

# MAINE STATE LEGISLATURE

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STATE OF MAINE  
HOUSE OF REPRESENTATIVES (Filing No. H-194)  
109TH LEGISLATURE  
FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to H.P. 91, L.D. 103, Bill,  
"AN ACT to Establish Registration of Polygraph Examiners."

Amend the Bill by striking out all of sections 1 and 2.

Further amend the Bill by renumbering section 3 to be  
section 1.

Further amend the Bill by striking out all of sections 4 and  
5 and inserting in their place the following:

'Sec. 2. 32 MRSA c. 87 is enacted to read:

CHAPTER 87

POLYGRAPH EXAMINERS

§7151. Short title

This chapter shall be known and may be cited as the  
Polygraph Examiners Act.

§7152. Purpose

It is the purpose of this chapter to regulate all persons  
who purport to be able to detect deception or to verify truth  
of statements through the use of instrumentation, such as lie  
detectors, polygraphs, deceptographs, psychological stress  
evaluators or similar or related devices and instruments without  
regard to the nomenclature applied thereto and this chapter  
shall be liberally construed to regulate all these persons and  
instruments. No person who purports to be able to detect  
deception or to verify truth of statements through instrumenta-  
tion shall be held exempt from this chapter because of the term-  
inology which he may use to refer to himself, to his instrument  
or to his services.

§7153. Definitions

As used in this chapter, unless the context otherwise indicates, the following words shall have the following meanings.

1. Commissioner. "Commissioner" means the Commissioner of the Department of Public Safety.
2. Internship. "Internship" means the study of polygraph techniques and of the administration of polygraph examinations by a trainee under the personal supervision and control of a licensed polygraph examiner in accordance with a course of study prescribed by the commissioner at the commencement of the internship.
3. Person. "Person" means any natural person, firm, association, partnership, corporation, government agency or subdivision, or any employee or agent thereof.
4. Polygraph. "Polygraph" means a lie detector, polygraph, deceptograph, psychological stress evaluator or other device, mechanism or instrument, regardless of what it is called, which is operated or the results of which are used or interpreted by a polygraph examiner for the purpose of detecting deception or verifying truth of statements.
5. Polygraph examination. "Polygraph examination" means any test administered by a polygraph examiner using a polygraph.
6. Polygraph examiner. "Polygraph examiner" means any person who purports to be able to detect deception or verify truth of statements through the use of polygraph.

54. Prohibitions

It shall be unlawful for any person to administer polygraph examinations or to attempt to hold himself out as a polygraph examiner or to refer to himself by any other title which would indicate or which is intended to indicate or calculated to mislead members of the public into believing that he is a polygraph examiner without first securing a license as provided. This prohibition does not apply to any employee of the Federal Government who administers polygraph examinations in the course of his employment or who holds himself out as a polygrapher in connection with his employment. the nonlicensing provisions of this chapter shall apply to that person as if he were subject to licensing requirements.

It shall be unlawful for any polygraph examiner conducting a polygraph examination to ask any questions pertaining to sexual behavior of any type or questions that could be construed as being sexually oriented, unless the examination is conducted in the course of either a criminal investigation by law enforcement officials for alleged violation of Title 17-A, chapters 11 and 35, or substantially equivalent provisions in another jurisdiction or civil litigation in which sexual behavior is at issue. This prohibition does not apply to polygraph / examinations for applicants for positions in law enforcement agencies.

It shall be unlawful for any polygraph examiner to probe the political or religious beliefs of any individual during any polygraph examination.

It shall be unlawful for any polygraph examiner to subject a person to a polygraph examination without that person's full knowledge and consent.

§7155. Examiner's license qualifications

Qualifications.

1./A person is qualified to receive a license as a polygraph examiner:

- A. Who is at least 21 years of age;
- B. Who has not been convicted of a crime involving moral turpitude;
- C. Who is a graduate of an accredited high school or who has been granted high school equivalency status by the State;
- D. Who is a graduate of a polygraph examiners course approved by the commissioner and has satisfactorily completed not less than 6 months of internship; and
- E. Who has passed an examination, including a practicum, conducted by the commissioner, or under his supervision, to determine his competency to administer polygraph examinations.

§7156. Acquisition of license by present examiners

Subject to section 7161, any person who is actually engaged in the occupation, business or profession of a polygraph examiner on the effective date of this chapter, shall, upon application within 90 days after the effective date of this chapter, compliance with section 7155, <sup>subsection 1,</sup> paragraph E, and payment of the required license fee, be issued a polygraph examiner's license, provided that the commissioner may require the applicant to submit satisfactory proof that he is so engaged.

§7157. Application for original license

Applications for original licenses shall be made to the commissioner in writing under oath on forms prescribed by him and shall be accompanied by the required fee which is not refundable. Any application shall require such information as in the judgment

which  
of the commissioner/will enable him to pass on the qualifications  
of the applicant for the license.

§7158. Applicant with out-of-state license

Subject to section 7161, an applicant who  
is a polygraph examiner, licensed under the laws of another state  
or territory of the United States, shall be issued a license without  
examination by the commissioner upon payment of the polygraph  
examiner license fee and the production of satisfactory proof that:

Age.

1./ He is at least 21 years of age;

Equivalency of requirements.

2./ The requirements for the licensing of a polygraph

examiner in that particular state or territory of the

United States were at the date of the applicant's licensing

therein substantially equivalent to the requirements now

in force in this State; and

Reciprocity.

3./ The other state or territory grants similar reciprocity

to license holders in this State.

§7159. Internship license

The commissioner shall issue an internship license to a  
trainee provided he applies for the license and pays the required  
fee within 10 days prior to the commencement of his internship.  
The application shall contain such information as may be required  
by the commissioner.

An internship license shall be valid for the term of 12  
months from the date of issue. The license may be extended or  
renewed for any term not to exceed 6 months upon good cause  
shown to the commissioner.

A trainee shall not be entitled to hold an internship license after the expiration of the original 12-month period and 6-month extension, if the extension is granted by the commissioner, until 12 months after the date of expiration of the last internship license held by the trainee.

§7160. Termination and renewal of examiner's license

Each polygraph examiner's license shall be issued for a term of two years and shall, unless suspended or revoked, be renewed / <sup>biennially</sup> as prescribed by the commissioner.

§7161. Refusal; suspension; revocation; grounds

1. Grounds. The commissioner shall have the authority after a hearing in conformance with Title 5, section 9051 et seq., to refuse to issue or renew a license. The ~~administrative~~ Court Judge shall have the power to suspend or revoke the license of any person licensed under this chapter. The commissioner may refuse to issue or renew a license and the Administrative Court may suspend or revoke a license on any one or more of the following grounds:

A. For failing to inform a subject to be examined as to the nature of the examination and of the specific questions to be asked;

B. For failing to inform a subject to be examined that his participation in the examination is voluntary; that he has the right to terminate an examination at any point without prejudice and that should he refuse or decline to submit to a polygraph examination, that the refusal or declination would not be the basis for any inference or act to his legal prejudice;

C. For failing to inform a person of his constitutional rights concerning self-incrimination under the fifth amendment of the Constitution of the United States when the polygraph examination is being conducted by or for a law enforcement agency or other entity when the person to be tested is suspected of criminal activity and where criminal charges could result should the person being examined make admissions against interest;

D. For asking a person being examined on the polygraph questions concerning sexual behavior except as provided for in section 7154;

E. For failing to discuss any reactions with the person being examined on the polygraph which could be indicative of deception and not providing the person an opportunity to offer explanations for the responses;

F. For failure to inform a person examined by polygraph of the results of the examination if so requested;

G. For conducting a polygraph examination of a person when he has reason to believe the examination is intended to interfere with or prevent the lawful organizational activities of a labor union;



H. For material misstatements in the application for original license or in the application for any renewal license under this chapter;

I. For willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully <sup>making</sup> a false report concerning an examination for polygraph examination purposes;

J. For the holder of any license having been adjudged guilty of the commission of a crime involving moral turpitude;

K. For making any willful misrepresentation or false promise or causing to be printed any false or misleading advertisement for the purposes of directly or indirectly obtaining business or trainees;

L. For having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this chapter;

M. For allowing one's license under this chapter to be used by an unlicensed person in violation of this chapter;

N. For willfully aiding or abetting another in violation of this chapter or any regulation or rule issued thereto;

O. For the license holder having been found to be an habitual abuser of drugs or alcohol, or mentally incompetent; or

P. For failing, within a reasonable time, to provide information requested by the commissioner as the result of a formal complaint to the commissioner which would indicate a violation of this chapter.

§7162. Violation by one examiner or trainee not to effect employer

Any unlawful act or violation of this chapter on the part of any polygraph examiner or trainee is not cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed unless it appears to the satisfaction of the commissioner that the polygraph examiner-employer has willfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

§7163. Application of Administrative Procedure Act

The Maine Administrative Procedure Act, Title 5, section 8001, et seq., applies to and governs all administrative actions taken under this chapter.

§7164. Surrender of license

Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the commissioner. Failure of a licensee to do so shall be a violation of this chapter and upon conviction, shall be subject to the penalties set forth. At any time after the suspension or revocation of any license, the commissioner shall restore it to the former licensee if he finds that the former licensee qualifies for the license in all other respects and that the conduct giving rise to the suspension or revocation is not continuing and that there is good reason to believe that it will not be repeated.

§7165. Jurisdiction over non-residents

In addition to any other method provided by rule or by statute, if a polygraph examiner licensed under this chapter is not a resident of this State and engages in conduct subject to this chapter, personal jurisdiction in the Superior and District Courts of this State may be acquired by service of process upon the commissioner and mailing forthwith a copy of the process and pleading by registered or certified mail to the defendant at his last reasonably ascertainable address. An affidavit of compliance with this paragraph shall be filed with the clerk of the court on or before the return day of the process, if any, or within any further time the court allows.

§7166. Limitations on uses in employment

1. Pre employment screening. No employer may, directly or indirectly, require, request or suggest that any applicant for employment submit to a polygraph examination as a condition of obtaining employment, or administer or cause to be administered to an applicant any such examination, or use or refer to the results of such an examination for hiring purposes. For purposes of this subsection, "employer" shall include an employment agency and "applicant" shall include any person seeking to use an employment agency's services.

2. Current employees. No employer may, directly or indirectly, require, request or suggest that any employee submit to a polygraph examination as a condition of employment, or administer or cause to be administered to any employee any such examination, or use or refer to the results of such an examination for employment purposes.

3. Exceptions.

A. This section shall not apply to employees of or applicants for employment with law enforcement agencies;

B. Nothing in subsection 2 shall prohibit either an employee from voluntarily requesting a polygraph examination in connection with his employment or an employer from using or referring to the results of any examination so requested, provided that the results of that examination may not be used against <sup>the employee</sup> / by the employer for any purpose, that the employer shall give the employee a copy of this Act when the employee requests the examination, and that the examination is recorded <sup>the employee's</sup> / or that a witness of / choice is present during the examination, or both, as the employee request

§7167. Penalties.

Any person who violates any provision of this chapter or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements is guilty of a Class D crime.

§7168. Rules

The commissioner shall adopt rules necessary to administer this chapter, including but not limited to fixing application and license fees adequate to defray the costs of administration, and establishing an internship program to ensure free entry into the profession in order to promote competition under this chapter.

Statement of Fact

The purpose of this bill is to establish a licensing procedure with the Department of Public Safety for those who purport to be able to detect deception or to verify the truth of statements through the use of a variety of instruments or mechanical devices generically known as polygraphs. The bill also regulates the nature of polygraph examinations and their uses in the context of employment.

Reported by the Committee on Business Legislation  
Reproduced and distributed under the direction of the  
Clerk of the House.  
4/10/79 (Filing No. H-194)