

WEST VIRGINIA LEGISLATURE

2022 REGULAR SESSION

ENGROSSED

Committee Substitute

for

House Bill 4262

BY DELEGATES STEELE AND FOSTER

[Originating in the Committee on Government

Organization; February 9, 2022]

1 A BILL to repeal §21-5-5c of the Code of West Virginia, 1931, as amended, and to amend and
2 reenact §21-5-5d of said code; all relating to licensure for polygraph examiners, removing
3 state licensure requirements for polygraph examiners; and updating criminal penalties
4 associated with removing state licensure.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

~~§21-5-5c. License required for psychophysiological detection of deception examiners;
qualifications; promulgation of rules governing administration of
psychophysiological detection of deception examinations~~ Requirements for
persons performing psychophysiological detection of deception examinations.

1 Any person who is a member in good standing of the American Polygraph Association or
2 a member of the American Association of Police Polygraphists may be hired or contracted to
3 perform psychophysiological detection of deception examinations in this state. The person must
4 be able to show that he or she is in good standing and has completed or is on track to complete
5 all continuing education units for the reporting period.

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

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

12 ~~(1) Is at least 21 years of age;~~

13 ~~(2) Is a citizen of the United States;~~

14 ~~(3) Has not been convicted of a felony: *Provided*, That the commissioner shall apply §21-~~
15 ~~4-6 of this code to determine if the prior criminal conviction bears a rational nexus to the license~~
16 ~~being sought;~~

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

19 ~~(5) Has passed an examination conducted by the Commissioner of Labor or under his or~~
20 ~~her supervision to determine his or her competency to obtain a license to practice as an examiner;~~

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

22 ~~(7) Has met any other qualifications of education or training established by the~~
23 ~~Commissioner of Labor in his or her sole discretion which qualifications are to be at least as~~
24 ~~stringent as those recommended by the American Polygraph Association.~~

25 ~~(c) The Commissioner of Labor may designate and administer any test he or she considers~~
26 ~~appropriate to those persons applying for a license to administer psychophysiological detection~~
27 ~~of deception, lie detector, or similar examination. The test shall be designed to ensure that the~~
28 ~~applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and~~
29 ~~has been trained in accordance with association rules. The test must also include a rigorous~~
30 ~~examination of the applicant's knowledge of and familiarity with all aspects of operating~~
31 ~~psychophysiological detection of deception equipment and administering psychophysiological~~
32 ~~detection of deception examinations.~~

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

36 ~~(1) "Class I license" which authorizes an individual to administer psychophysiological~~
37 ~~detection of deception examinations for all purposes which are permissible under the provisions~~
38 ~~of this article and other applicable laws and rules.~~

39 ~~(2) "Class II license" which authorizes an individual who is a full-time employee of a law-~~
40 ~~enforcement agency to administer psychophysiological detection of deception examinations to its~~
41 ~~employees or prospective employees only.~~

42 ~~(e) The Commissioner of Labor shall charge an annual fee to be established by legislative~~
43 ~~rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and~~
44 ~~deposited in an appropriated special revenue account hereby created in the State Treasury to be~~
45 ~~known as the Psychophysiological Examiners Fund and expended for the implementation and~~
46 ~~enforcement of this section. Through June 30, 2019, amounts collected which are found from time~~
47 ~~to time to exceed funds needed for the purposes set forth in this section may be utilized by the~~
48 ~~commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July~~
49 ~~1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the~~
50 ~~division's funding obligations. In addition to any other information required, an application for a~~
51 ~~license shall include the applicant's Social Security number.~~

52 ~~(f) The Commissioner of Labor shall propose rules for legislative approval in accordance~~
53 ~~with §29A-3-1 et seq. of this code governing the administration of psychophysiological detection~~
54 ~~of deception, lie detector, or similar examination to any person: *Provided*, That all applicable rules~~
55 ~~in effect on the effective date of §21-5-5a, §21-5-5b, §21-5-5c, and §21-5-5d of this code will~~
56 ~~remain in effect until amended, withdrawn, revoked, repealed, or replaced. The legislative rules~~
57 ~~shall include:~~

58 ~~(1) The type and amount of training or schooling necessary for a person before which he~~
59 ~~or she may be licensed to administer or interpret a psychophysiological detection of deception,~~
60 ~~lie detector, or similar examination;~~

61 ~~(2) Testing requirements, including the designation of the test to be administered to~~
62 ~~persons applying for licensure;~~

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

65 ~~(4) The conditions under which a psychophysiological detection of deception, lie detector,~~
66 ~~or similar examination may be administered;~~

67 ~~(5) Fees for licenses, renewals of licenses, and other services provided by the~~
68 ~~commissioner;~~

69 ~~(6) Any other qualifications or requirements, including continuing education, established~~
70 ~~by the commissioner for the issuance or renewal of licenses; and~~

71 ~~(7) Any other purpose to carry out the requirements of §21-5-5a, §21-5-5b, §21-5-5c, and~~
72 ~~§21-5-5d of this code.~~

§21-5-5d. Penalties; cause of action.

1 (a) It shall be a misdemeanor to administer or interpret a psychophysiological detection of
2 deception, lie detector or similar examination utilizing mechanical or electronic measures of
3 physiological reactions to evaluate truthfulness without ~~having received a valid and current license~~
4 ~~to do so as issued by the commissioner of labor or in violation of any rule or regulation~~
5 ~~promulgated by the commissioner under section five-c of this article~~ being a member in good
6 standing of the American Polygraph Association or the American Association of Police
7 Polygraphists. Any person convicted of violating section five-c shall be fined not more than \$500.

8 (b) Any person who violates §21-5-5b of this ~~article~~ code is guilty of a misdemeanor and,
9 upon conviction thereof, shall be fined not more than \$500.

10 (c) Any employee or prospective employee has a right to sue an employer or prospective
11 employer for a violation of the provisions of §21-5-5b of this ~~article~~ code. If successful, the
12 employee or prospective employee shall recover threefold the damages sustained by him or her,
13 together with reasonable attorneys' fees, filing fees, and reasonable costs of the action.
14 Reasonable costs of the action may include, but shall not be limited to, the expenses of discovery
15 and document reproduction. Damages may include, but shall not be limited to, back pay for the
16 period during which the employee did not work or was denied a job.