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OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

FIRST REGULAR SESSION, 2003



**ENROLLED**

**COMMITTEE SUBSTITUTE  
FOR**

**House Bill No. 2529**

(By Delegates Beane, Kuhn, Brown, Ellem and Leggett)



Passed March 7, 2003

In Effect Ninety Days from Passage

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**H. B. 2529**

(BY DELEGATES BEANE, KUHN, BROWN, ELLEM AND LEGGETT)

[Passed March 7, 2003; in effect ninety days from passage.]

AN ACT to amend and reenact sections five-a, five-b, five-c and five-d, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to the licensure and regulation of psychophysiological detection of deception examiners; creating categories of licensure; authorizing legislative rules; prohibited activities; and penalties.

*Be it enacted by the Legislature of West Virginia:*

That sections five-a, five-b, five-c and five-d, article five, chapter twenty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, 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,  
5 office, 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 article  
10 pertaining to employers shall apply in equal force and effect to  
11 their agents and representatives.

12 (2) "Employee" means an individual employed by an  
13 employer.

14 (3) "Psychophysiological detection of deception instru-  
15 ment" means an instrument used for the detection of deception  
16 which records permanently and simultaneously a person's  
17 cardiovascular and respiratory patterns and galvanic skin  
18 response: *Provided*, That the instrument may record other  
19 physiological changes pertinent to the detection of deception.

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

22 (5) "Psychophysiological detection of deception" means an  
23 examination which records permanently and simultaneously a  
24 person's cardiovascular and respiratory patterns and galvanic  
25 skin response.

**§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  
2 indirectly, that any employee or prospective employee of  
3 the employer submit to a psychophysiological detection of

4 deception examination, lie detector or other similar examination  
5 utilizing mechanical or electronic measures of physiological  
6 reactions to evaluate truthfulness, and no employer may  
7 knowingly allow the results of any examination administered  
8 outside this state to be utilized for the purpose of determining  
9 whether to employ a prospective employee or to continue the  
10 employment of an employee in this state: *Provided*, That the  
11 provisions of this section shall not apply to employees or  
12 prospective employees who would have direct access to the  
13 manufacture, storage, distribution or sale of any controlled  
14 substance listed in schedule I, II, III, IV or V of section eight  
15 hundred twelve of title twenty-one of the United States code:  
16 *Provided, however*, That the provisions of this section shall not  
17 apply to law-enforcement agencies or to military forces of the  
18 state as defined by section one, article one, chapter fifteen of  
19 the code: *Provided further*, That the results of any examination  
20 shall be used solely for the purpose of determining whether to  
21 employ or to continue to employ any person exempted hereun-  
22 der and for no other purpose.

**§21-5-5c. License required for psychophysiological detection of  
deception examiners; qualifications; promulga-  
tion of rules governing administration of psycho-  
physiological detection of deception examinations.**

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

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

11 (1) Is at least twenty-one 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 or her supervision, to determine his  
20 or her competency to obtain a license to practice as an exam-  
21 iner;

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

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

28 (c) The commissioner of labor may designate and adminis-  
29 ter any test the commissioner considers appropriate to those  
30 persons applying for a license to administer psychophysio-  
31 logical detection of deception, lie detector or similar examina-  
32 tion. The test shall be designed to ensure that the applicant is  
33 thoroughly familiar with the code of ethics of the American  
34 polygraph association and has been trained in accordance with  
35 association rules. The test must also include a rigorous exami-  
36 nation of the applicant's knowledge of and familiarity with all  
37 aspects of operating psychophysiological detection of deception  
38 equipment and administering psychophysiological detection of  
39 deception examinations.

40 (d) The license to administer psychophysiological detection  
41 of deception, lie detector or similar examinations to any person  
42 shall be issued for a period of one year. It may be reissued from  
43 year to year. The licenses to be issued are:

44 (1) "Class I license" which authorizes an individual to  
45 administer psychophysiological detection of deception exami-  
46 nations for all purposes which are permissible under the  
47 provisions of this article and other applicable laws and rules.

48 (2) "Class II license" which authorizes an individual who  
49 is a full time employee of a law enforcement agency to admin-  
50 ister psychophysiological detection of deception examinations  
51 to its employees or prospective employees only.

52 (e) The commissioner of labor shall charge a fee to be  
53 established by legislative rule. The fees shall be deposited in the  
54 general revenue fund of the state. In addition to any other  
55 information required, an application for a license shall include  
56 the applicant's social security number.

57 (f) The commissioner of labor shall propose rules for  
58 legislative approval in accordance with the provisions of article  
59 three, chapter twenty-nine of this code governing the adminis-  
60 tration of psychophysiological detection of deception, lie  
61 detector or similar examination to any person: *Provided*, That  
62 all applicable rules in effect on the effective date of sections  
63 five-a, five-b, five-c and five-d of this article will remain in  
64 effect until amended, withdrawn, revoked, repealed or replaced.  
65 The legislative rules shall include:

66 (1) The type and amount of training or schooling necessary  
67 for a person before which he or she may be licensed to adminis-  
68 ter or interpret a psychophysiological detection of deception, lie  
69 detector or similar examination;

70 (2) Testing requirements including the designation of the  
71 test to be administered to persons applying for licensure;

72 (3) Standards of accuracy which shall be met by machines  
73 or other devices to be used in psychophysiological detection of  
74 deception, lie detector or similar examination;

75 (4) The conditions under which a psychophysiological  
76 detection of deception, lie detector or similar examination may  
77 be administered;

78 (5) Fees for licenses, renewals of licenses and other  
79 services provided by the commissioner;

80 (6) Any other qualifications or requirements, including  
81 continuing education, established by the commissioner for the  
82 issuance or renewal of licenses; and

83 (7) Any other purpose to carry out the requirements of  
84 sections five-a, five-b, five-c and five-d of this article.

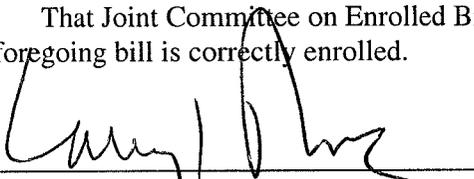
**§21-5-5d. Penalties; cause of action.**

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

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

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

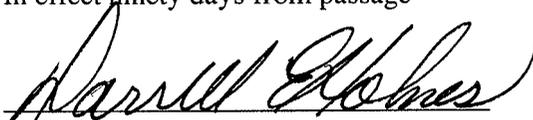
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

  
Chairman, Senate Committee

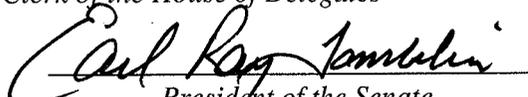
  
Chairman House Committee

Originating in the House.

In effect ninety days from passage

  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 18  
day of March, 2003.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/12/03

Time 9:07 am