the board's past decisions and on any other criteria the board considers

necessary. Provides that the board is not required to take any specific action provided in the guidelines.

SECTION 11. Repealer: Section 82.023(g) (relating to defining "chemical dependency" and "treatment facility"), Government Code.

Repealer: Section 82.030(f) (relating to the definition of "treatment facility"), Government Code.

SECTION 12. Provides that Section 82.001, Government Code, as amended by this Act, applies only to members appointed to the board on or after September 1, 2017.

SECTION 13. (a) Provides that, except as provided by Subsection (b), Section 82.010, Government Code, as amended by this Act, applies to a member of the board appointed before, on, or after the effective date of this Act.

(b) Provides that a member of the board who, before the effective date of this Act, completed the training program required by Section 82.010, Government Code, as that law existed before the effective date of this Act, is required to complete additional training only on subjects added by this Act to the training program as required by Section 82.010, Government Code, as amended by this Act. Prohibits a board member described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of the board held on or after December 1, 2017, until the member completes the additional training.

SECTION 14. Requires the supreme court, as soon as practicable after the effective date of this Act, to modify the rules necessary to implement the changes in license application requirements made under Section 82.027, Government Code, as amended by this Act.

SECTION 15. Provides that Section 82.027, Government Code, as amended by this Act, applies only to an application to take the state bar examination that is submitted to the board on or after September 1, 2017.

SECTION 16. Effective date: September 1, 2017.