WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED

Com. Sub. for
HOUSE BILL No. 1212

(By Mr. Carrichael)

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.

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

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

2. "Employee" means an individual employed by an employer.

3. "Polygraph" means an instrument which records permanently and simultaneously a subject's cardiovascular and respiratory patterns and galvanic skin response as minimum standards: Provided, That such instrument may record other physiological changes pertinent to the detection of deception.

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

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

No employer may require or request either directly or indirectly, that any employee or prospective employee of such employer submit to a polygraph, lie detector or other such similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness, and no employer may knowingly allow the results of any such examination or test administered outside this state to be utilized for the purpose of determining whether to employ a prospective employee or to continue the employment of an employee in this state: Provided, That the
provisions of this section shall not apply to employees of an employee authorized to manufacture, distribute or dispense the drugs to which article five, chapter thirty applies, excluding ordinary drugs as defined in section twenty-one, article five, chapter thirty: Provided, however, That the provisions of this section shall not apply to law-enforcement agencies or to military forces of the state as defined by section one, article one, chapter fifteen of the code: Provided further, That the results of any such examination shall be used solely for the purpose of determining whether to employ or to continue to employ any person exempted hereunder and for no other purpose.

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

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

(b) A person is qualified to receive a license as an examiner if he:

(1) Is at least eighteen years of age;
(2) Is a citizen of the United States;
(3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;
(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;
(5) Has passed an examination conducted by the commissioner of labor or under his supervision, to determine his competency to obtain a license to practice as an examiner;
(6) Has satisfactorily completed not less than six months of internship training; and

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

(c) The commissioner of labor may design and by procedural rule designate and thereafter administer any test he deems appropriate to those persons applying for a license to administer polygraph, lie detector or such similar test to employees or prospective employees. The test designed by the commissioner of labor shall be so designed as to ensure that the applicant is thoroughly familiar with the code of ethics of the American polygraph association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating polygraph equipment.

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

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

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

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

(2) Standards of accuracy which shall be met by machines or other devices to be used in polygraph, lie detector or similar tests; and
58 (3) The conditions under which a polygraph, lie detector 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 polygraph, lie detector or similar test utilizing mechanical measures of physiological reactions to evaluate truthfulness to an employee or prospective employee without having received a valid and current license to do so as issued by the commissioner of labor or in violation of any rule or regulation promulgated by the commissioner under section five-c of this article. Any person convicted of violating section five-c shall be fined not more than five hundred dollars.

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

14 (c) An employee or prospective employee has a right to sue an employer or prospective employer for a violation of the provisions of section five-b of this article. If successful, the employee or prospective employee shall recover threefold the damages sustained by him, together with reasonable attorneys fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to, the expenses of discovery and document reproduction. Damages may include, but shall not be limited to, back pay for the period during which the employee did not work or was denied a job.
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 .................................. this the 26 . .

day of ........................................ 1983.

Governor