

MAINE STATE LEGISLATURE

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ONE HUNDRED AND SIXTH LEGISLATURE

Legislative Document

No. 1662

S. P. 509

In Senate, March 26, 1973

Referred to the Committee on State Government. Sent down for concurrence and ordered printed.

HARRY N. STARBRANCH, Secretary

Presented by Senator Brennan of Cumberland.

STATE OF MAINE

IN THE YEAR OF OUR LORD NINETEEN HUNDRED
SEVENTY-THREE

AN ACT Creating a Polygraph Examiners Act.

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

Sec. 1. R. S., T. 32, c. 52, additional. Title 32 of the Revised Statutes is amended by adding a new chapter 52 to read as follows:

CHAPTER 52

POLYGRAPH EXAMINERS

§ 3661. Short title

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

§ 3662. Purpose

It is the purpose of this Act 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 Act shall be liberally construed to regulate all such 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 Act because of the terminology which he may use to refer to himself, to his instrument or to his services.

§ 3663. Definitions

In this Act, unless the context requires a different definition, 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 polygraph examiner in accordance with a course of study prescribed by the board at the commencement of such internship.
3. Person. "Person" means any natural person, firm, association, copartnership 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. Secretary. "Secretary" means that member of the Polygraph Examiners Board selected by the board to act as secretary.

§ 3664. 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. A subject's cardiovascular pattern and
2. A subject's respiratory pattern.

Patterns of other physiological changes in addition to subsections 1 and 2 may also be recorded. The use of any 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 such equipment shall be subject to penalties and may be enjoined in the manner provided.

§ 3665. Creation of the board

1. Membership. There is established a Polygraph Examiners Board consisting of a minimum of 3 and 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 a polygraph examiner in the commercial field; one of whom shall be a practicing attorney in the State of Maine whose practice includes a substantial amount of criminal litigation, either for the State or for the defense, and one citizen of the State unconnected with the business of carrying out polygraphic examinations or with any law enforcement agency, and have completed a course of formal instruction in polygraph instrumentation and techniques totalling 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. At least one member must be a qualified examiner of a governmental law enforcement agency and at least one member must be a qualified polygraph examiner in the commercial field. The members shall be appointed by the Governor for a term of 6 years. The terms

of office of members appointed to the initial board are one for 2 years; one for 4 years; and one for 6 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 Act 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 additional staff as is necessary for the purpose of carrying out this Act.

§ 3666. Administration and expenses

1. Regulations. The board shall issue regulations consistent with this Act for the administration and enforcement of this Act 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 Act shall be paid to the Treasurer of State.

The fees collected during the first biennium shall go to the administration of this Act.

§ 3667. Prohibition

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.

§ 3668. Examiner's license qualifications

1. Qualifications. A person is qualified to receive a license as an 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 felony or a misdemeanor 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 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 training;

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;

H. Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy. Said surety bond or insurance policy shall be in the sum of \$5,000 and shall be conditioned that the obligor therein will pay to the extent of the face amount of such 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 examinations.

§ 3669. Acquisition of license by present examiners

On the effective date of this Act, 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 3663 shall upon application within 90 days after the effective date of this Act and payment of the required license fee, be issued a polygraph examiner's license which shall be effective no longer than one year from date of issuance, provided that the board may require such applicant to submit satisfactory proof that he is so engaged. The applicant must also satisfy such requirements of section 3668, subsection 1, paragraphs A to D and G and H.

§ 3670. 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 such 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.

§ 3671. Nonresident applicants

Each nonresident applicant for an original license or a renewal license shall file with the board an irrevocable consent that actions against said 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. Such consent shall stipulate and agree that such 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.

Nonresident applicants must satisfy the requirements of section 3668.

§ 3672. 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 a fee of \$200 and the production of satisfactory proof that:

- A. He is at least 18 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 such 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 such state or territory for at least 2 years prior to his application for license under this Act;
- F. Such other state or territory grants similar reciprocity to license holders of this State; and
- G. He has complied with section 3671.

§ 3673. Internship license

Upon approval by the board, the secretary shall issue an internship license to a trainee provided he applies for such 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. Such 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 such extension is granted by the board, until 12 months after the date of expiration of the last internship license held by said trainee.

§ 3674. Examination and license fees

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.

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

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

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

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

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

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.

§ 3675. Display of license and signature thereon

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

§ 3676. 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 changes the location. A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.

§ 3677. Termination and renewal of examiner's license

Each polygraph examiner's license shall be issued for the 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 3668, 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 such 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 3668, subsection 1, paragraphs B, C and D must also be satisfied.

§ 3678. License required to maintain suit

No action or counterclaim shall be maintained by any person in any court in this State with respect to any agreement or service for which a license is required by this Act, or to recover the agreed price or any compensation under such agreement, or for such service for which a license is required by this

Act without alleging and proving that such person had a valid license at the time of making such agreement or performing such services.

§ 3679. Refusal, suspension, revocation; grounds

1. Grounds. The board may refuse to issue or 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;

C. Material misstatement in the application for original license or in the application for any renewal license under this Act;

D. Willful disregard or violation of this Act 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;

E. If the holder of any license has been adjudged guilty of the commission of a felony or misdemeanor involving moral turpitude;

F. Making any willful misrepresentation or false promise or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or trainees;

G. Having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this Act;

H. Allowing one's license under this Act to be used by an unlicensed person in violation of this Act;

I. Willfully aiding or abetting another in the violation of this Act or any regulation or rule issued thereto;

J. Where the license holder has been adjudged an habitual drunkard or mentally incompetent;

K. 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 Act; or

L. Failing to inform the subject of the results of the examination if so requested.

§ 3680. Violation by one examiner or trainee not to affect employer

Any unlawful act or violation of any of the provisions of this Act on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear 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.

§ 3681. Board hearing

When there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension or revocation action is taken, notify such person in writing, in person or by certified mail at the last address supplied to the board by such person, of such impending refusal, suspension or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within the 20-day period, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.

The board shall conduct the administrative hearings and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at a hearing, the board shall take whatever action is deemed necessary in refusing the application or suspending or revoking the license.

§ 3682. Application of Administrative Code

The Administrative Code applies to and governs all administrative actions taken by the polygraph examiners board.

§ 3683. 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 violation of this Act 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.

§ 3684. Proceedings through the Attorney General

If any person violates any provision of this Act, the secretary shall, upon direction of a majority of the board, in the name of the State of Maine, through the Attorney General, apply in any District Court of competent jurisdiction for an order enjoining such violation or for an order enforcing compliance with this Act. Upon the filing of a verified petition in the court, the court, if satisfied by affidavit or otherwise that the person has violated this Act, may issue a temporary injunction, without notice or bond, enjoining such

continued violation and if it is established that the person has violated or is violating this Act, the court may enter a decree perpetually enjoining the violation or enforcing compliance with this Act. In case of violation of any order or decree issued under this section, the court may try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this Act.

§ 3685. Penalties

Any person who violates any provision of this Act 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 shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than \$100 nor more than \$1,000, or by imprisonment for not more than 6 months, or by both.

Sec. 2. R. S., T. 5, § 151, amended. The first sentence of section 151 of Title 5 of the Revised Statutes, as repealed and replaced by section 7 of chapter 544 of the public laws of 1967, and as amended, is further amended to read as follows:

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 Licensure of Administrators of Medical Care Facilities other than Hospitals, the State Board of Architects, the Electricians' Examining Board, the Oil Burnermen's Licensing Board, the Penobscot Bay and River Pilotage Commission, the State Board of Barbers, State Board of Hairdressers, State Board of Registration for Land Surveyors, State Board of Social Worker Registration, the Examiners of Podiatrists, the Board of Chiropractic Examination and Registration 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. 3. R. S., T. 5, § 2301, sub-§ 1, amended. Subsection 1 of section 2301 of Title 5 of the Revised Statutes, as amended, is further amended by adding a new paragraph after the 11th paragraph to read as follows:

Board of Polygraph Examiners;

Sec. 4. Appropriation. There is appropriated from the General Fund to the Board of Polygraph Examiners, the sum of \$2,000 to carry out the duties and functions of the board.

STATEMENT OF FACT

This Act 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 Act is to ensure the highest degree possible of accuracy and integrity in polygraph operations in Maine.