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HOUSE BILL 1929

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State of Washington                      61st Legislature                      2009 Regular Session

By Representative Williams

Read first time 02/03/09. Referred to Committee on Commerce & Labor.

1            AN ACT Relating to the regulation of polygraph examiners; amending  
2 RCW 18.235.020; adding a new chapter to Title 18 RCW; creating a new  
3 section; prescribing penalties; and providing an effective date.

4 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

5            NEW SECTION.    **Sec. 1.**    It is the purpose of this chapter to  
6 regulate all persons who purport to be able to detect deception or to  
7 verify truth of statements through the use of instrumentation or  
8 mechanical devices, including but not limited to lie detectors,  
9 polygraphs, or similar or related devices and instruments, without  
10 regard to the nomenclature. This chapter must be liberally construed  
11 to regulate all such persons and instruments. A person who purports to  
12 be able to detect deception or to verify truth of statements through  
13 instrumentation is not exempt from the provisions of this chapter  
14 because of the terminology used to describe the person, the instruments  
15 or mechanical devices of the person, or the nature of the services of  
16 the person.

17            NEW SECTION.    **Sec. 2.**    The definitions in this section apply  
18 throughout this chapter unless the context clearly requires otherwise.

1 (1) "Department" means the department of licensing.

2 (2) "Director" means the director of the department of licensing or  
3 the director's designee.

4 (3) "Internship" means the study of polygraph examinations, and of  
5 the administration of polygraph examinations, by a trainee under the  
6 personal supervision and control of a polygraph examiner in accordance  
7 with a course of study prescribed by the department at the commencement  
8 of the course of study.

9 (4) "Person" includes any individual, firm, corporation,  
10 partnership, association, company, society, manager, contractor,  
11 subcontractor, bureau, agency, service, office, or an agent or employee  
12 of any of the foregoing.

13 (5) "Polygraph examination" means a minimum of two charts  
14 administered to any one subject, and each relevant question must be  
15 asked a minimum of two times to constitute a polygraph examination.

16 (6) "Polygraph examiner" means a person who purports to be able to  
17 detect deception or verify the truth of statements through the use of  
18 instrumentation or of a mechanical device that records visually,  
19 permanently, and simultaneously the cardiovascular pattern, the  
20 respiratory pattern, and the galvanic skin response of the individual  
21 being examined.

22 NEW SECTION. **Sec. 3.** The requirements of this chapter do not  
23 apply to:

24 (1) A person who uses a polygraph for the sole purpose of  
25 conducting scientific, medical, or academic research or experiments.  
26 Results of this research or experiments may only be used for academic,  
27 medical, or scientific pursuits and may not be used for specific  
28 employment, law enforcement, or public safety objectives; or

29 (2) Individuals who are employed by the United States government  
30 while in the performance of their assigned duties.

31 NEW SECTION. **Sec. 4.** (1) An instrument used to test or question  
32 individuals for the purpose of detecting deception or verifying truth  
33 of statements must record visually, permanently, and simultaneously:

34 (a) A subject's cardiovascular pattern;

35 (b) A subject's respiratory pattern; and

36 (c) A subject's electrodermal response.

1 (2) Patterns of other physiological changes in addition to those  
2 required in subsection (1)(a) through (c) of this section may also be  
3 recorded. The use of any instrument or device to detect deception or  
4 to verify truth of statements that does not meet these minimum  
5 instrumentation requirements is prohibited and the operation or use of  
6 the equipment is subject to penalties and may be enjoined in the manner  
7 provided in this chapter.

8 NEW SECTION. **Sec. 5.** (1) It is a violation of this chapter for:

9 (a) A person, including a city, county, or state employee, to  
10 perform the functions and duties of a polygraph examiner in this state  
11 without being licensed in accordance with this chapter;

12 (b) A person to present or attempt to use the license of another as  
13 his or her own license;

14 (c) A person to give false or forged evidence of any kind to the  
15 director in obtaining a license;

16 (d) A person to falsely impersonate any other licensee; or

17 (e) A person to attempt to use an expired or revoked license.

18 (2) A person who violates any of the provisions of this chapter is  
19 guilty of a gross misdemeanor.

20 NEW SECTION. **Sec. 6.** No person other than a state-licensed  
21 polygraph examiner may assume or use the title of polygraph examiner or  
22 any title, designation, or abbreviation likely to create the impression  
23 of certification, licensure, or registration as a polygraph examiner by  
24 this state.

25 NEW SECTION. **Sec. 7.** (1) An applicant must meet the following  
26 requirements to obtain a polygraph examiner license:

27 (a) Be at least twenty-one years old;

28 (b) Be a citizen or resident alien of the United States;

29 (c) Not have demonstrated, in the preceding ten years, a course of  
30 behavior that indicates a high degree of probability that the applicant  
31 will be unlikely to perform the duties of a polygraph examiner in a  
32 manner that would serve the interests of the public;

33 (d) Not have been convicted of a crime in any jurisdiction if the  
34 director determines that the applicant's particular crime directly  
35 relates to his or her capacity to perform the duties of a polygraph

1 examiner and the director determines that the license should be  
2 withheld to protect the citizens of Washington state. The director  
3 shall make his or her determination to withhold a license because of  
4 previous convictions notwithstanding the restoration of employment  
5 rights act, chapter 9.96A RCW;

6 (e) Submit a set of fingerprints;

7 (f) Pay the required nonrefundable fee for each application;

8 (g) Submit a fully completed application that includes proper  
9 identification on a form prescribed by the director;

10 (h) Be a graduate of a polygraph examiners course approved by the  
11 director;

12 (i) Have satisfactorily completed an internship of not less than  
13 six months as required by the department;

14 (j) Have passed an examination that includes a review of applicable  
15 state law concerning the polygraph, conducted by the department or  
16 under its supervision, to determine his or her competency to obtain a  
17 license to practice as a polygraph examiner;

18 (k) Certify that he or she will respond to judicial process served  
19 on the director by courts of competent jurisdiction within the state  
20 and provide the department with an up-to-date address; and

21 (1)(i) Have a four-year degree from a full four-year accredited  
22 university or college recognized as such by the department;

23 (ii) Have completed two years of study, or its equivalent, at such  
24 a university or college with two years of experience as an investigator  
25 or detective with a municipal, county, state, or federal agency; or

26 (iii) Have graduated from an accredited high school and have at  
27 least five years' experience as an investigator or detective with a  
28 municipal, county, state, or federal agency.

29 (2) When the department refuses to issue a license based upon an  
30 applicant's failure to meet the requirements of subsection (1)(c) of  
31 this section, the department shall prepare a concise, specific written  
32 statement of the facts supporting the department's conclusion that  
33 there is a high degree of probability that the applicant will be  
34 unlikely to perform required duties in a manner that would serve the  
35 interests of the public. A copy of the statement must be provided to  
36 the applicant.

1        NEW SECTION.    **Sec. 8.**    (1) The director shall, with the advice and  
2 approval of the polygraph examiner's advisory committee created in  
3 section 23 of this act, adopt rules in accordance with chapter 34.05  
4 RCW necessary to implement this chapter and chapter 18.235 RCW.

5        (2) The rules must include, but are not limited to:

6        (a) Prohibited areas of inquiry;

7        (b) Recordkeeping procedures; and

8        (c) Consent procedures.

9        NEW SECTION.    **Sec. 9.**    On the effective date of this section, any  
10 person who has actually been engaged in the occupation, business, or  
11 profession of a polygraph examiner in the state for a period of at  
12 least two years, and conducted at least two hundred polygraph  
13 examinations, and who is using for that purpose the instrumentation  
14 prescribed in section 3 of this act, must, upon application and proof  
15 satisfactory to the director within ninety days after the effective  
16 date of this section and payment of the required license fee, be issued  
17 a polygraph examiner's license that is effective no longer than one  
18 year from the date of issuance. However, the department may require  
19 the applicant to submit satisfactory proof that he or she is so  
20 engaged. The applicant must also satisfy the requirements of section  
21 7(1) (a) through (g), (k), and (l) of this act.

22        NEW SECTION.    **Sec. 10.**    All polygraph examiners shall furnish proof  
23 as the director may require that they have successfully completed a  
24 total of thirty clock hours of instruction every two years in polygraph  
25 examination courses approved by the director in order to renew their  
26 licenses. Up to fifteen clock hours of instruction, beyond the thirty  
27 hours of clock instruction required in the two-year period, may be  
28 carried forward for credit in a subsequent two-year period. In order  
29 to fulfill the requirements of this section, a polygraph examiner may  
30 commence work on a course no more than thirty-six months before the  
31 proof date for renewal. Examinations are not required to fulfill any  
32 part of the education requirement in this section. This section  
33 applies to renewal dates after January 1, 2012.

34        NEW SECTION.    **Sec. 11.**    (1) Each nonresident applicant for an  
35 original license or a renewal shall file with the department an

1 irrevocable statement of consent stating that actions against the  
2 applicant may be filed in any appropriate court of any county or  
3 municipality of the state in which the plaintiff resides or in which  
4 some part of the transaction occurred out of which the alleged cause of  
5 action arose and that process on such an action may be served on the  
6 applicant by leaving two copies thereof with the director. The consent  
7 statement must stipulate and agree that the service of process must be  
8 taken and held to be valid and binding for all purposes. The director  
9 shall send one copy of the service of process to the applicant at the  
10 address shown on the records of the department by registered or  
11 certified mail.

12 (2) Nonresident applicants must satisfy the requirements of section  
13 7(1) (a) through (g), (k), and (l) of this act.

14 (3) Nothing in this chapter prevents a polygraph examination of a  
15 person as part of a judicial proceeding by court order if the polygraph  
16 examination is conducted by a nonresident examiner who establishes to  
17 a court of competent jurisdiction his or her qualifications at the time  
18 the order is requested. The court shall consider the basic  
19 qualifications set forth in section 7 of this act in determining  
20 whether or not to grant the order. In granting the order the remainder  
21 of the requirements of this chapter may be waived.

22 NEW SECTION. **Sec. 12.** An applicant for licensure who is currently  
23 licensed and in good standing under the laws of another state may  
24 obtain a certificate or license as a Washington state licensed  
25 polygraph examiner without being required to satisfy the examination  
26 requirements of this chapter if: (1) The director determines that the  
27 certification or licensure requirements are substantially similar to  
28 those found in Washington state; and (2) that the other state has a  
29 written reciprocal agreement to provide similar treatment to holders of  
30 Washington state licenses.

31 NEW SECTION. **Sec. 13.** (1) Upon approval by the department, the  
32 director shall issue an internship license to a trainee if the trainee  
33 applies for a license and pays the required fee within ten days prior  
34 to the commencement of his or her internship. The application must  
35 contain such information as may be required by the department. A

1 temporary intern license may be issued by the director for not more  
2 than six months upon payment of the necessary fee.

3 (2) An internship license is valid for a term of twelve months from  
4 the date of issue. Upon good cause shown to the department, the  
5 license may be extended or renewed for any term not to exceed twelve  
6 months.

7 (3) Upon a showing of extenuating circumstances, the trainee may  
8 petition the department for an additional extension.

9 NEW SECTION. **Sec. 14.** A license or duplicate license must be  
10 prominently displayed at the place of business of the polygraph  
11 examiner or at the place of internship. Each license must be signed by  
12 the director and must be issued under the seal of the department.

13 NEW SECTION. **Sec. 15.** A licensed examiner must provide the  
14 director notice in writing of any change of principal business location  
15 within thirty days of the time the examiner changes the location. A  
16 change of business location without notification to the director  
17 automatically suspends the license issued under this chapter.

18 NEW SECTION. **Sec. 16.** (1) A polygraph examiner's license must be  
19 issued for a term of one year and must, unless suspended and revoked,  
20 be renewed annually as prescribed by the department.

21 (2) A polygraph examiner whose license has expired may at any time  
22 within two years after the expiration thereof obtain a renewal license  
23 without examination by making a renewal application therefor and  
24 satisfying the requirements of section 7(1) (c) and (d) of this act.

25 (3) A person whose polygraph examiner's license has expired while  
26 the person was employed by a federal agency or while the person was on  
27 active duty as a member of the armed forces of the United States or on  
28 active duty as a member of the Washington national guard may obtain a  
29 renewal license, without examination, upon application therefor within  
30 two years after the date of the termination of such employment or  
31 active duty and payment of the required fee for such a renewal. The  
32 provisions of section 7(1) (c) and (d) of this act must also be  
33 satisfied.

1        NEW SECTION.    **Sec. 17.**    A person holding himself or herself out to  
2        be a polygraph examiner may not maintain an action or counterclaim in  
3        any court in this state with respect to any agreement or service for  
4        which a license is required by this chapter, or to recover the agreed  
5        price of any compensation under the agreement, or for the services for  
6        which a license is required by this chapter without alleging and  
7        proving that the person had a valid license at the time the agreement  
8        was made or the services performed.

9        NEW SECTION.    **Sec. 18.**    In addition to the unprofessional conduct  
10       described in RCW 18.235.130, the director may refuse to issue or may  
11       suspend or revoke a license on any one or more of the following  
12       grounds:

13       (1) Failing to inform a subject to be examined of the nature of the  
14       polygraph examination;

15       (2) Failing to inform a subject to be examined that his or her  
16       participation in the polygraph examination is voluntary;

17       (3) Willfully disregarding or violating this chapter or any rule  
18       issued pursuant to this chapter, including, but not limited to,  
19       willfully making a false report concerning an examination for polygraph  
20       examination purposes;

21       (4) Having demonstrated unworthiness or incompetency to act as a  
22       polygraph examiner; or

23       (5) Failing to inform the subject of the results of the polygraph  
24       examination if so requested.

25       NEW SECTION.    **Sec. 19.**    An unlawful act or violation of any of the  
26       provisions of this chapter on the part of any polygraph examiner or  
27       trainee is not cause for revocation of the license of any other  
28       polygraph examiner for whom the offending examiner or trainee may have  
29       been employed, unless it appears to the satisfaction of the director  
30       that the polygraph examiner-employer has willfully aided or abetted the  
31       illegal actions or activities of the offending polygraph examiner or  
32       trainee.

33       NEW SECTION.    **Sec. 20.**    Each polygraph examiner shall register with  
34       the county clerk in the county in which the examiner maintains a



1 business address. The county clerk of each county shall maintain a  
2 list of all polygraph examiners registered in the county.

3 NEW SECTION. **Sec. 21.** Upon the revocation or suspension of any  
4 license, the licensee shall surrender the license or licenses to the  
5 director. Failure of a licensee to do so is a violation of this  
6 chapter and upon conviction the licensee is subject to the penalties  
7 set forth in this chapter. At any time after the suspension or  
8 revocation of any license, the director shall restore the license to  
9 the former licensee upon the written recommendations of the department.

10 NEW SECTION. **Sec. 22.** The uniform regulation of business and  
11 professions act, chapter 18.235 RCW, governs unlicensed practice, the  
12 issuance and denial of licenses, and the discipline of licensees under  
13 this chapter.

14 NEW SECTION. **Sec. 23.** The polygraph examiner's advisory committee  
15 is created.

16 (1) The polygraph examiner's advisory committee consists of five  
17 members appointed by the director who shall advise the director  
18 concerning the administration of this chapter. The committee must be  
19 composed of a balance of private polygraph examiners, law enforcement  
20 polygraph examiners, and a person who is not a polygraph examiner but  
21 who works in the industry. The private and law enforcement polygraph  
22 examiners of the initial committee must be polygraph examiners who  
23 would qualify for licensing under this chapter. Their successors must  
24 be polygraph examiners who are licensed under this chapter.

25 (2) The members of the polygraph examiner's advisory committee may  
26 not serve more than five years consecutively. The terms of office must  
27 be staggered.

28 (3) Members of the committee must be reimbursed for travel expenses  
29 as provided in RCW 43.03.050 and 43.03.060.

30 NEW SECTION. **Sec. 24.** This chapter may be known and cited as the  
31 polygraph examiner's act.

32 **Sec. 25.** RCW 18.235.020 and 2008 c 119 s 21 are each amended to  
33 read as follows:

1 (1) This chapter applies only to the director and the boards and  
2 commissions having jurisdiction in relation to the businesses and  
3 professions licensed under the chapters specified in this section.  
4 This chapter does not apply to any business or profession not licensed  
5 under the chapters specified in this section.

6 (2)(a) The director has authority under this chapter in relation to  
7 the following businesses and professions:

8 (i) Auctioneers under chapter 18.11 RCW;  
9 (ii) Bail bond agents and bail bond recovery agents under chapter  
10 18.185 RCW;

11 (iii) Camping resorts' operators and salespersons under chapter  
12 19.105 RCW;

13 (iv) Commercial telephone solicitors under chapter 19.158 RCW;

14 (v) Cosmetologists, barbers, manicurists, and estheticians under  
15 chapter 18.16 RCW;

16 (vi) Court reporters under chapter 18.145 RCW;

17 (vii) Driver training schools and instructors under chapter 46.82  
18 RCW;

19 (viii) Employment agencies under chapter 19.31 RCW;

20 (ix) For hire vehicle operators under chapter 46.72 RCW;

21 (x) Limousines under chapter 46.72A RCW;

22 (xi) Notaries public under chapter 42.44 RCW;

23 (xii) Polygraph examiners under chapter 18.-- RCW (the new chapter  
24 created in section 26 of this act);

25 (xiii) Private investigators under chapter 18.165 RCW;

26 ~~((xiii))~~ (xiv) Professional boxing, martial arts, and wrestling  
27 under chapter 67.08 RCW;

28 ~~((xiv))~~ (xv) Real estate appraisers under chapter 18.140 RCW;

29 ~~((xv))~~ (xvi) Real estate brokers and salespersons under chapters  
30 18.85 and 18.86 RCW;

31 ~~((xvi))~~ (xvii) Security guards under chapter 18.170 RCW;

32 ~~((xvii))~~ (xviii) Sellers of travel under chapter 19.138 RCW;

33 ~~((xviii))~~ (xix) Timeshares and timeshare salespersons under  
34 chapter 64.36 RCW;

35 ~~((xix))~~ (xx) Whitewater river outfitters under chapter 79A.60  
36 RCW; and

37 ~~((xx))~~ (xxi) Home inspectors under chapter 18.280 RCW.

1 (b) The boards and commissions having authority under this chapter  
2 are as follows:

3 (i) The state board of registration for architects established in  
4 chapter 18.08 RCW;

5 (ii) The cemetery board established in chapter 68.05 RCW;

6 (iii) The Washington state collection agency board established in  
7 chapter 19.16 RCW;

8 (iv) The state board of registration for professional engineers and  
9 land surveyors established in chapter 18.43 RCW governing licenses  
10 issued under chapters 18.43 and 18.210 RCW;

11 (v) The state board of funeral directors and embalmers established  
12 in chapter 18.39 RCW;

13 (vi) The state board of registration for landscape architects  
14 established in chapter 18.96 RCW; and

15 (vii) The state geologist licensing board established in chapter  
16 18.220 RCW.

17 (3) In addition to the authority to discipline license holders, the  
18 disciplinary authority may grant or deny licenses based on the  
19 conditions and criteria established in this chapter and the chapters  
20 specified in subsection (2) of this section. This chapter also governs  
21 any investigation, hearing, or proceeding relating to denial of  
22 licensure or issuance of a license conditioned on the applicant's  
23 compliance with an order entered under RCW 18.235.110 by the  
24 disciplinary authority.

25 NEW SECTION. **Sec. 26.** Sections 1 through 24 of this act  
26 constitute a new chapter in Title 18 RCW.

27 NEW SECTION. **Sec. 27.** Sections 1 through 24 of this act take  
28 effect January 1, 2010.

29 NEW SECTION. **Sec. 28.** The director of licensing may take the  
30 necessary steps to ensure that this act is implemented on January 1,  
31 2010.

32 NEW SECTION. **Sec. 29.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

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