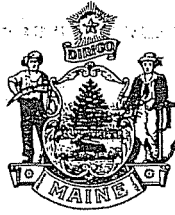


# MAINE STATE LEGISLATURE

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# 124th MAINE LEGISLATURE

## SECOND REGULAR SESSION-2010

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Legislative Document

No. 1590

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H.P. 1128

House of Representatives, December 22, 2009

**An Act To Update and Clarify Polygraph Examiner and Private Investigator Licensing Laws Administered by the Department of Public Safety**

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Submitted by the Department of Public Safety pursuant to Joint Rule 204.

Received by the Clerk of the House on December 18, 2009. Referred to the Committee on Criminal Justice and Public Safety pursuant to Joint Rule 308.2 and ordered printed pursuant to Joint Rule 401.

*Millicent M. MacFarland*  
MILLICENT M. MacFARLAND  
Clerk

Presented by Representative HASKELL of Portland.

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

2 **PART A**

3 **Sec. A-1. 32 MRSA §7152**, as enacted by PL 1979, c. 209, §2, is amended to  
4 read:

5 **§7152. Purpose**

6 ~~It is the~~ The purpose of this chapter is to regulate all persons who purport to be able  
7 to detect deception in, or to verify truth of, statements through the use of instrumentation,  
8 ~~such as lie detectors, polygraphs, deceptographs, psychological stress evaluators or~~  
9 ~~similar or related devices and instruments without regard to the nomenclature applied~~  
10 ~~thereto and this chapter shall be liberally construed to regulate all these persons and~~  
11 ~~instruments. No person who purports to be able to detect deception or to verify truth of~~  
12 ~~statements through instrumentation shall be held exempt from this chapter because of the~~  
13 ~~terminology which he may use to refer to himself, to his instrument or to his services of~~  
14 any kind.

15 **Sec. A-2. 32 MRSA §7153**, as enacted by PL 1979, c. 209, §2, is amended to  
16 read:

17 **§7153. Definitions**

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

20 **1. Commissioner.** "Commissioner" means the Commissioner of ~~the Department of~~  
21 Public Safety or designee.

22 **1-A. Examinee.** "Examinee" means a person to whom a polygraph examination is  
23 administered.

24 **1-B. Intern.** "Intern" means a person participating in an internship pursuant to this  
25 chapter.

26 **2. Internship.** "Internship" means the study of polygraph techniques and of the  
27 administration of polygraph examinations by a ~~trainee~~ person under the personal  
28 supervision and control of a licensed polygraph examiner in accordance with a course of  
29 study prescribed by the commissioner at the commencement of the internship.

30 **3. Person.** "Person" means any natural person, firm, association, partnership,  
31 corporation, government agency or subdivision, or any employee or agent thereof.

32 **4. Polygraph.** "Polygraph" means ~~a lie detector, polygraph, deceptograph,~~  
33 ~~psychological stress evaluator or other device, mechanism or an instrument, regardless of~~  
34 ~~what it is called, which is operated or the results of which are used or interpreted by a~~  
35 ~~polygraph examiner for the purpose of detecting~~ designed or intended to be used to detect  
36 deception in, or verifying verify the truth of, statements.

1           **5. Polygraph examination.** "Polygraph examination" means ~~any~~ a test administered  
2 by a polygraph examiner using a polygraph.

3           **6. Polygraph examiner.** "Polygraph examiner" means ~~any~~ a person who purports to  
4 be able to detect deception in, or verify the truth of, statements through the use of a  
5 polygraph.

6           **7. Post-conviction sex offender polygraph examination.** "Post-conviction sex  
7 offender polygraph examination" means a polygraph examination administered to assist  
8 in the treatment of convicted sex offenders.

9           **8. Preemployment law enforcement agency applicant polygraph screening**  
10 **examination.** "Preemployment law enforcement agency applicant polygraph screening  
11 examination" means a polygraph examination administered to a person applying to work  
12 for a law enforcement agency.

13           **Sec. A-3. 32 MRSA §7153-A** is enacted to read:

14           **§7153-A. Validity of polygraph examinations generally**

15           For the results of a polygraph examination to be recognized as valid in this State, the  
16 polygraph examination must, at a minimum, simultaneously record the cardiovascular  
17 patterns, respiratory patterns and electrodermal response patterns of an examinee during  
18 the course of the polygraph examination.

19           **Sec. A-4. 32 MRSA §7154**, as amended by PL 2001, c. 386, §7, is repealed.

20           **Sec. A-5. 32 MRSA §7154-A** is enacted to read:

21           **§7154-A. License requirement**

22           **1. License required.** A person may not administer a polygraph examination, or  
23 represent in any way that the person is a polygraph examiner or is authorized to  
24 administer polygraph examinations, without first being issued a license pursuant to this  
25 chapter.

26           **Sec. A-6. 32 MRSA §7155**, as enacted by PL 1979, c. 209, §2, is repealed.

27           **Sec. A-7. 32 MRSA §7155-A** is enacted to read:

28           **§7155-A. Polygraph examiner license qualifications**

29           The commissioner may issue a polygraph examiner license to an applicant who:

30           **1. Age.** Is at least 21 years of age;

31           **2. Character.** Has demonstrated good moral character and has not been convicted  
32 of a crime that is punishable by a maximum term of imprisonment equal to or exceeding  
33 one year or a crime enumerated in this chapter. The determination of good moral  
34 character must be made in writing, based upon evidence recorded by a governmental

1 entity. The commissioner shall consider matters recorded within the previous 3 years,  
2 including, but not limited to, the following:

3 A. Records of incidents of abuse by the applicant of family or household members  
4 provided pursuant to Title 19-A, section 4012, subsection 1;

5 B. Records provided by the Department of Health and Human Services regarding the  
6 failure of the applicant to meet child or family support obligations;

7 C. Records of 3 or more convictions of the applicant for Class D or E crimes;

8 D. Records of 3 or more civil violations by the applicant; or

9 E. Records that the applicant has engaged in recklessness or negligence that  
10 endangered the safety of others, including the use of weapons or motor vehicles;

11 3. Graduation. Is a graduate of an accredited high school or has been granted high  
12 school equivalency status by the State;

13 4. Application. Submits an application approved by the commissioner that, at a  
14 minimum, includes the following information from the applicant:

15 A. The applicant's full name;

16 B. The applicant's full current residential address and the applicant's residential  
17 addresses during the previous 5 years;

18 C. A written statement, signed by the applicant, granting the commissioner the  
19 authority to check the criminal records of any law enforcement agency that pertain to  
20 any matter involving the applicant. The applicant must agree to submit to having the  
21 applicant's fingerprints taken if it becomes necessary to resolve any question as to the  
22 applicant's identity; and

23 D. Answers to the following questions:

24 (1) Are you currently under indictment or information for a crime for which the  
25 possible penalty is imprisonment for a period equal to or exceeding one year?

26 (2) Have you ever been convicted of a crime for which the possible penalty was  
27 imprisonment for a period equal to or exceeding one year?

28 (3) Are you a fugitive from justice?

29 (4) Are you an unlawful user of or addicted to marijuana or any other drug?

30 (5) Are you an illegal alien?

31 By affixing the applicant's signature to the application, the applicant certifies that the  
32 information in the application is true and correct and that the applicant understands that  
33 an affirmative answer to any of the questions in paragraph D is cause for a license to be  
34 denied;

35 5. Military discharge. Has not been dishonorably discharged from military service;

1           **6. Course work; internship.** Is a graduate of a polygraph examiners course  
2 approved by the commissioner and has satisfactorily completed not less than 6 months of  
3 internship; and

4           **7. Examination.** Has passed an examination approved by the commissioner  
5 covering subjects pertaining to polygraph examinations.

6           **Sec. A-8. 32 MRSA §7156**, as enacted by PL 1979, c. 209, §2, is amended to  
7 read:

8           **§7156. Acquisition of license by present examiners**

9           Subject to section ~~7161~~ 7161-A, any person who is actually engaged in the  
10 occupation, business or profession of a polygraph examiner ~~on the effective date of this~~  
11 ~~chapter, September 14, 1979 shall, upon application within 90 days after the effective~~  
12 ~~date of this chapter before December 14, 1979, compliance with section 7155~~ 7155-A,  
13 subsection ~~1, paragraph E, 7~~ and payment of the required license fee, be issued a  
14 polygraph examiner's license, provided that the commissioner may require the applicant  
15 to submit satisfactory proof that ~~he~~ the person is so engaged.

16           **Sec. A-9. 32 MRSA §7157**, as enacted by PL 1979, c. 209, §2, is repealed.

17           **Sec. A-10. 32 MRSA §7158**, as enacted by PL 1979, c. 209, §2, is amended to  
18 read:

19           **§7158. Person with out-of-state license**

20           Subject to section ~~7161~~ 7161-A, ~~an applicant~~ a person who is a polygraph examiner;  
21 licensed under the laws of another state or territory of the United States, ~~shall or a~~  
22 ~~province of Canada, may~~ be issued a license without examination by the commissioner  
23 ~~upon payment of the polygraph examiner~~ if the person applies for such a license fee and  
24 the production of satisfactory proof that:

25           **1. Age.** ~~He is at least 21 years of age;~~

26           **2. Equivalency of requirements.** The requirements of the other state or territory of  
27 the United States or the province of Canada for the licensing of a polygraph examiner in  
28 that particular state or territory of the United States license were, at the date of the  
29 applicant's licensing therein, substantially equivalent to the requirements now in force in  
30 this State of this chapter; and

31           **3. Reciprocity.** The other state or territory of the United States or province of  
32 Canada grants substantially similar reciprocity to polygraph examiner license holders in  
33 this State.

34           **Sec. A-11. 32 MRSA §7158-A** is enacted to read:

1           **§7158-A. Term of polygraph examiner license; conditions for license renewal**

2           **1. Term of license.** A polygraph examiner license issued under this chapter is valid  
3 for a term of 2 years and must be renewed every 2 years thereafter.

4           **2. Conditions for renewal of license.** For a polygraph examiner license to be  
5 renewed, the licensee must submit a renewal application approved by the commissioner  
6 that, at a minimum, includes information from the licensee seeking license renewal that  
7 supplements or updates relevant information that was ascertained at the time the licensee  
8 applied for the licensee's initial polygraph examiner license.

9           **Sec. A-12. 32 MRSA §7159**, as enacted by PL 1979, c. 209, §2, is repealed.

10          **Sec. A-13. 32 MRSA §7159-A** is enacted to read:

11          **§7159-A. Intern polygraph examiner license**

12          **1. Qualifications.** The commissioner may issue an intern polygraph examiner  
13 license to a person who meets the qualifications set forth in section 7155-A, subsections 1  
14 to 5.

15          **2. Application.** Application for an intern polygraph examiner's license must be  
16 made to the commissioner in accordance with the requirements of section 7155-A. The  
17 application must be accompanied by the fee required under section 7160-A.

18          **3. Term of license.** A license issued under this section is valid for 2 years from the  
19 date of issuance and is not renewable.

20          **Sec. A-14. 32 MRSA §7160**, as enacted by PL 1979, c. 209, §2, is repealed.

21          **Sec. A-15. 32 MRSA §7160-A** is enacted to read:

22          **§7160-A. License application fee**

23          The commissioner may require that a reasonable fee be submitted with the  
24 application of any license authorized under this chapter to cover or defray the actual costs  
25 for the Department of Public Safety to administer this chapter.

26          **Sec. A-16. 32 MRSA §7161**, as enacted by PL 1979, c. 209, §2 and amended by  
27 PL 1999, c. 547, Pt. B, §78 and affected by §80, is repealed.

28          **Sec. A-17. 32 MRSA §7161-A** is enacted to read:

29          **§7161-A. Denial, suspension and revocation of license**

30          **1. Grounds to deny, suspend or revoke a license authorized under this chapter.**  
31 In accordance with the Maine Administrative Procedure Act, the commissioner may  
32 refuse to issue or renew any license authorized by this chapter and may suspend or revoke  
33 a license authorized by this chapter if the applicant or licensee:

- 1 A. Commits, or attempts to commit, fraud or deceit in obtaining a license under this  
2 chapter or in connection with service rendered within the scope of the license issued;
- 3 B. Is convicted of a crime that involves dishonesty or false statement or that relates  
4 directly to the administration of polygraph examinations;
- 5 C. Is convicted of any crime for which incarceration for one year or more may be  
6 imposed;
- 7 D. Violates any of the provisions of this chapter or of any rule adopted by the  
8 commissioner pursuant to this chapter;
- 9 E. Aids or abets a person who administers a polygraph examination without being  
10 duly licensed under this chapter;
- 11 F. Demonstrates incompetence in the administration of polygraph examinations. A  
12 licensee demonstrates incompetence in the administration of polygraph examinations  
13 if the licensee has engaged in conduct that evidences a lack of ability, understanding  
14 or knowledge to administer polygraph examinations in accordance with law or  
15 generally known and accepted standards of practice in the field of polygraph  
16 examination;
- 17 G. Inquires during the course of a polygraph examination about any sexual behavior  
18 of an examinee or about a matter that could reasonably be construed by an examinee  
19 as being of a sexual nature unless:
- 20 (1) The examination is being conducted in the course of a criminal investigation  
21 by law enforcement officials;
- 22 (2) The examination is being conducted in the course of civil litigation in which  
23 the examinee's sexual behavior is at issue;
- 24 (3) The examination is being conducted for the purpose of ensuring compliance  
25 with court-ordered sex offender treatment; or
- 26 (4) The examinee is an applicant for a position with a law enforcement agency.
- 27 If a polygraph examination is conducted for the purpose of ensuring compliance with  
28 court-ordered sex offender treatment, the results of the examination are not  
29 admissible into evidence in a court proceeding;
- 30 H. Inquires during the course of a polygraph examination about the political or  
31 religious beliefs of an examinee unless the examination is being conducted in the  
32 course of a criminal investigation conducted by law enforcement officials and the  
33 political or religious beliefs of the examinee might be relevant to the investigation;
- 34 I. Administers a polygraph examination to a person without the person's informed  
35 written consent; or
- 36 J. Administers either a post-conviction sex offender polygraph examination or a  
37 preemployment law enforcement agency applicant polygraph screening examination  
38 without having the commissioner's license endorsement to do so.
- 39 **2. Surrender of license.** A license that is suspended pursuant to this section must be  
40 promptly surrendered to the commissioner during the term of the suspension, which may



1 be for a period of up to 12 months. A license that is revoked pursuant to this section must  
2 be promptly surrendered to the commissioner.

3 **Sec. A-18. 32 MRSA §7162**, as enacted by PL 1979, c. 209, §2, is repealed.

4 **Sec. A-19. 32 MRSA §7163**, as enacted by PL 1979, c. 209, §2, is repealed.

5 **Sec. A-20. 32 MRSA §7164**, as enacted by PL 1979, c. 209, §2, is repealed.

6 **Sec. A-21. 32 MRSA §7165**, as enacted by PL 1979, c. 209, §2, is amended to  
7 read:

8 **§7165. Jurisdiction over nonresidents**

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

18 **Sec. A-22. 32 MRSA §7166**, as enacted by PL 1979, c. 209, §2, is amended to  
19 read:

20 **§7166. Limitations on uses in employment**

21 **1. Preemployment screening.** ~~No~~ Except as otherwise provided in this chapter, an  
22 employer may not, directly or indirectly, require, request or suggest that any applicant for  
23 employment submit to a polygraph examination as a condition of obtaining employment,  
24 or administer or cause to be administered to an applicant any such examination, or use or  
25 refer to the results of such an examination for hiring purposes. For purposes of this  
26 subsection, "employer" ~~shall include~~ includes, but is not limited to, an employment  
27 agency, and "applicant" ~~shall include~~ includes, but is not limited to, any person seeking to  
28 use an employment agency's services.

29 **2. Current employees.** ~~No~~ An employer may not, directly or indirectly, require,  
30 request or suggest that any employee submit to a polygraph examination as a condition of  
31 employment, or administer or cause to be administered to any employee any such  
32 examination, or use or refer to the results of such an examination for employment  
33 purposes.

34 **3. Exceptions.** Notwithstanding any provision in this section to the contrary:

35 A. This section ~~shall~~ does not apply to employees of or applicants for employment  
36 with law enforcement agencies; and

1 B. Nothing in subsection 2 ~~shall prohibit~~ prohibits either an employee from  
2 voluntarily requesting a polygraph examination in connection with ~~his~~ the employee's  
3 employment or an employer from using or referring to the results of any examination  
4 so requested, ~~provided that ; however,~~ the results of that examination may not be used  
5 against the employee by the employer for any purpose, ~~that the employer shall~~ must  
6 give the employee a copy of this Act when the employee requests the examination;  
7 and ~~that the examination is~~ must be recorded or ~~that a witness of the employee's~~  
8 choice is must be present during the examination, or both, as the employee requests.

9 **Sec. A-23. 32 MRSA §7167**, as enacted by PL 1979, c. 209, §2, is amended to  
10 read:

11 **§7167. Penalties**

12 Any person who intentionally violates any provision of this chapter or any person  
13 who intentionally falsely states or represents that ~~he~~ the person has been or is a polygraph  
14 examiner or trainee intern or that ~~he~~ the person is qualified to apply instrumentation to ~~the~~  
15 detection of detect deception in, or verification of verify the truth of, statements is ~~guilty~~  
16 of commits a Class D crime.

17 **Sec. A-24. 32 MRSA §7168**, as enacted by PL 1979, c. 209, §2, is amended to  
18 read:

19 **§7168. Rules**

20 The commissioner ~~shall~~ may adopt rules ~~necessary~~ to administer this chapter,  
21 ~~including, but not limited to, fixing application and license fees adequate to defray the~~  
22 ~~costs of administration, and establishing an internship program to ensure free entry into~~  
23 ~~the profession in order to promote competition under this chapter.~~ Rules adopted  
24 pursuant to this section are routine technical rules as defined in Title 5, chapter 375,  
25 subchapter 2-A.

26 **Sec. A-25. 32 MRSA §7169**, as enacted by PL 1979, c. 541, Pt. B, §43, is  
27 amended to read:

28 **§7169. Admissibility of evidence**

29 The fact that evidence was obtained in violation of this chapter ~~shall~~ does not render  
30 the evidence inadmissible in any criminal, civil or administrative proceeding.

31 **Sec. A-26. 32 MRSA §7170** is enacted to read:

32 **§7170. Polygraph examination facilities**

33 **1. Requirements.** At a minimum, facilities in which polygraph examinations are  
34 conducted must:

- 35 A. Afford privacy and freedom from interruptions;
- 36 B. Be free of visual distractions and noise problems;

- 1           C. Be comfortable in temperature and have adequate ventilation;
- 2           D. Be sufficient in size for conducting a polygraph examination;
- 3           E. Be equipped with audio and visual recording devices; and
- 4           F. Have comfortable seating suitable for polygraph testing and a table surface
- 5           adequate to support polygraph equipment.

6           **Sec. A-27. 32 MRSA §7171 is enacted to read:**

7           **§7171. Standard of practice**

8           **1. General standards of practice.** In the administration of a polygraph

9           examination, a polygraph examiner shall:

10           A. Follow all federal and state laws applicable to the administration of polygraph

11           examinations; and

12           B. Conduct the polygraph examination in an unbiased manner.

13           **2. Preexamination standards of practice.** Prior to the commencement of a

14           polygraph examination, a polygraph examiner must:

15           A. Ascertain the examinee's signed consent for the administration of the polygraph

16           examination;

17           B. Verify the identity of the examinee;

18           C. Obtain information from the examinee about the examinee's medical, physical and

19           psychological condition relevant to the examinee's qualification to participate in a

20           polygraph examination;

21           D. Advise the examinee of the purpose of the polygraph examination;

22           E. Advise the examinee that the polygraph examination is voluntary;

23           F. Advise the examinee that the polygraph examination may be terminated upon

24           request;

25           G. Inform the examinee that full examination results will not be available until all

26           data has been collected and analyzed;

27           H. Provide the examinee with an explanation of the polygraph and its components,

28           the procedure and the physiological activity to be recorded;

29           I. Review all examination questions with the examinee and verify that the examinee

30           understands each question;

31           J. When applicable, inform the examinee of the examinee's constitutional rights

32           concerning self-incrimination under the United States Constitution, Amendment V;

33           and

34           K. Permit reasonably sufficient time for a thorough discussion of the polygraph

35           examination process with the examinee and afford the examinee reasonably sufficient

36           time to thoroughly discuss those issues.

1           **3. Post-examination standards of practice.** Following a polygraph examination, a  
2 polygraph examiner shall:

3           A. Advise the examinee of any readily ascertainable polygraph examination results;  
4           and

5           B. Provide an opportunity for the examinee to discuss any readily ascertainable  
6           polygraph examination results.

7           **Sec. A-28. 32 MRSA §7172** is enacted to read:

8           **§7172. Retention of materials resulting from or used during a polygraph**  
9           **examination**

10           Licensed polygraph examiners and interns must securely retain audio and visual  
11           recordings, reports and any other documentation resulting from or used during a  
12           polygraph examination for a minimum of 6 years from the date that such an examination  
13           is administered.

14           **Sec. A-29. 32 MRSA §7173** is enacted to read:

15           **§7173. Post-conviction sex offender polygraph examination**

16           1. Endorsement required. Only a licensed polygraph examiner whose license has  
17           been endorsed by the commissioner to administer post-conviction sex offender polygraph  
18           examinations may administer such examinations.

19           2. Submission of information. To have a license endorsed by the commissioner  
20           under this section, a licensed polygraph examiner first must submit the following  
21           information to the commissioner:

22           A. Proof of having accumulated a minimum of 40 hours of training approved by the  
23           commissioner that directly pertains to the practice of administering post-conviction  
24           sex offender polygraph examinations; and

25           B. Proof of having conducted a minimum of 200 complete polygraph examinations.

26           3. Limit on tests administered per day. A licensed polygraph examiner whose  
27           license is endorsed pursuant to this section may not conduct more than 2 post-conviction  
28           sex offender polygraph examinations in one 24-hour period.

29           4. Prohibition. A licensed polygraph examiner who, pursuant to Title 22, section  
30           4011-A, subsections 1 and 1-A, is a person required to immediately report or cause a  
31           report to be made to the Department of Health and Human Services when the person  
32           knows or has reasonable cause to suspect that a child has been or is likely to be abused or  
33           that a suspicious death of a child has occurred may not administer a post-conviction sex  
34           offender polygraph examination.

35           **Sec. A-30. 32 MRSA §7174** is enacted to read:

1 §7174. Preemployment law enforcement agency applicant polygraph screening  
2 examinations

3 1. Endorsement required. Only a licensed polygraph examiner whose license has  
4 been endorsed by the commissioner to administer preemployment law enforcement  
5 agency applicant polygraph screening examinations may administer such examinations.

6 2. Submission of information. To have a license endorsed by the commissioner  
7 under this section, a licensed polygraph examiner first must submit the following  
8 information to the commissioner:

9 A. Proof of having completed a minimum of 25 polygraph examinations; and

10 B. A written agreement to abide by the standards set forth in the most recent law  
11 enforcement applicant polygraph testing policy adopted by the Board of Trustees of  
12 the Maine Criminal Justice Academy.

13 PART B

14 **Sec. B-1. 32 MRSA §8102**, as enacted by PL 1981, c. 126, §2, is amended to  
15 read:

16 **§8102. Purpose**

17 ~~It is the~~ The purpose of this chapter is to regulate any person, firm, corporation or  
18 other legal entity engaging in the business of private ~~investigating~~ investigation.

19 **Sec. B-2. 32 MRSA §8103, sub-§1**, as amended by PL 2001, c. 298, §1, is  
20 further amended to read:

21 **1. Commissioner.** "Commissioner" means the Commissioner of Public Safety, or the  
22 commissioner's designee.

23 **Sec. B-3. 32 MRSA §8103, sub-§4-A** is enacted to read:

24 **4-A. Private investigation.** "Private investigation" means an investigation intended  
25 or designed to obtain, or that in fact obtains, information with reference to any of the  
26 following:

27 A. Any crime or other act committed or threatened against the laws or government of  
28 the United States or any state or territory, or any political subdivision thereof;

29 B. The identity, habits, conduct, movements, whereabouts, affiliations, associations,  
30 transactions, reputation or character of any person;

31 C. Libels, fires, losses, accidents or damage or injury to a person or property;

32 D. The location, disposition or recovery of lost or stolen property; or

33 E. Evidence that may or is to be used before any court, board, officer or investigative  
34 committee.

1           **Sec. B-4. 32 MRSA §8103, sub-§5**, as enacted by PL 1981, c. 126, §2, is  
2 repealed and the following enacted in its place:

3           **5. Private investigator.** "Private investigator" means any person who, for any  
4 consideration whatsoever, engages in or solicits business or accepts employment to  
5 conduct a private investigation.

6           **Sec. B-5. 32 MRSA §8104**, as enacted by PL 1981, c. 126, §2, is amended to  
7 read:

8           **§8104. License requirement; exceptions**

9           **1. License.** ~~No~~ A person may not act as a private investigator without first obtaining  
10 from the commissioner a license to be a private investigator or investigative assistant.

11           **2. Exceptions.** This section does not apply to the following:

12           A. A person employed by or on behalf of the State, the United States Government  
13 or any other state or Canadian province, or any political subdivision thereof, or any  
14 public instrumentality thereof, while in the performance of ~~his~~ the person's official  
15 duties;

16           B. A charitable or philanthropic organization, duly incorporated under the laws of  
17 the State, or any agent thereof, provided that the organization is not operated for  
18 profit;

19           C. A person employed to inquire into the fitness of an applicant for employment  
20 with that person's employer;

21           D. A credit reporting bureau or agency, or agent thereof, whose business is the  
22 furnishing of information concerning a person's business, financial or credit standing;

23           E. An insurance company, or agent thereof, investigating the personal habits and  
24 financial responsibility of applicants for insurance or indemnity bonds;

25           F. An attorney admitted to practice law in this State who is acting in a professional  
26 capacity;

27           F-1. A legal assistant or paralegal engaged in activity for which the person is  
28 employed by an attorney admitted to practice law in this State;

29           G. A nonprofit trade or business association, board or organization, whether  
30 incorporated or unincorporated, or any agent thereof, conducting an investigation for  
31 the following purposes:

32           (1) To furnish to members of the association, board or organization, information  
33 concerning the business, financial or credit standing or the reputation of a person  
34 with whom the members consider doing business; provided that the investigation  
35 is no more extensive than is reasonably necessary; or

36           (2) To compile or disseminate statistics or data relating to business of the  
37 members of the association, board or organization;

1 H. An insurance adjuster or investigator, or an employee investigating claims for or  
2 against his that employee's employer;

3 I. A person engaged in compiling genealogical information;

4 J. A person possessing a valid private investigator's license granted under any prior  
5 existing provision of law of this State, provided that, upon expiration of the license,  
6 further licensure of the person shall be is governed by this section; or

7 K. An employee of a person not licensed under this chapter to do private  
8 investigative work, including a proprietary security organization, provided that the  
9 employee performs investigative functions solely for the employer and relating to the  
10 conduct of the employer's business;

11 L. A person providing testimony in a legal proceeding as an expert under applicable  
12 state and federal law;

13 M. A person with a professional license, other than a private investigator or private  
14 detective license, issued by the State, or any other state or Canadian province, whose  
15 scope of professional work includes duties or responsibilities that constitute private  
16 investigation; or

17 N. A person engaged solely in the business of securing information about persons or  
18 property from records that are in the public domain, including, but not limited to,  
19 such records that are available via the Internet.

20 **Sec. B-6. 32 MRSA §8105, sub-§4**, as amended by PL 1995, c. 694, Pt. D, §56  
21 and affected by Pt. E, §2 and amended by PL 2003, c. 689, Pt. B, §6, is further amended  
22 to read:

23 **4. Character.** Has demonstrated good moral character and has not been convicted of  
24 a crime ~~which is~~ punishable by a maximum term of imprisonment equal to or exceeding  
25 one year, or a crime enumerated in this chapter. The determination of good moral  
26 character ~~shall~~ **must** be made in writing, based upon evidence recorded by a governmental  
27 entity. The commissioner shall consider matters recorded within the previous ~~5~~ **3** years,  
28 including, but not limited to, the following:

29 A. Records of incidents of abuse by the applicant of family or household members  
30 provided pursuant to Title 19-A, section 4012, subsection 1;

31 B. Records provided by the Department of Health and Human Services regarding  
32 the failure of the applicant to meet child or family support obligations;

33 C. Records of 3 or more convictions of the applicant for Class D or E crimes;

34 D. Records of 3 or more civil violations by the ~~applicants~~ applicant; or

35 E. Records that the applicant has engaged in recklessness or negligence that  
36 endangered the safety of others, including the use of weapons or motor vehicles;

37 **Sec. B-7. 32 MRSA §8105, sub-§5**, as amended by PL 2009, c. 20, §1, is further  
38 amended to read:

1           **5. Application.** Submits an application approved by the commissioner that ~~contains,~~  
2 at a minimum, includes the following information from the applicant:

- 3           A. ~~Full~~ The applicant's full name;
- 4           B. ~~Full~~ The applicant's full current residential address and the applicant's residential  
5 addresses for the prior during the previous 5 years;
- 6           C. The applicant's date and place of birth, height, weight and color of eyes;
- 7           D. A written statement, signed by the applicant, granting the ~~chief of police~~  
8 commissioner authority to check the criminal records of any law enforcement agency  
9 that pertain to any matter involving the applicant. The applicant must agree to submit  
10 to having the applicant's fingerprints taken by the issuing authority if it becomes  
11 necessary to resolve any question as to the applicant's identity; and
- 12           E. Answers to the following questions:
- 13                 (1) Are you currently under indictment or information for a crime for which the  
14 possible penalty is imprisonment for a period equal to or exceeding one year?
- 15                 (2) Have you ever been convicted of a crime for which the possible penalty was  
16 imprisonment for a period equal to or exceeding one year?
- 17                 (3) Are you a fugitive from justice?
- 18                 (4) Are you an unlawful user of or addicted to marijuana or any other drug?
- 19                 (5) Have you been adjudged mentally defective or been committed to a mental  
20 institution within the past 5 years? ~~or~~
- 21                 (6) Are you an illegal alien?

22           By affixing the applicant's signature, the applicant certifies that the information in the  
23 application provided by the applicant is true and correct and that the applicant  
24 understands that an affirmative answer to any of the questions in paragraph E is cause for  
25 refusal a license to be denied and any false statement may result in prosecution as  
26 provided in section 8114.

27           **Sec. B-8. 32 MRSA §8105, sub-§8,** as enacted by PL 1981, c. 126, §2, is  
28 amended to read:

29           **8. Examination.** Has passed an examination administered by the commissioner  
30 covering subjects pertaining to private investigation to be prescribed by ~~him~~ the  
31 commissioner, provided that a person currently licensed, as described in section 8106,  
32 may at no time be required to take any such examination.

33           **Sec. B-9. 32 MRSA §8107,** as enacted by PL 1981, c. 126, §2, is amended to  
34 read:

35           **§8107. Application for original license**

36           Applications for original licenses ~~shall~~ must be made to the commissioner in writing  
37 under oath on forms prescribed by ~~him~~ the commissioner with respect to the requirements  
38 of section 8105. The application ~~shall~~ must be accompanied by the fee required under



1 section 8117, and by a certification, by each of 3 reputable citizens of the State, of the  
2 following:

3 **1. Residence.** That ~~he~~ the certifying citizen resides in the community in which the  
4 applicant resides, has a place of business or proposes to conduct ~~his~~ the applicant's private  
5 investigator business;

6 **2. Knowledge of applicant.** That ~~he~~ the certifying citizen has personally known the  
7 applicant for at least 3 years;

8 **3. Relation to applicant.** That ~~he~~ the certifying citizen is not related to the applicant  
9 by blood or marriage;

10 **4. Character of applicant.** That the applicant is honest and of good moral character;  
11 and

12 **5. Truth of statements in application.** That ~~he~~ the certifying citizen has read the  
13 application and believes each statement in it to be true.

14 **Sec. B-10. 32 MRSA §8108, first ¶,** as enacted by PL 1981, c. 126, §2, is  
15 amended to read:

16 The commissioner ~~shall~~ may grant a license to an applicant who has a valid private  
17 investigator's license granted under the laws of another state or territory of the United  
18 States, upon payment of the required fee and the production of satisfactory proof that:

19 **Sec. B-11. 32 MRSA §8110, sub-§2,** as amended by PL 1983, c. 221, §1, is  
20 further amended to read:

21 **2. Application.** Application for an investigative assistant's license ~~shall~~ must  
22 made to the commissioner in accordance with the requirements of sections 8105 and  
23 8107. The application ~~shall~~ must be accompanied by the fee required under section 8117.

24 **Sec. B-12. 32 MRSA §8111, sub-§1,** as enacted by PL 1981, c. 126, §2, is  
25 amended to read:

26 **1. Requirement.** A person licensed as a private investigator shall ~~give~~ provide to the  
27 commissioner a bond in the sum of \$10,000 if ~~he~~ the licensee is a resident of the State  
28 and in the sum of \$50,000 if ~~he~~ the licensee is not a resident of the State.

29 A person licensed as an investigative assistant shall ~~give~~ provide to the ~~commission~~  
30 commissioner a bond in the sum of \$20,000.

31 **Sec. B-13. 32 MRSA §8111, sub-§2, ¶C,** as enacted by PL 1981, c. 126, §2, is  
32 amended to read:

33 C. Be conditioned upon the honest conduct of the business of the licensee and the  
34 right of any person, including the officer of any aggrieved labor union or association,  
35 whether or not incorporated, injured by the intentional, knowing, reckless or  
36 negligent act of the licensee to bring, in ~~his~~ the person's own name, an action on the  
37 bond.

1           **Sec. B-14. 32 MRSA §8113**, as amended by PL 2001, c. 298, §§4 and 5, is further  
2 amended to read:

3           **§8113. Refusal; suspension; revocation; grounds**

4           ~~The In accordance with the Maine Administrative Procedure Act, the commissioner~~  
5 ~~may, after notice of an opportunity for hearing in conformance with the provisions of the~~  
6 ~~Maine Administrative Procedure Act, Title 5, chapter 375, subchapter IV, refuse to issue~~  
7 ~~or renew a license. The District Court and may suspend or revoke the license of any~~  
8 ~~person licensed under this chapter. The following are grounds for an action to refuse to~~  
9 ~~issue, suspend, revoke or refuse to renew the license of a person licensed under this~~  
10 ~~chapter on the following grounds:~~

11           **1. Fraud or deceit.** The practice of fraud or deceit in obtaining a license under this  
12 chapter or in connection with service rendered within the scope of the license issued;

13           **2. Conviction of certain crimes.** Conviction of a crime ~~which that~~ involves  
14 dishonesty or false statement or ~~which that~~ relates directly to the practice for which the  
15 licensee is licensed or ~~which that~~ is enumerated in this chapter, or conviction of any crime  
16 for which incarceration for one year or more may be imposed;

17           **3. Violation of chapter or rule.** Any violation of this chapter or any rule adopted  
18 by the commissioner;

19           **4. Aiding or abetting unlicensed practice of private investigation.** Aiding or  
20 abetting the practice of private investigation by a person not duly licensed under this  
21 chapter and who represents ~~himself to be~~ to others that the person is duly licensed;

22           **5. Failure to maintain bond.** Failure to maintain a bond as required by section  
23 8111;

24           **6. Incompetence.** Incompetence in the practice for which ~~he~~ the person is licensed.  
25 A licensee ~~shall be deemed~~ is considered incompetent in the practice if the licensee has:

26           A. Engaged in conduct ~~which that~~ evidences a lack of ability or fitness to discharge  
27 the duty owed by the licensee to a client or the general public; or

28           B. Engaged in conduct ~~which that~~ evidences a lack of knowledge, or inability to  
29 apply principles or skills to carry out the practice for which ~~he~~ the person is licensed;

30           **7. Employment of prohibited person.** Employment, in connection with a private  
31 investigation business, in any capacity, of any person who has been convicted of a crime  
32 punishable by imprisonment for one year or more or any former licensee whose license  
33 has been revoked; or

34           **8. Representations that licensee is sworn peace officer.** Representation by the  
35 licensee ~~which that~~ suggests, or ~~which that~~ would reasonably cause another person to  
36 believe, that ~~he~~ the licensee is a sworn peace officer of this State, any political  
37 subdivision of this State, any other state or ~~of~~ the Federal Government.

1           **Sec. B-15. 32 MRSA §8113-A, sub-§2**, as enacted by PL 1989, c. 917, §17, is  
2 amended to read:

3           **2. Report to commissioner.** ~~The~~ A law enforcement officer who has probable cause  
4 to require chemical testing shall promptly notify the commissioner of ~~the~~ a licensee's  
5 refusal and provide the commissioner with a report of the facts and circumstances of the  
6 requirement to submit to chemical testing and of the licensee's refusal.

7           **Sec. B-16. 32 MRSA §8113-A, sub-§3**, as amended by PL 1995, c. 65, Pt. A,  
8 §132 and affected by §153 and Pt. C, §15, is further amended to read:

9           **3. Suspension in effect during pendency.** ~~The~~ A suspension ~~remains under~~  
10 subsection 1 must remain in effect until the entry of judgment if charges are filed of  
11 violating Title 17-A, section 1057 or of operating a motor vehicle, snowmobile, ATV or  
12 watercraft under the influence of intoxicating liquor or drugs, unless it is determined by  
13 the court in which the criminal charge or civil violation is pending, or by the Secretary of  
14 State if a hearing is held pursuant to Title 29-A, section 2483, that the law enforcement  
15 officer did not have probable cause to require the licensee to submit to chemical testing.

16           **Sec. B-17. 32 MRSA §8114, sub-§1, ¶B**, as enacted by PL 1981, c. 126, §2, is  
17 amended to read:

18           B. To falsely represent that ~~he~~ the person is the holder of a valid license;

19           **Sec. B-18. 32 MRSA §8114, sub-§1, ¶C**, as enacted by PL 1981, c. 126, §2, is  
20 amended to read:

21           C. To falsely represent that any person in ~~his~~ the person's employ is a private  
22 investigator or investigative assistant; or

23           **Sec. B-19. 32 MRSA §8114, sub-§4**, as enacted by PL 1981, c. 126, §2, is  
24 amended to read:

25           **4. Failure of assistant to return equipment.** It is a Class D crime for a licensed  
26 investigative assistant ~~knowingly intentionally~~ to fail to return immediately on demand,  
27 or within 7 days of termination of ~~his~~ the investigative assistant's employment, any item  
28 of equipment issued to ~~him~~ the investigative assistant by ~~his~~ the investigative assistant's  
29 employer.

30           **Sec. B-20. 32 MRSA §8114, sub-§5**, as enacted by PL 1981, c. 126, §2, is  
31 amended to read:

32           **5. Other unlawful acts.** It is a Class D crime for a person licensed under this chapter  
33 or any person employed by ~~him~~ the person intentionally to commit any of the  
34 following acts:

35           A. To incite, encourage or aid any person who has become a party to any strike to  
36 commit any unlawful act against any person or property;

37           B. To incite, stir up, create or aid in the inciting of discontent or dissatisfaction  
38 among the employees of any person with the intention of having them strike;

- 1 C. To interfere with or prevent lawful and peaceful picketing during strikes;
- 2 D. To interfere with, restrain or coerce employees in the exercise of their right to  
3 form, join or assist any labor organization of their ~~own~~ choosing;
- 4 E. To interfere with or hinder lawful or peaceful collective bargaining between  
5 employers and employees;
- 6 F. To pay, offer to give any money, gratuity, consideration or other thing of value,  
7 directly or indirectly, to any person for any verbal or written report of the lawful  
8 activities of employees in the exercise of their right to organize, form or assist any  
9 labor organization and to bargain collectively through representatives of their ~~own~~  
10 choosing;
- 11 G. To advertise for, recruit, furnish or replace or offer to furnish or replace for hire  
12 or reward, within or outside the State, any skilled or unskilled help or labor, armed  
13 guards, other than armed guards employed for the protection of payrolls, property or  
14 premises, for service upon property ~~which~~ that is being operated in anticipation of or  
15 during the course of a strike;
- 16 H. To furnish armed guards upon the highways for persons involved in labor  
17 disputes;
- 18 I. To furnish or offer to furnish to employers or their agents any arms, munitions,  
19 tear gas implements or any other weapons;
- 20 J. To send letters of literature to employers offering to eliminate labor unions; or
- 21 K. To advise any person of the membership of an individual in a labor organization  
22 for the purpose of preventing that individual from obtaining or retaining employment.

23 **Sec. B-21. 32 MRSA §8115**, as enacted by PL 1981, c. 126, §2, is repealed and  
24 the following enacted in its place:

25 **§8115. Identification cards; use of badges prohibited**

26 **1. Issuance of identification cards.** The commissioner shall design and issue to  
27 each person licensed under this chapter an identification card featuring a recent  
28 photograph of the licensee.

29 **2. Use of badges prohibited.** A person licensed under this chapter may not carry or  
30 present a badge that suggests, or that would reasonably cause another person to believe,  
31 that the licensed private investigator or investigative assistant is a sworn peace officer of  
32 this State, any political subdivision of this State, any other state or the Federal  
33 Government.

34 **Sec. B-22. 32 MRSA §8116, sub-§2**, as enacted by PL 1981, c. 126, §2, is  
35 amended to read:

36 **2. Contempt.** If a witness refuses to obey a subpoena or to give any evidence  
37 relevant ~~relevant~~ to proper inquiry by the commissioner, the Attorney General may  
38 petition the Superior Court in the county where the refusal occurred to find the witness in  
39 contempt. The Attorney General shall cause to be served on that witness an order

1 requiring ~~him~~ the witness to appear before the Superior Court to show cause why ~~he~~ the  
2 witness should not be adjudged in contempt. The court shall, in a summary manner, hear  
3 the evidence and, if it is such as to warrant ~~him in doing~~ the court to do so, punish that  
4 witness in the same manner and to the same extent as for contempt committed before the  
5 Superior Court or with reference to the process of the Superior Court.

6 **Sec. B-23. 32 MRSA §8116, sub-§3**, as enacted by PL 1981, c. 126, §2, is  
7 amended to read:

8 **3. Rules.** The commissioner ~~shall~~ may adopt ~~all~~ rules necessary to administer this  
9 chapter, including, but not limited to, fixing application and license fees and establishing  
10 a training requirement for investigative assistants. Rules adopted pursuant to this  
11 subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

12 **Sec. B-24. 32 MRSA §8118**, as enacted by PL 1981, c. 126, §2, is repealed.

13 **Sec. B-25. 32 MRSA §8119**, as enacted by PL 1981, c. 126, §2, is repealed.

14 **Sec. B-26. 32 MRSA §8120-A**, as enacted by PL 1997, c. 360, §5, is amended to  
15 read:

16 **§8120-A. Firearms**

17 A private investigator licensed under this chapter may carry a firearm while  
18 performing the duties of a private investigator only after being issued a concealed  
19 weapons permit ~~by the Chief of the State Police under~~ pursuant to Title 25, chapter 252  
20 and passing the written firearms examination prescribed by the commissioner.

21 **SUMMARY**

22 This bill updates and clarifies polygraph examiner and private investigator licensing  
23 laws that are administered by the Department of Public Safety.