



## Lower the Expense, Not the Bar

### *House Bill 2045*

by Kathleen Hunker, *Policy Analyst*

Mr. Chairman, members of the committee, my name is Kathleen Hunker. I am a policy analyst and licensed attorney at the Texas Public Policy Foundation, where I specialize in researching the unintended consequences of anti-competitive regulations. It's with this background that I come before you today to offer some observations on how the current rule, which limits the eligibility of taking the Texas Bar Exam, denies the Texas legal market a growing pool of skilled professionals as well as prevents the state from holding inbound attorneys accountable to homegrown ethical standards.

- Texas attracts thousands of new residents every year thanks to its booming economy as well as its low tax, low regulatory environment. Nearly a million people migrated to Texas between 2010 and 2014 according to the U.S. Census Bureau, more than half of whom were from other parts of the United States.
- Occupational licensing can pose a difficult challenge for new residents since professional requirements vary per state and many have already invested in professional qualifications that are not recognized by Texas law. New residents therefore are forced to pursue expensive and often times redundant coursework before practicing in Texas, which not only constructs a tall barrier to entry, but also limits consumer access to skilled professionals, reducing competition and driving up the cost of finding adequate representation.
- State licensing programs also can take a heavy toll on the state's economy. A 2007 study of national trends determined that state licensing programs reduced rate of job growth by 20 percent. It then estimated that the total "deadweight"—if one includes its rippling impact on prices, investments, availability of services, and discouraged innovation, etc.—amounted between \$34.8 and \$41.7 billion per year as compared to an unlicensed market.
- Limiting the Texas Bar Exam to those who attended an accredited law school prevents the government from regulating a wide swath of the Texas legal profession. Attorneys with an out-of-state license cannot fully practice law in Texas. However, their status does qualify them to participate in certain activities, such as federal proceedings, acting as general counsel, and drafting briefs for Texas attorneys to submit on their behalf. Without some form of official recognition, the state cannot demand—or enforce—that these practitioners abide by Texas ethical rules. Instead, they operate underneath the radar, outside of any state quality control, bound to standards of their home state.
- The government's interest in ensuring that its citizens receive competent representation in court does not require attendance at an approved law school and can be satisfied with the Texas Bar Exam standing on its own. Indeed, the Texas Bar Exam already functions as the primary filter separating those with a good grasp of Texas law from those in need of additional study. It is held over a three day period, tests the taker's expertise in at least 16 subject areas, assesses writing ability and familiarity with both state and federal procedures, and is reputed to be one of the toughest exams administered in the nation. The Texas Bar Exam offers the state a verified means of maintaining the excellence of the state's legal profession. Opening it up to experienced professionals would not lessen the profession so much as open up the market to greater competition and widen the doorway through which modern day pioneers can pursue the economic opportunities promised by the Texas Model.

- House Bill 2045 helps ensure that skilled attorneys are not inadvertently deterred from the practice of law merely because they followed a professional tract endorsed in their home state. It also promotes an ethical, high quality profession since new residents with unorthodox law licenses are not pushed offstage out of the sight and jurisdiction of state regulators. Entry into the legal profession would center on a person's skill and knowledge, not the name of the institute that helped launch their career.

Texans deserve the fullest access to capable representation, just as new residents deserve the chance to pursue their livelihood without unnecessary barriers to entry. House Bill 2045 makes certain that the barrier to entry extends no higher than that which is reasonably necessary to verify the commitment and proficiency of the Texas bar.

Thank you for the opportunity to testify. I'd be happy to answer any questions. ★

