

MAINE STATE LEGISLATURE

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FIRST REGULAR SESSION

ONE HUNDRED AND NINTH LEGISLATURE

Legislative Document

No. 103

H. P. 91

House of Representatives, January 17, 1979

Referred to the Committee on Business Legislation. Sent up for concurrence and ordered printed.

EDWIN H. PERT, Clerk

Presented by Mr. Drinkwater of Belfast.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-NINE

AN ACT to Establish Registration of Polygraph Examiners.

Be it enacted by the People of the State of Maine, as follows:

Sec. 1. 5 MRSA § 151, first sentence, as last amended by PL 1975, c. 705, § 1, is further amended to read:

All money received by the Treasurer of State from the **Board of Polygraph Examiners**, the Board of Registration in Medicine, the Board of Examiners in Physical Therapy, the Board of Examiners of Psychologists, the State Board of Nursing, the Board of Examiners of Applicants for Admission to the Bar, the Board of Accountancy, the Board of Veterinary Examiners, the Board of Osteopathic Examination and Registration, the State Board of Funeral Service, the State Board of Registration and Examination in Optometry, the Board of Dental Examiners, the State Board of Registration for Professional Engineers, the State Board of Certification for Geologists and Soil Scientists, the State Board of Licensure of Administrators of Medical Care Facilities other than Hospitals, the State Board of Architects, the Electricians' Examining Board, the Oil Burner Men's Licensing Board, the Penobscot Bay and River Pilotage Commission, the State Board of Barbers, State Board of Cosmetology, State Board of Registration for Land Surveyors, State Board of Social Worker Registration, the Examiners of Podiatrists, the Board of Chiropractic Examination and Registration, the Board of Examiners on Speech Pathology and Audiology and the Board of

Commissioners of the Profession of Pharmacy shall constitute a fund, which shall be a continuous carrying account for the payment of the compensation and expenses of the members, the expenses of the board and for executing the law relating to each board respectively and so much thereof as may be required is appropriated for said purposes.

Sec. 2. ~~32 MRSA § 6051, sub-§ 6, as repealed and replaced by PL 1977, c. 696, § 252, is repealed as follows:~~

~~6.—Polygraph expert.— “Polygraph expert” means an expert in the analysis of polygraph test results; however, a full time police officer may act as a polygraph examiner without a license~~

Sec. 3. ~~32 MRSA § 6055, first ¶, last 2 sentences, as enacted by PL 1977, c. 508, § 3, are repealed as follows:~~

~~For the purposes of this chapter, a polygraph expert shall be considered a private investigator and shall not engage in the practice of his profession unless licensed as a private investigator as provided in section 6057. However, part time or full time police officers may act as a polygraph expert without a license while acting in their capacity as a police officer~~

Sec. 4. ~~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 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 instrumentation shall be held exempt from this chapter because of the terminology 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. **Board.** “Board” means the Polygraph Examiners Board.
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 board at the commencement of the internship.

3. **Person.** "Person" means any natural person, firm, association, partnership or corporation.

4. **Polygraph examiner.** "Polygraph examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device.

5. **Polygraph screening tests.** "Polygraph screening tests" mean limited polygraph tests designed to generally screen individuals for the following purposes:

A. The elimination of suspects in criminal and civil matters where a number of individuals have come under suspicion;

B. The screening of the personal history of applicants for employment in business, industry, law enforcement or other activities to verify an applicant's statements relative to previous criminal activity, qualifications, responsibility and other areas which would have a direct bearing on the applicant's ability or potential to perform the duties of the position applied for; or

C. The periodic screening of employees in a business, industry or other activity relative to criminal or other improper activities directed against the employer for the purposes of detecting and deterring internal crime.

6. **Secretary.** "Secretary" means that member of the Polygraph Examiners Board selected by the board to act as secretary.

7. **Specific polygraph examination.** "Specific polygraph examination" means an in-depth polygraph examination of an individual that is designed to explore specific criminal or civil allegations or serve as a follow-up examination where a polygraph screening test provides indications of possible deception.

§ 7154. Use of polygraph examination results

Polygraph examination graphs and the resulting opinions of polygraph examiners may be used as an investigative aid and as a means of supporting other evidence as to the guilt or innocence of an accused person before any court, board or in any other administrative proceeding, when found to be acceptable by the court, board or administrative entity. However, the polygraph test graphs and resulting opinions of the polygraph examiner shall in no case be used as the sole source of evidence or information in any criminal, civil, administrative, employment, employee termination or any other process. Voluntary admissions or other statements legally obtained in conjunction with a polygraph examination may be considered in any legal or administrative actions.

§ 7155. Minimum instrumentation required

Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently and simultaneously:

1. Cardiovascular pattern. A subject's cardiovascular pattern;
2. Respiratory pattern. A subject's respiratory pattern; and
3. Electrodermal or galvanic skin response pattern. A subject's electrodermal or galvanic skin response pattern.

Patterns of other physiological changes in addition to those listed in subsections 1, 2 and 3 may also be recorded. The use of any other instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is prohibited and the operation or use of the equipment shall be subject to penalties and may be enjoined in the manner provided in this chapter.

§ 7156. Creation of the board

1. Membership. There is established a Polygraph Examiners Board consisting of a maximum of 5 members who shall be citizens of the United States and residents of the State of Maine for at least 2 years prior to appointment, 3 of whom shall have been engaged for a period of at least 2 years as polygraph examiners and have completed a course of formal instruction in polygraph instrumentation and techniques totaling at least 200 hours of classroom instruction at a school, civilian, military or governmental, that is fully recognized and accredited by the American Polygraph Association, one of whom shall be practicing attorney in the State and one of whom shall be a citizen of the State unconnected with the business of carrying out polygraph examinations or with any law enforcement agency. At least one member shall be a qualified polygraph examiner of a governmental law enforcement agency and at least one member shall be a qualified polygraph examiner in the private or commercial field. The members shall be appointed by the Governor for a term of 4 years. The terms of office of members appointed to the initial board are 2 for 2 years; 2 for 3 years and one for 4 years. Members may be appointed by the Governor to successive terms. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term.

2. Expenses. Members of the board shall be compensated for travel and expenses incurred in performance of their duties.

3. Meetings. The board shall meet within 30 days after the effective date of this chapter and elect a chairman, vice-chairman and a secretary from among its members. At the meeting the board shall specify dates spaced at 3-month intervals on which examinations for polygraph examiners' licenses will be held. A copy of those dates shall forthwith be delivered to the secretary.

4. Voting. The vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board.

5. **Staff.** The board shall employ such staff as is necessary for the purpose of carrying out this chapter.

§ 7157. Administration and expenses

1. **Regulations.** The board shall issue regulations consistent with this chapter for the administration and enforcement of this chapter and shall prescribe forms which shall be issued in connection herewith.

2. **Orders.** An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are genuine signatures of the board members and that the board members are fully qualified to act.

3. **Fees.** All fees collected under this chapter shall be paid to the Treasurer of State to be used for carrying out the purposes of this chapter in accordance with Title 5, section 151.

§ 7158. Prohibitions

It shall be unlawful for any person, including a town, city, county or state employee, to administer polygraph or other examinations utilizing instrumentation for the purpose of detecting deception or verifying truth of statements 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 qualified to apply instrumentation to detect deception or to verify truth of statements without first securing a license as provided.

It shall be unlawful for any polygraph examiner conducting a polygraph applicant screening test for business, industry or any other private entity to ask any questions pertaining to sexual behavior of any type or questions that could be construed as being sexually oriented. This prohibition does not apply to polygraph tests for applicants for positions in law enforcement agencies. It shall also be unlawful for any polygraph examiner to ask questions about sexual behavior in any other screening or specific polygraph examination, unless the examination deals with sexual allegations as in certain criminal or civil matters.

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

§ 7159. Examiner's license qualifications

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

- A. Who is at least 21 years of age;
- B. Who is a citizen of the United States;
- C. Who establishes that he is a person of honesty, truthfulness, integrity and moral fitness;

- D. Who has not been convicted of a crime involving moral turpitude;
- E. Who holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers, or in lieu thereof, is a graduate of an accredited high school or who has been granted high school equivalency status by the State and has 5 consecutive years of active investigative experience preceding his application;
- F. Who is a graduate of a polygraph examiners course approved by the board and has satisfactorily completed not less than 6 months of internship; and
- G. Who has passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

2. Surety bond. Prior to the issuance of a license, the applicant shall furnish to the board evidence of a surety bond or insurance policy. The surety bond or insurance policy shall be in the sum of either \$10,000 for a resident and \$50,000 for a nonresident and shall be conditioned that the obligor therein will pay to the extent of the face amount of the surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examination. This paragraph shall not apply to full time law enforcement officers performing official law enforcement polygraph duties.

§ 7160. Acquisition of license by present examiners

On the effective date of this chapter, any person who is actually engaged in the occupation, business or profession of a polygraph examiner and who is using for that purpose the instrumentation prescribed in section 7155 shall upon application within 90 days after the effective date of this chapter and payment of the required license fee, be issued a polygraph examiner's license, provided that the board may require the applicant to submit satisfactory proof that he is so engaged. The application shall also satisfy the requirements of section 7159, subsection 1, paragraphs A to D and G and subsection 2.

§ 7161. Application for original license

Applications for original licenses shall be made to the secretary of the board in writing under oath on forms prescribed by the board and shall be accompanied by the required fee which is not refundable. Any application shall require such information as in the judgment of the board will enable it to pass on the qualifications of the applicant for the license.

§ 7162. Nonresident applicants

Each nonresident applicant for an original license or a renewal license shall file with the board an irrevocable consent that action against the applicant may be filed in any appropriate court of any county or municipality of this State in which the plaintiff resides or in which some part of the transaction occurred out of which

the alleged cause of action arose and that process on any such action may be served on the applicant by leaving 2 copies thereof with the secretary. The consent shall stipulate and agree that the service or process shall be taken and held to be valid and binding for all purposes. The secretary of the board shall send forthwith one copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

§ 7163. Applicant with out-of-state license

1. Applicant. An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the board, in its discretion, upon payment of the polygraph examiner license fee and the production of satisfactory proof that:

- A. He is at least 21 years of age;
- B. He is a citizen of the United States;
- C. He is of good moral character;
- D. 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;
- E. The applicant had lawfully engaged in the administration of polygraph examinations under the laws of that state or territory for at least 2 years prior to his application for license under this chapter;
- F. The other state or territory grants similar reciprocity to license holders in this State; and
- G. He has complied with section 7162.

§ 7164. Internship license

Upon approval by the board, the secretary 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 board.

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 board.

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 board, until 12 months after the date of expiration of the last internship license held by the trainee.

§ 7165. Eximination and license fees

1. Applicant's fee. The fee to be paid by an applicant for an examination to determine his fitness to receive a polygraph examiner's license is \$50, which is not to be credited as payment against the license fee.

2. Original polygraph examiner's license; fee. The fee to be paid for an original polygraph examiner's license is \$100.

3. Duplicate polygraph examiner's license; fee. The fee to be paid for the issuance of a duplicate polygraph examiner's license is \$25.

4. Internship license; fee. The fee to be paid for an internship license is \$50.

5. Polygraph examiner's renewal license; fee. The fee to be paid for a polygraph examiner's renewal license is \$50.

6. Internship license; extension or renewal; fee. The fee to be paid for the extension or renewal of an internship license is \$25.

7. Duplicate internship license; fee. The fee to be paid for a duplicate internship license is \$15.

The fees required by this chapter may be paid by the governmental agency employing the examiner.

§ 7166. Display of license and signature

A license or duplicate license shall be prominently displayed at the place of business of the polygraph examiner or at his place of internship. Each license shall be signed by the board secretary and shall be issued under the seal of the board.

§ 7167. Change of business address

Notice in writing shall be given to the secretary by the licensed examiner of any change of principal business location within 30 days of the time he changed the location. A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.

§ 7168. Termination and renewal of examiner's license

Each polygraph examiner's license shall be issued for a term of one year and shall, unless suspended or revoked, be renewed annually as prescribed by the board. A polygraph examiner whose license has expired may at any time within 2 years after the expiration thereof obtain a renewal license without examination by making a renewal application therefor and satisfying section 7159, subsection 1, paragraphs B, C and D. However, any polygraph examiner whose license expired while he was in the federal service on active duty with the Armed Forces of the United States, or the National Guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his license renewed without examination if

within 2 years after termination of the service, training or education, except under conditions other than honorable, he furnishes the board with an affidavit to the effect that he has been so engaged and that his service, training or education has been so terminated. Section 7159, subsection 1, paragraphs B, C and D shall also be satisfied.

§ 7169. License required to maintain suit

No action or counterclaim shall be maintained by a person in any court in this State with respect to any agreement or service for which a license is required by this chapter, or to recover the agreed price of any compensation under the agreement, or for the service for which a license is required by this chapter without alleging and proving that the person had a valid license at the time of making the agreement or performing the service.

§ 7170. Refusal; suspension; revocation; grounds

1. Grounds. The board 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 board 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;
- 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 7158;
- 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 making 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 mentally incompetent; or

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

§ 7171. 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 board that the polygraph examiner-employer has willfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

§ 7172. Application of Administrative Procedure Act

The Maine Administrative Procedure Act, Title 5, section 8001, et seq., applies to and governs all administrative actions taken by the polygraph examiners board.

§ 7173. Surrender of license

Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the secretary. 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 secretary shall restore it to the former licensee, upon the written recommendation of the board.

§ 7174. Proceedings through the Attorney General

If any person violates any provision of this chapter, the secretary shall, upon direction of a majority of the board, in the name of the State, through the Attorney General, apply in any Superior Court of competent jurisdiction for an order enjoining the violation or for an order enforcing compliance with this chapter. Upon the filing of a verified petition in the court, the court, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction, without notice or bond, enjoining the continued violation and if it is established that the person has violated or is violating this chapter, the court may enter a decree perpetually enjoining the violation or enforcing compliance with this chapter. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

§ 7175. 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.

Sec. 5. Appropriation. The following funds shall be appropriated from the General Fund to carry out the purposes of this Act:

	1979-80
BOARD OF POLYGRAPH EXAMINERS	
All Other	\$2,000

STATEMENT OF FACT

This bill regulates persons claiming to be able to detect deception or to verify the truth of statements through the use of instrumentation such as lie detectors, polygraphs, deceptographs and similar instruments by creating the polygraph examiners board with licensing powers over all such persons and instruments and prohibiting the use of instruments that do not meet minimum standards.

The purpose of this bill is to ensure the highest degree possible of accuracy and integrity in polygraph operations in Maine.