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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.

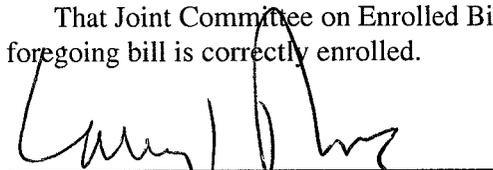
§21-5-5d. Penalties; cause of action.

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.

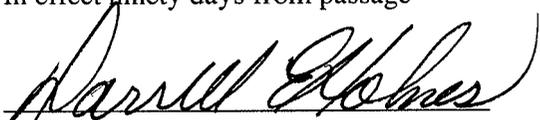
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman, Senate Committee

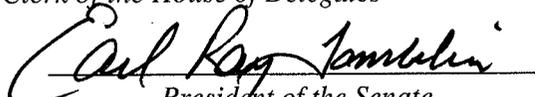

Chairman House Committee

Originating in the House.

In effect ninety days from passage

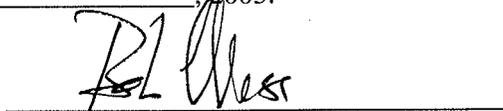

Clerk of the Senate


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