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APPROVED AND SIGNED BY THE GOVERNOR

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OFFICE OF THE GOVERNOR

Date 3-26-83

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

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ENROLLED

Com. Sub. for
HOUSE BILL No. 1212

(By Mr. Cornichael)

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Passed March 9, 1983

In Effect Ninety Days From Passage



ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 1212
(By MR. CARMICHAEL)

[Passed March 9, 1983; in effect ninety days from passage.]

An ACT to amend article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto four new sections, designated sections five-a, five-b, five-c and five-d, relating to prohibiting employers from requiring, requesting or knowingly subjecting any employee or prospective employee to submit to a polygraph, lie detector or other such similar test using mechanical measures of physiological reactions to evaluate truthfulness; providing for exceptions for law-enforcement agencies and military forces of this state and for employers who manufacture, distribute or dispensed drugs; limitations upon the use of test results; providing for the licensing of polygraph examiners; establishing qualifications for polygraph examiners; requiring the commissioner of labor to promulgate rules governing polygraph tests; requiring the commissioner of labor to design and administer a test for licensing of examiners; establishing a licensing fee; providing for a penalty for violation of these sections; and providing for a cause of action and treble damages to an employee or prospective employee.

Be it enacted by the Legislature of West Virginia:

That article five, chapter twenty-one of the code of West Virginia,

one thousand nine hundred thirty-one, as amended, be amended by adding thereto four new sections, designated sections five-a, five-b, five-c and five-d, all to read as follows:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-5a. Definitions.

1 As used in sections five-b, five-c and five-d of this article,
2 unless the context clearly requires otherwise:

3 (1) "Employer" means any individual, person, corporation,
4 department, board, bureau, agency, commission, division, of-
5 fice, company, firm, partnership, council or committee of the
6 state government; public benefit corporation, public authority
7 or political subdivision of the state, or other business entity,
8 which employs or seeks to employ an individual or individuals.
9 All provisions of sections five-b, five-c and five-d of this
10 article pertaining to employers shall apply in equal force and
11 effect to their agents and representatives.

12 (2) "Employee" means an individual employed by an em-
13 ployer.

14 (3) "Polygraph" means an instrument which records per-
15 manently and simultaneously a subject's cardiovascular and
16 respiratory patterns and galvanic skin response as minimum
17 standards: *Provided*, That such instrument may record other
18 physiological changes pertinent to the detection of deception.

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19 (4) "Prospective employee" means an individual seeking or
20 being sought for employment with an employer.

§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

1 No employer may require or request either directly or indir-
2 ectly, that any employee or prospective employee of such em-
3 ployer submit to a polygraph, lie detector or other such similar
4 test utilizing mechanical measures of physiological reactions
5 to evaluate truthfulness, and no employer may knowingly al-
6 low the results of any such examination or test administered
7 outside this state to be utilized for the purpose of determining
8 whether to employ a prospective employee or to continue the
9 employment of an employee in this state: *Provided*, That the

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10 provisions of this section shall not apply to employees of an
11 employee² authorized to manufacture, distribute or dispense
12 the drugs to which article five, chapter thirty applies, exclud-
13 ing ordinary drugs as defined in section twenty-one, article
14 five, chapter thirty: *Provided, however,* That the provisions
15 of this section shall not apply to law-enforcement agencies or
16 to military forces of the state as defined by section one, article
17 one, chapter fifteen of the code: *Provided further,* That the
18 results of any such examination shall be used solely for the
19 purpose of determining whether to employ or to continue to
20 employ any person exempted hereunder and for no other
21 purpose.

**§21-5-5c. License required for polygraph examiners; qualifications;
promulgation of rules governing administration of
polygraph tests.**

1 (a) No person, firm or corporation shall administer a
2 polygraph, lie detector or other such similar test utilizing
3 mechanical measures of physiological reactions to evaluate
4 truthfulness to an employees or prospective employee without
5 holding a current valid license to do so as issued by the
6 commissioner of labor. No test shall be administered by a
7 licensed corporation except by an officer or employee thereof
8 who is also licensed.

9 (b) A person is qualified to receive a license as an ex-
10 aminer if he:

11 (1) Is at least eighteen years of age;

12 (2) Is a citizen of the United States;

13 (3) Has not been convicted of a misdemeanor involving
14 moral turpitude or a felony;

15 (4) Has not been released or discharged with other than
16 honorable conditions from any of the armed services of the
17 United States or that of any other nation;

18 (5) Has passed an examination conducted by the commis-
19 sioner of labor or under his supervision, to determine his
20 competency to obtain a license to practice as an examiner;

21 (6) Has satisfactorily completed not less than six months
22 of internship training; and

23 (7) Has met any other qualifications of education or
24 training established by the commissioner of labor in his sole
25 discretion which qualifications are to be at least as stringent
26 as those recommended by the American polygraph association.

27 (c) The commissioner of labor may design and by pro-
28 cedural rule designate and thereafter administer any test
29 he deems appropriate to those persons applying for a license
30 to administer polygraph, lie detector or such similar test to
31 employees or prospective employees. The test designed by
32 the commissioner of labor shall be so designed as to ensure
33 that the applicant is thoroughly familiar with the code of
34 ethics of the American polygraph association and has been
35 trained in accordance with association rules. The test must
36 also include a rigorous examination of the applicant's knowl-
37 edge of and familiarity with all aspects of operating polygraph
38 equipment.

39 (d) The license to give a polygraph, lie detector or similar
40 test to employees or prospective employees shall be issued for
41 a period of one year. It may be reissued from year to year.

42 (e) The commissioner of labor shall charge a fee of one
43 hundred dollars for each issuance or reissuance of a license
44 to give a polygraph, lie detector or similar test to employees
45 or prospective employees. Such fee shall be deposited in the
46 general revenue fund of the state.

47 (f) The commissioner of labor shall promulgate legislative
48 rules pursuant to the provisions of chapter twenty-nine-a,
49 article three governing the administration of polygraph, lie
50 detector or such similar test to employees. Such legislative
51 rules shall include:

52 (1) The type and amount of training or schooling necessary
53 for a person before which he may be licensed to give or
54 interpret such polygraph, lie detector or similar test;

55 (2) Standards of accuracy which shall be met by machines
56 or other devices to be used in polygraph, lie detector or
57 similar tests; and

58 (3) The conditions under which a polygraph, lie detector
59 or such similar test may be given.

§21-5-5d. Penalties; cause of action.

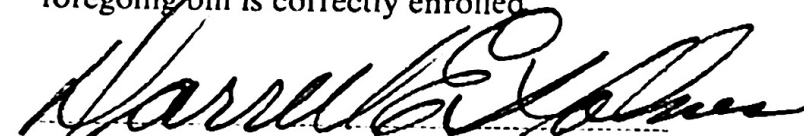
1 (a) It shall be a misdemeanor to administer or interpret a
2 polygraph, lie detector or similar test utilizing mechanical
3 measures of physiological reactions to evaluate truthfulness
4 to an employee or prospective employee without having
5 received a valid and current license to do so as issued by
6 the commissioner of labor or in violation of any rule or
7 regulation promulgated by the commissioner under section
8 five-c of this article. Any person convicted of violating
9 section five-c shall be fined not more than five hundred
10 dollars.

11 (b) Any employer who violates section five-b is guilty
12 of a misdemeanor, and, upon conviction thereof, shall be
13 fined not more than five hundred dollars.

14 (c) An employee or prospective employee has a right to
15 sue an employer or prospective employer for a violation of the
16 provisions of section five-b of this article. If successful, the
17 employee or prospective employee shall recover threefold the
18 damages sustained by him, together with reasonable attorneys
19 fees, filing fees and reasonable costs of the action. Reasonable
20 costs of the action may include, but shall not be limited to,
21 the expenses of discovery and document reproduction. Dam-
22 ages may include, but shall not be limited to, back pay for
23 the period during which the employee did not work or was
24 denied a job.

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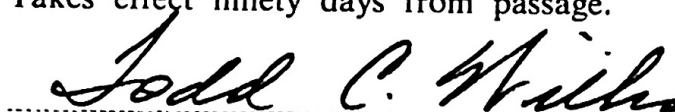
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled

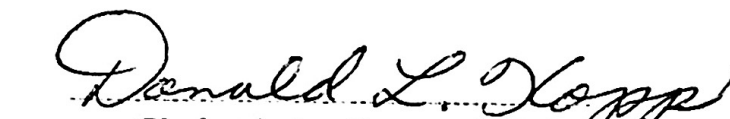

Chairman Senate Committee



Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 26
day of March, 1983.


Governor

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