

MAINE STATE LEGISLATURE

The following document is provided by the
LAW AND LEGISLATIVE DIGITAL LIBRARY
at the Maine State Law and Legislative Reference Library
<http://legislature.maine.gov/lawlib>



Reproduced from scanned originals with text recognition applied
(searchable text may contain some errors and/or omissions)

SMG
P. of S.

MAJORITY

L.D. 1373

Date: 6/14/2013

(Filing No. S-287)

LABOR, COMMERCE, RESEARCH AND ECONOMIC DEVELOPMENT

Reproduced and distributed under the direction of the Secretary of the Senate.

STATE OF MAINE

SENATE

126TH LEGISLATURE

FIRST REGULAR SESSION

COMMITTEE AMENDMENT "A" to S.P. 480, L.D. 1373, Bill, "An Act To Update the Polygraph Examiner Licensing Laws"

Amend the bill by striking out everything after the enacting clause and before the summary and inserting the following:

'Sec. 1. 5 MRSA §12004-I, sub-§74-H is enacted to read:

74-H.

<u>Public Safety</u>	<u>Polygraph</u>	<u>Not Authorized</u>	<u>32 MRSA §7371</u>
	<u>Examiners Advisory</u>		
	<u>Board</u>		

Sec. 2. 32 MRSA c. 85, as amended, is repealed.

Sec. 3. 32 MRSA c. 86 is enacted to read:

CHAPTER 86

POLYGRAPH EXAMINERS ACT

SUBCHAPTER 1

GENERAL PROVISIONS

§7351. Short title

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

§7352. Definitions

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

1. Board. "Board" means the Polygraph Examiners Advisory Board under section 7371.

COMMITTEE AMENDMENT

1 2. Commissioner. "Commissioner" means the Commissioner of Public Safety.

2 3. Department. "Department" means the Department of Public Safety.

3 4. Instrument. "Instrument" means a device used to test a subject to directly or
4 indirectly detect deception or verify the truth of a statement by, at a minimum, recording
5 visually, permanently and simultaneously a subject's cardiovascular, respiratory and
6 electrodermal patterns.

7 5. Intern. "Intern" means a person who holds a polygraph examiner intern license
8 under this chapter.

9 6. Polygraph examiner. "Polygraph examiner" means a person licensed under this
10 chapter to use an instrument.

11 7. Polygraph examiner internship. "Polygraph examiner internship" means a
12 course of study of polygraph examinations and of the administration of polygraph
13 examinations by an intern under the supervision and control of a polygraph examiner.

14 **§7353. Commissioner; powers and duties**

15 1. Administer and enforce. The commissioner shall administer and enforce this
16 chapter.

17 2. Rules. The commissioner shall adopt rules necessary to carry out the purposes of
18 this chapter. Rules adopted pursuant to this subsection are routine technical rules as
19 defined in Title 5, chapter 375, subchapter 2-A.

20 3. Board. The commissioner shall consult with the board concerning the licensing
21 of polygraph examiners, polygraph examiner internship requirements and any other
22 matters necessary for the administration of this chapter.

23 **§7354. License required to maintain action or counterclaim**

24 A person may not maintain an action or counterclaim against another person in a
25 court in this State with respect to an agreement for or the performance of a service for
26 which a license is required by this chapter, including the recovery of any compensation
27 under the agreement or for the service, unless the person alleges and proves that the other
28 person was licensed at the time of making the agreement or performing the service.

29 **§7355. General criminal penalty**

30 1. General violation. A person commits a Class E crime if the person:

31 A. Intentionally violates this chapter other than section 7365;

32 B. Falsely represents that the person:

33 (1) Has been or is a polygraph examiner or intern; or

34 (2) Is qualified to use an instrument; or

35 C. Maintains possession of a suspended or revoked polygraph examiner license.

36 2. Violation of confidentiality. A person commits a Class D crime if the person
37 intentionally violates section 7365.

R. of S.

SUBCHAPTER 2

POLYGRAPH EXAMINATION ADMINISTRATION GENERALLY

§7361. Polygraph examiner's duties and responsibilities generally

1. Duties and responsibilities. A polygraph examiner or an intern shall:

A. Abide by the provisions of this chapter and rules adopted pursuant to this chapter;

B. Ensure that confidential information protected under section 7365 is disclosed only as authorized by that section;

C. Inform a subject to be examined of the nature of the examination;

D. Inform the subject of an examination of the examination results on request at the completion of the examination; and

E. Provide within a reasonable time information requested by the commissioner as the result of a formal complaint to the commissioner alleging a violation of this chapter.

2. Prohibitions. A polygraph examiner or an intern may not:

A. Aid or abet another to violate this chapter or a rule adopted under this chapter;

B. Allow the person's license issued under this chapter to be used by an unlicensed person in violation of this chapter;

C. Make a material misstatement in an application for the issuance or renewal of a license;

D. Make a misrepresentation or false promise or cause the printing of a false or misleading advertisement to directly or indirectly obtain business;

E. Conduct an examination without the informed consent of the subject of the examination;

F. Administer a polygraph examination to a minor without the written consent of a parent of the minor or the minor's legal guardian;

G. Make a false report concerning an examination for polygraph examination purposes; or

H. Commit a criminal offense, including, but not limited to, an offense that directly relates to the duties and responsibilities of a polygraph examiner.

3. Disciplinary action. A person who fails to comply with this section is subject to disciplinary action pursuant to section 7388.

§7362. Minimum polygraph instrument requirements

1. Minimum instrument requirements. An instrument must record visually, permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal patterns. An instrument used by a polygraph examiner may also record patterns of other physiological changes.

R. of S.

1 **2. Other devices prohibited.** The use of any device by a polygraph examiner for
2 the purpose of directly or indirectly detecting deception or verifying truth of statements
3 that does not meet the minimum instrument requirements set forth in subsection 1 is
4 prohibited.

5 **§7363. Prohibitions**

6 **1. Practice without a license.** A person may not administer polygraph
7 examinations, purport to be a polygraph examiner or use any other title that would cause
8 members of the public to believe that the person is a polygraph examiner without first
9 securing a license under this chapter. This prohibition does not apply to an employee of
10 the Federal Government who administers polygraph examinations in the course of
11 employment or who purports to be a polygraph examiner in connection with employment.

12 **2. Prohibited questioning.** A polygraph examiner conducting a polygraph
13 examination may not ask any questions pertaining to sexual behavior of any type or
14 questions that could be construed as being sexually oriented, unless the examination is
15 conducted either in the course of a criminal investigation by law enforcement officials or
16 in the course of civil litigation in which sexual behavior is at issue or the examination is
17 conducted for the purpose of ensuring compliance with court-ordered sex offender
18 treatment. This prohibition does not apply to polygraph examinations for applicants for
19 positions in law enforcement agencies. If the polygraph examination is conducted for the
20 purpose of ensuring compliance with court-ordered sex offender treatment, the results of
21 the examination are not admissible into evidence in a court proceeding.

22 **3. Political or religious beliefs.** A polygraph examiner may not ask questions
23 regarding the political or religious beliefs of any individual during a polygraph
24 examination, except when the examination is conducted in the course of a criminal
25 investigation conducted by law enforcement officials and the political or religious beliefs
26 of the individual may be relevant to that investigation.

27 **4. Knowledge and consent.** A polygraph examiner may not conduct a polygraph
28 examination without the subject's full knowledge and consent.

29 **§7364. Limitations on uses in employment**

30 **1. Preemployment screening.** An employer may not, directly or indirectly, require,
31 request or suggest that an applicant for employment submit to a polygraph examination as
32 a condition of obtaining employment or administer or cause to be administered to an
33 applicant such an examination or use or refer to the results of such an examination for
34 hiring purposes. For purposes of this subsection, "employer" includes an employment
35 agency and "applicant" includes a person seeking to use an employment agency's
36 services.

37 **2. Current employees.** An employer may not, directly or indirectly, require, request
38 or suggest that an employee submit to a polygraph examination as a condition of
39 continued employment or administer or cause to be administered to an employee such an
40 examination or use or refer to the results of such an examination for employment
41 purposes.

42 **3. Exception.** This section does not apply to employees of or applicants for
43 employment with law enforcement agencies.

1 4. Voluntary request. This section does not prohibit an employee from voluntarily
2 requesting a polygraph examination in connection with employment or an employer from
3 using or referring to the results of any examination so requested, except that the results of
4 that examination may not be used against the employee by the employer for any purpose,
5 the employer must give the employee a copy of this chapter when the employee requests
6 the examination and the examination must be recorded or a witness of the employee's
7 choice must be present during the examination, or both, as the employee requests.

8 **§7365. Confidentiality of polygraph examination results and related records**

9 1. Disclosure prohibited. A polygraph examiner, intern or employee of a polygraph
10 examiner may not disclose information acquired from a polygraph examination, or
11 records resulting from a polygraph examination, to another person other than:

- 12 A. The subject of the examination;
- 13 B. Any other person specifically designated in writing by the subject of the
14 examination;
- 15 C. A member or agent of the department that licenses a polygraph examiner or law
16 enforcement agency that supervises or controls a polygraph examiner's activities; or
- 17 D. Another polygraph examiner in private, professional consultation.

18 2. Further disclosure prohibited. A polygraph examiner or other person to whom
19 information acquired from a polygraph examination is disclosed under subsection 1 may
20 not further disclose the information.

21 3. Examination records. Notwithstanding any other provision of law, the pre-test,
22 in-test and post-test records associated with the administration of a polygraph
23 examination that is administered for preemployment screening purposes or in association
24 with a law enforcement investigation are confidential for the purposes of Title 1, chapter
25 13 and are not subject to compulsory legal process or otherwise discoverable or
26 admissible in evidence in any civil action unless the confidentiality is expressly waived,
27 in writing, by the subject of the examination. For purposes of this subsection, "records"
28 includes, but is not limited to, video and audio recordings, graphs and examination
29 results.

30 4. Records in custody of commissioner. Records in the custody of the
31 commissioner pursuant to this chapter are confidential if those records contain:

- 32 A. Personal medical information of an applicant or licensee under this chapter; or
- 33 B. Personally identifying information of a minor to whom a polygraph examination
34 has been administered.

35 **§7366. Information included in contract for services and waiver of liability**

36 If a written contract for a polygraph examiner's services or a waiver of liability is
37 signed by the subject of a polygraph examination, the contract or waiver must inform the
38 subject of the procedures for filing a complaint with the commissioner against the
39 polygraph examiner and contain the name, mailing address and telephone number of the
40 department.

R. of S.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35

SUBCHAPTER 3

POLYGRAPH EXAMINERS ADVISORY BOARD

§7371. Polygraph Examiners Advisory Board

1. Establishment; advise commissioner. The Polygraph Examiners Advisory Board, as established by Title 5, section 12004-I, subsection 74-H, shall act as an advisory board to the commissioner on issues relating to the licensing and regulation of polygraph examiners.

2. Members. The board consists of 5 members appointed by the Governor as follows:

A. Two polygraph examiners, each of whom is a polygraph examiner for a state, county or municipal law enforcement agency;

B. Two polygraph examiners who are polygraph examiners in a commercial field; and

C. One member who represents the public.

3. Residency. A member of the board must have been a resident of this State for at least 2 years immediately preceding the date of appointment.

4. Active engagement. Except for the member of the board who represents the public, a member of the board must be actively engaged as a polygraph examiner on the date of appointment to the board.

5. Employment. No 2 board members may be employed by the same employer.

6. Meetings. The board shall meet as needed, but at least twice annually.

7. Terms. Board members serve 3-year terms.

8. Vacancies. If a vacancy occurs on the board, the Governor shall appoint a successor to fill the unexpired term.

9. Chair. The board shall select from among its members a chair to serve for a 2-year term.

10. Powers and duties. The board shall:

A. Advise the commissioner on proposed rules;

B. At the request of the commissioner, review written examinations for polygraph examiner license applicants and provide advice regarding polygraph examiner internship requirements;

C. At the request of the commissioner, provide advice on granting, suspending and revoking the licenses of polygraph examiners;

D. Propose standards governing the conduct of persons licensed under this chapter, which may be incorporated by reference into rules adopted by the commissioner; and

H. of S.

1 E. At the request of the commissioner, provide advice and information on any
2 matters the commissioner determines appropriate or necessary to administer this
3 chapter.

4 **SUBCHAPTER 4**

5 **LICENSURE**

6 **§7381. License application**

7 **1. Application.** An application for a polygraph examiner license or polygraph
8 examiner intern license must:

9 A. Be complete and made to the commissioner, in the manner and including the
10 information prescribed by the commissioner; and

11 B. Be accompanied by the required nonrefundable fee. A fee for any license under
12 this chapter may be charged only in an amount reasonably calculated by the
13 commissioner to cover the aggregate costs of the administration of this chapter by the
14 department.

15 **2. Term of polygraph examiner license.** A polygraph examiner license is issued
16 for a 2-year term and may be renewed.

17 **3. Term of polygraph examiner intern license.** A polygraph examiner intern
18 license expires on the first anniversary of the date of issuance and may be renewed once.
19 After the expiration of the original term of a polygraph examiner intern license and
20 renewal of that license granted by the commissioner, an intern may not hold another
21 polygraph examiner intern license before the first anniversary of the date the intern's
22 previous polygraph examiner intern license expired.

23 **4. Sole authority.** The commissioner has sole authority to issue a license under this
24 chapter.

25 **§7382. Qualifications for license**

26 **1. Qualifications.** A person is qualified for a polygraph examiner license if the
27 person:

28 A. Has not been convicted of a crime for which a license may be denied under Title
29 5, chapter 341;

30 B. Either:

31 (1) Holds a baccalaureate degree from a college or university accredited by an
32 organization recognized by the commissioner; or

33 (2) Has at least 5 years of active investigative experience with an investigative
34 service of the United States as a sworn member of a branch of the United States
35 Armed Forces, a federal investigative agency or a law enforcement agency
36 immediately preceding the date of application;

37 C. Is a graduate of a commissioner-approved polygraph examiner course and has
38 satisfactorily completed at least 6 months of a polygraph examiner internship; and

1 D. Has passed an examination approved by the commissioner to determine the
2 person's competency for a license.

3 2. Examination. The commissioner shall provide for an examination for licensure
4 under this chapter to be administered as needed, but at least at 3-month intervals.

5 **§7383. Nonresident applicant for license**

6 1. Consent to action. In addition to meeting all other requirements for a license, an
7 applicant for the issuance or renewal of a polygraph examiner license who is not a
8 resident of this State must file with the commissioner an irrevocable consent to have:

9 A. An action against the applicant filed in a court in a county or municipality of the
10 state in which:

11 (1) The plaintiff resides; or

12 (2) A part of the transaction out of which the alleged cause of action arose
13 occurred; and

14 B. Process in the action under paragraph A served on the applicant by leaving 2
15 copies of the process with the commissioner. Service of process in the manner
16 described under this paragraph is binding for all purposes.

17 2. Copy to applicant. The commissioner shall immediately send by registered or
18 certified mail a copy of the process under subsection 1, paragraph B to the applicant at
19 the address shown on department records.

20 **§7384. Applicant with out-of-state license**

21 The commissioner may grant a license to an applicant who holds a valid license from
22 another state that has license requirements substantially equivalent to or more stringent
23 than those of this State.

24 **§7385. Continuing education**

25 A polygraph examiner shall participate in continuing education programs as required
26 by rules of the commissioner.

27 **§7386. License holder information**

28 A polygraph examiner or intern shall notify the commissioner in writing of a change
29 in the polygraph examiner's or intern's principal business location or residential location
30 not later than the 30th day after the date the change is made.

31 **§7387. Display of license**

32 A polygraph examiner or intern shall prominently display the polygraph examiner's
33 or intern's license or a copy of the license at the polygraph examiner's or intern's place of
34 business or place of internship, as appropriate.

R. & S.

1 **§7388. Refusal; suspension; revocation; disciplinary action; grounds**

2 The commissioner may deny a license, refuse to renew a license, suspend or revoke a
3 license or impose disciplinary or probationary conditions, fines or costs of hearing and
4 investigation on a polygraph examiner or intern, as well as issue a written warning, for:

5 **1. Violation of chapter or rule.** A violation of any provision of this chapter or any
6 rule adopted by the commissioner;

7 **2. Violation of standards of acceptable professional conduct.** A violation of the
8 standards of acceptable professional conduct adopted by rule by the commissioner; or

9 **3. Cause for refusal.** The commission of an act that would have been cause for
10 refusal to issue a license had the act occurred and been known to the commissioner at the
11 time of issuance of a license.

12 A decision to deny, revoke or suspend a license or to impose disciplinary action of
13 any kind under this chapter may be appealed pursuant to the Maine Administrative
14 Procedure Act.

15 **§7389. Surrender of license**

16 A polygraph examiner or intern whose license is suspended or revoked by the
17 commissioner shall immediately surrender the license to the commissioner.

18 **§7390. Administrative actions; Maine Administrative Procedure Act**

19 The Maine Administrative Procedure Act applies to and governs all administrative
20 actions taken under this chapter.

21 **Sec. 4. Polygraph Examiners Advisory Board; staggered terms.**
22 Notwithstanding the Maine Revised Statutes, Title 32, section 7371, subsection 7, of the
23 initial members appointed to the Polygraph Examiners Advisory Board, the Governor
24 shall appoint 2 members for terms of 3 years, 2 members for terms of 2 years and one
25 member for a term of one year.

26 **Sec. 5. Effective date.** This Act takes effect April 1, 2014.'

27 **SUMMARY**

28 This amendment makes the following changes to the bill.

29 1. It provides that the Commissioner of Public Safety is responsible for
30 administering the laws governing polygraph examiners, as in current law, and it changes
31 the status and role of the proposed Polygraph Examiners Board to an advisory board,
32 which the amendment renames the Polygraph Examiners Advisory Board, that is
33 responsible for providing advice to the commissioner on licensing issues related to
34 polygraph examiners and administration of the polygraph examiner licensing laws.

35 2. It removes provisions in the bill that add polygraph examiners to the list of
36 mandated reporters of suspected abuse or neglect of children or incapacitated or
37 dependent adults.

R. of S.

COMMITTEE AMENDMENT "A" to S.P. 480, L.D. 1373

- 1 3. It adds to the list of licensing violations the act of maintaining possession of a
2 suspended or revoked license.
- 3 4. It includes the provisions in current law governing prohibitions on the use of
4 polygraph examinations and the limitations on their uses in employment.
- 5 5. It removes provisions in the bill that add administrative staff to the board.
- 6 6. It removes provisions in the bill that allow the board to take licensing and
7 disciplinary action against licensees.
- 8 7. It adds language governing the commissioner's authority to deny a license, refuse
9 to renew a license, suspend or revoke a license or impose disciplinary or probationary
10 conditions, fines or costs of hearing and investigation on a polygraph examiner or intern,
11 as well as issue a written warning.
- 12 8. It adds language to provide that the Maine Administrative Procedure Act applies
13 to all administrative actions taken under these provisions, as well as to authorize the
14 commissioner to adopt rules to administer these provisions, which are routine technical
15 rules.

FISCAL NOTE REQUIRED

(See attached)

COMMITTEE AMENDMENT



126th MAINE LEGISLATURE

LD 1373

LR 444(02)

An Act To Update the Polygraph Examiner Licensing Laws

Fiscal Note for Bill as Amended by Committee Amendment "A" (S-287)
Committee: Labor, Commerce, Research and Economic Development
Fiscal Note Required: Yes

Fiscal Note

Minor cost increase - General Fund
Minor revenue increase - General Fund

Correctional and Judicial Impact Statements

Establishes new Class E crimes.

The collection of additional fines may also increase General Fund revenue by minor amounts.

Fiscal Detail and Notes

Additional costs to the Department of Public Safety associated with implementing the provisions of this legislation can be absorbed within existing budgeted resources.