

HOUSE BUSINESS AND INDUSTRY COMMITTEE

Chairman, Rep. Jerry Metcalf, called the Business & Industry Committee to order on January 28, 1983, at 9:00 a.m. in Room 420 of the Capitol Building, Helena, Montana. All members were present except Rep. Fagg.

HOUSE BILL 452

REP. FRED DAILY, District 87, sponsor, opened by saying this bill does two main things - regulates the use of lie detection devices and licenses operators. This would be done through the Department of Commerce instead of through a new board. There are only 22 polygraph examiners in Montana and that does not constitute enough for the creation of a new board.

PROPONENTS:

BOB GRAHAM, President, Montana Association of Polygraph Examiners, and employed with the Sheriff's Office in Butte, stated that this is the second time they have tried to get this legislation through the Legislature. At the present time nothing controls the polygraph industry in Montana. They do have an association of 22 members. He stated there were out-of-state polygraph examiners practicing in Montana who don't meet the regulations their organization has in effect. This bill will protect the Montana citizen by insuring they are getting the best professionals in the field. The criminal polygraph test is used mostly in this state and they want some way for the state to regulate this industry. There is nothing from stopping a person who reads a few books to claim he is qualified.

ART WEAVER, Burger King manager in Great Falls, said he used to be manager of a bank in North Dakota and the polygraph test was the only thing that could exonerate his credit record. It saved him from always being called a liar. He recommended everyone should watch F. Lee Bailey's television show for information on polygraphs.

JOHN SCULLY, Sheriff's and Peace Officer's Association, said the issue here is that it takes a competent, trained individual to operate the polygraph in a competent manner. He thinks the state should license the operators to prevent the abuse it can be put to.

BILL WARE, Montana Chiefs of Police Association and Police Chief of the Helena Police Department, said he supported Mr. Scully's remarks and they support this bill.

REP. DAILY, in closing, said of the 22 members in the MAPE, 20 are police officers. This bill does not require the court to accept a polygraph examination as evidence, it simply licenses polygraph examiners.

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QUESTIONS:

REP. ELLERD: Will licensing stop anyone from practicing polygraph?

Mr. Scully: Most people who are polygraph examiners are people who have been involved in law enforcement one way or another.

REP. SAUNDERS: Do you know of any instances where this polygraph has been abused. Mr. Scully: Yes. Rep. Saunders: Were they given by people who were qualified to do so? Mr. Scully: Some examiners have caused problems with law enforcement.

REP. ELLISON: What is the status of lie detectors in this state. Are they admissible in court? Mr. Scully: The general rule is that lie detectors are not available in the system to prove guilt or innocence, it's available to use as a tool of investigation.

REP. ELLISON: If we license them doesn't that mean we are going to have to make up our minds as to whether to use them?

Mr. Graham: Polygraph evidence is admissible in court if you enter into a stipulation with your attorney and the prosecuting attorney that it be entered as evidence. We don't have any cases in Montana where a stipulation has been entered into but it has happened in the nation. It is not the accuracy of the polygraph that is in question any more, it's the disproportionate amount of influence it has within the judicial system.

REP. SCHULTZ: Are you going to grandfather all your people without any examination? Mr. Graham: Every member we have in our association is a graduate of the institute and is qualified.

REP. HANSEN: Do you think being licensed will increase your credibility? Chuck O'Reilly, Sheriff, Lewis & Clark County: You are not licensing the machine...you are licensing the individual. All the machine does is measure blood pressure. It's the training on how to prepare the questions and how they react to the questions that involves training.

REP. FABREGA: Will there be a license fee? Rep. Daily: The Department of Commerce will set up a fee in accordance with what it will cost them to license. Mary Lou Garrett, Department of Commerce: I prepared the fiscal note on this bill and I have determined it will cost \$150 per license.

REP. FABREGA: Won't licensing the operator give him a better standing in the courts? Mr. Scully: No. You have to separate licensing the ability of a qualified person from the issue of credibility in court. We do have instances where polygraph examinations were introduced as evidence and the court dismissed the case. Rep.

Fabrega: What happens if a person wants to use his test in court?

Mr. Scully: We'd have to look at what were the questions asked, and under what circumstances, where it took place, etc.

REP. HARPER: This grandfather clause has no date on it - it is on-going. Would you have a problem with all these people taking the test? Pat Fleming, Deputy County Attorney, Silver Bow County: It will give them six months to apply and then they would have to satisfy the other requirements. Rep. Harper: Why can't everyone be required to take the examination? Mr. Fleming: They may not oppose everyone taking this test. We are talking about waiving it for the 22 in Montana. The idea was that if you have 6 to 8 years

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of experience, it would only be fair to grandfather them in. REP. HARPER: After a license expires, you have two years to renew it. What is the state of the art and how in fact does it move and are we giving people a period of time that is just unreasonable? Mr. Graham: After you have practiced polygraphy it is not that difficult to pick it up again. Examiners must attend seminars within a year period or a two year period. If he doesn't meet that standard, his credibility is questioned.

REP. ELLERD: Would this prohibit a licensed examiner from another state but not in Montana from practicing here? Mr. Scully: He would have to apply for a license. Mr. Graham: If this bill passes, we will immediately notify the American Polygraph Association and let them know that we have a licensing law. They are going to know that before they come into Montana. This is going to attract out of state examiners because they want to be licensed.

REP. BACHINI: How many other states have licensing now?

Mr. Graham: 23 states have licensing laws.

REP. WALLIN: Are there any courts that refuse to permit this in court? Mr. Graham: The mention of polygraph in a court is grounds for appeal.

REP. METCALF: The Department of Commerce did not decide for or against this bill. Do you think the Department would be able to enforce this bill or will it require a FTE to take care of it? Ms. Garrett: It will take a .03 FTE. It wouldn't take much time and we can administer it for about \$2,500 - \$3,000 a year, if that.

EXECUTIVE SESSION:

REP. PAVLOVICH moved that HOUSE BILL 452 DO PASS.

REP. ELLERD: Does it read that any out of state examiner must have a Montana license or that he has to have a license in another state? Rep. Metcalf: He must have a license in Montana.

REP. HARPER: If the bill passes the way it is now, every person is going to get an application into Montana immediately so that he doesn't have to take the test.

REP. BACHINI: Does the Department have a person to test these people? Rep. Metcalf: They are going to have to establish the test and everything else. REP. FABREGA: Generally, these tests are somewhat developed by the association, like the Board of Realtors.

REP. PAVLOVICH: They are all required to go to a school to learn this skill and I imagine the Department of Commerce could go to that school and get their requirements and have these 22 people take the test. (general agreement)

REP. FABREGA: The one benefit of this bill to license examiners will be to set a standard and it will eliminate quacks. The intent is that anyone who is not licensed in this state has to show that he has taken a test in another state. Everyone in Montana will have to take the test.

REP. KADAS: Do we want to limit it to law enforcement people only?

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REP. METCALF: I think a psychologist would make an excellent examiner.

REP. HARPER: An examiner has to be 18 years old with 5 years experience...

REP. NISBET: Are they going to be operating illegally until they take the test? Rep. Harper: As part of my amendments, I will move to strike the effective date until October 1 to get things in order and adopt the rules.

REP. HARPER: I move the amendments we have worked out here today.

Question: Motion carried unanimously.

Paul Verdon was asked to put in the proper language and bring a reading copy of HB 452 back to committee. (Amendments Exhibit #1)

HOUSE BILL 213

REP. HANSEN moved that HOUSE BILL 213 DO PASS AS AMENDED.

REP. FABREGA: I think the title would read more clearly if we added "the existence of a controlling interest in the condominium project", and I so move. Question: Carried unanimously.

Question: The motion that HOUSE BILL 213 DO PASS AS AMENDED carried unanimously.

The hearing adjourned at 11:15 a.m.



JERRY METCALF, CHAIRMAN



Linda Palmer, Secretary

STANDING COMMITTEE REPORT

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MR. **Speaker:**

We, your committee on **BUSINESS & INDUSTRY**

having had under consideration **HOUSE** Bill No. **213**
first reading (white)

A BILL FOR AN ACT ENTITLED: "AN ACT REQUIRING THE DEVELOPER OF A CONDOMINIUM PROJECT OWNING A CONTROLLING INTEREST IN THE PROJECT TO NOTIFY PROSPECTIVE BUYERS OF THAT INTEREST AND HIS CONTROL OVER THE ASSOCIATION BYLAWS AND REGULATIONS; REQUIRING THE SELLER OF ANY CONDOMINIUM UNIT OR HIS AGENT TO FURNISH A BUYER WITH COPIES OF THE CONDOMINIUM BYLAWS, REGULATIONS, AND GOVERNING LAW; AMENDING SECTION 70-23-606, MCA."

Respectfully report as follows: That **HOUSE** Bill No. **213**

Be amended as follows:

DO PASS

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1. Title, line 4
Following: "THE"
Strike: "DEVELOPER"
Insert: "SELLER"
2. Title, lines 5 and 6
Following: "CONDOMINIUM"
Strike: Remainder of line 5 and line 6 through "PROJECT"
Insert: "UNIT"
3. Title, line 6
Following: "OF"
Strike: "THAT INTEREST"
Insert: "THE EXISTENCE OF A CONTROLLING INTEREST IN THE CONDOMINIUM PROJECT"
4. Title, line 7
Following: "AND"
Strike: "HIS"
Insert: "OF THAT"
5. Title, line 10
Following: "LAW;"
Insert: "ALLOWING A PROSPECTIVE PURCHASER A PERIOD TO WITHDRAW WITHOUT PENALTY;"
6. Page 1, line 14
Following: "by"
Strike: "developer"
Insert: "seller"
7. Page 1, line 15
Following: "documents"
Insert: "--delay period"
8. Page 1, line 15
Following: "a"
Strike: "project"
9. Page 1, line 16
Strike: "developer"
Insert: "person, corporation, or other legal entity"
10. Page 1, line 17
Strike: "developer"
Insert: "seller"
11. Page 1, line 17
Following: "agent"
Insert: ", prior to signing any buy-sell agreement,"

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19.....

12. Page 1, line 20
Following: "(a) the"
Strike: "developer"
Insert: "seller or other person"
13. Page 1, line 25
Following: "by the"
Strike: "developer"
Insert: "seller or other person"
14. Page 2, line 3
Following: "the"
Strike: "developer"
Insert: "seller or other person"
15. Page 2, line 5
Following: "the"
Strike: "developer"
Insert: "seller or other person constituting a majority of unit owners"
16. Page 2, line 9
Following: "buyer"
Insert: ", prior to signing any buy-sell agreement,"
17. Page 2, following line 12
Insert: "(3) Any buy-sell agreement shall provide that it is not effective until 72 hours after the prospective purchaser has received the documents required in subsection (2), and during that delay the prospective purchaser may withdraw his offer without penalty."

AND AS AMENDED
DO PASS

1 HOUSE BILL NO. 452

2 INTRODUCED BY DAILY, QUILICI, PAVLOVICH, D. BROWN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT LICENSING AND
5 REGULATING PERSONS WHO PURPORT TO BE ABLE TO DETECT
6 DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC
7 OPINION OF DECEPTION OR TRUTHFULNESS THROUGH THE USE OF ANY
8 DEVICE OR INSTRUMENT CAPABLE OF MEASURING OR RECORDING
9 BODILY RESPONSES OR PSYCHOPHYSIOLOGICAL ACTIVITIES;
10 PROVIDING LICENSING QUALIFICATIONS; PROVIDING FOR REVOCATION
11 AND SUSPENSION OF LICENSES; RENEWAL OF REQUIRING CONTINUING EDUCATION
12 FOR LICENSES; GRANTING RULEMAKING AUTHORITY TO THE
13 DEPARTMENT OF COMMERCE; AND PROVIDING PENALTIES;--AND
14 PROVIDING--AN--IMMEDIATE--EFFECTIVE--DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17 Section 1. Definitions. In [sections 1 through 14],
18 unless the context clearly indicates otherwise, the
19 following definitions apply:

20 (1) "Department" means the department of commerce
21 provided for in Title 2, chapter 15, part 18.

22 (2) "Examinee" means an individual who is being
23 examined, tested, or questioned by an examiner for the
24 purpose of detecting deception or verifying truthfulness.

25 (3) "Examiner" means any person who:

1 (a) purports to be able to detect deception, verify
2 truthfulness, or provide a diagnostic opinion of deception
3 or truthfulness through the use of a mechanical device or
4 instrument;

5 (b) represents that he can or does offer the service
6 of detecting deception, verifying truthfulness, or providing
7 a diagnostic opinion of deception or truthfulness through
8 the use of a mechanical device or instrument; or

9 (c) uses a mechanical device or instrument to measure
10 or record an individual's bodily responses or
11 psychophysiological activities to enable or assist the
12 detection of deception, the verification of truthfulness, or
13 the reporting of a diagnostic opinion regarding deception or
14 truthfulness.

15 Section 2. Minimum standards for instruments or
16 devices. (1) No person may use or attempt to use any
17 instrument or device for the purpose of detecting deception,
18 verifying truthfulness, or assisting in the reporting of a
19 diagnostic opinion as to deception or truthfulness unless
20 the instrument or device, at a minimum, is capable of
21 visually, permanently, and simultaneously recording
22 indications of an examinee's:

23 (a) cardiovascular pattern;

24 (b) respiratory pattern; and

25 (c) galvanic skin response pattern.

1 (2) Indications of other psychophysiological changes
2 or bodily responses may also be recorded in addition to the
3 minimum standards provided in subsection (1).

4 (3) The operation, use, or attempted use by an
5 examiner of an instrument or device that does not meet the
6 minimum requirements provided in subsection (1) is subject
7 to the penalties provided in [section 14].

8 Section 3. Powers and duties of department. The
9 department shall:

10 (1) administer and enforce the provisions of this
11 chapter;

12 (2) adopt rules in accordance with the Montana
13 Administrative Procedure Act to carry out the provisions of
14 ~~[sections 5, 7 through 10, and 13 THIS ACT];~~ and

15 (3) investigate all complaints concerning violations
16 of [sections 1 through 14] unless the department determines
17 that any such complaint is frivolous or otherwise lacking in
18 merit.

19 Section 4. License required. No person may, unless
20 licensed under the provisions of [sections 1 through 14]:

21 (1) hold himself out to be an examiner;

22 (2) use or attempt to use any mechanical device or
23 instrument for the purpose of detecting deception, verifying
24 truthfulness, or reporting a diagnostic opinion regarding
25 deception or truthfulness;

(3) purport to detect deception or verify truthfulness through mechanical devices or instruments; or

(4) advertise or represent that he can or does offer the service of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding an individual's deception or truthfulness through mechanical devices or instruments.

Section 5. Issuance of examiner's license without examination — reciprocity. (1) Upon application to the department ~~within 6 months after {the effective date of this act}~~ and payment of the required license fee, a person must be issued an examiner's license ~~without examination~~ if he

has satisfied the department by affidavit or otherwise that he:

(a) has actually engaged in the occupation, profession, or practice as an examiner for at least 1 year before applying under this subsection and, during that period, has used instruments that satisfy the standards of [section 2]; and

(b) meets the minimum requirements for licensing provided in [section 6(1) through (5)].

(2) Except as provided in subsection (3), an applicant licensed as a polygraph examiner in another state must, upon application to the department and payment of the required license fee, be issued an examiner's license without

1 examination if he satisfies the department by affidavit or
2 otherwise that he:

3 (a) has legally administered polygraph examinations in
4 the state in which he is licensed for at least 1 year before
5 making application under this subsection; and

6 (b) meets the requirements for licensing set forth in
7 [section 6].

8 (3) No license may be issued without examination under
9 subsection (2) unless the state in which the applicant is
10 licensed has and maintains licensing requirements
11 substantially equivalent to those provided in [sections 1
12 through 14] and grants reciprocity to examiners licensed in
13 Montana under terms similar to those provided in this
14 section.

15 Section 6. Issuance of examiner's license with
16 examination. Upon application and payment of the required
17 fee, an applicant must be granted a license as an examiner
18 if he:

19 (1) is at least 18 years old;

20 (2) is a citizen of the United States;

21 (3) is of good moral character;

22 (4) has successfully completed a course in polygraph
23 instruction at an American polygraph association accredited
24 institution;

25 (5) has a high school diploma from an accredited high

1 school or its equivalent and ~~at least 5 years of continuous~~
 2 ~~investigative experience with a recognized law enforcement~~
 3 ~~or governmental investigative agency; and~~

4 (6) has successfully passed an examination conducted
 5 by the department that tests the applicant's general
 6 knowledge of the use of the polygraph OR A COMPARABLE
 7 EXAMINATION CONDUCTED BY ANOTHER STATE WHOSE LAW REQUIRES
 8 SUCCESSFUL COMPLETION OF THE EXAMINATION AS QUALIFICATION
 9 FOR A LICENSE.

10 Section 7. Fees. (1) The department shall adopt and
 11 charge nonrefundable application, license, and license
 12 renewal fees, commensurate with costs in accordance with
 13 37-1-134.

14 (2) All fees collected by the department under this
 15 section must be deposited in the earmarked revenue fund for
 16 the use of the department in administering [sections 1
 17 through 14].

18 THERE IS A NEW MCA SECTION THAT READS:

19 Section 8. Continuing education. The department shall
 20 establish by rule minimum requirements of professional
 21 education and training, consistent with field of learning
 22 and with the standards of professional organizations, for
 23 renewal of licenses.

24 Section 9. Terms of license — renewal. (1) An
 25 examiner's license is issued for 1 year or such portion as

1 remains at the time of issuance and may be renewed, if it
2 has not been revoked or suspended, on or before the date of
3 expiration of the license. A license that is not renewed
4 expires at midnight on the date set by the department.

5 (2) An examiner whose license has expired may at any
6 time within 2 years after the expiration date obtain a
7 renewal license without examination upon payment of a
8 renewal fee to the department. An examiner whose license
9 expired while he was on active duty in the armed forces of
10 the United States or the national guard may, notwithstanding
11 the provisions of 10-1-605, renew his license without
12 examination within 2 years after discharge from service.

13 Section 10. Form of license -- display of license. (1)

14 A license issued under the provisions of [sections 1 through
15 14] must be in the form determined by the department and
16 must include:

17 (a) the name of the examiner;

18 (b) the name under which the examiner is to operate;

19 and

20 (c) the number of the license and the date on which
21 the license was issued.

22 (2) The license must at all times be posted in a
23 conspicuous place in the principal place of business of the
24 examiner.

25 Section 11. Pocket card. Upon the issuance of a

1 license, a pocket card of such size, design, and content as
2 determined by the department must be issued without charge
3 to the examiner, which card is evidence that the examiner is
4 duly licensed.

5 Section 12. Admissibility of results as evidence.
6 Nothing in [sections 1 through 14] permits the results of a
7 polygraph examination or other test given by an examiner to
8 be introduced or admitted as evidence in a court of law.

9 Section 13. Suspension and revocation. An examiner's
10 license may be suspended for a fixed period or may be
11 revoked if, after a hearing before the department, it has
12 been determined by competent evidence that the examiner:

13 (1) has obtained the license by fraudulent
14 representation;

15 (2) employs misrepresentation, false promises, or
16 misleading advertising for the purpose of directly or
17 indirectly obtaining business;

18 (3) is incompetent for any reason to act as an
19 examiner;

20 (4) has allowed his license to be used by an
21 unlicensed person;

22 (5) has violated the provisions of [sections 1 through
23 14] or any rule adopted by the department;

24 (6) has willfully or negligently aided or abetted
25 another examiner in violating the provisions of [sections 1

1 through 14] or any rule adopted by the department;

2 (7) has failed to provide, within a reasonable amount
3 of time, information requested by the department relating to
4 a formal complaint filed with the department involving the
5 examiner;

6 (8) has been adjudicated by a decree of court to be
7 seriously mentally ill;

8 (9) has failed to inform the examinee of all specific
9 question areas to be explored before questions are actually
10 asked during an examination;

11 (10) has conducted an examination without having
12 informed the examinee that:

13 (a) he has the right to refuse to participate in the
14 examination;

15 (b) he has the right to halt the examination in
16 progress at any time;

17 (c) he is not required to answer any questions or give
18 any information; and

19 (d) any information he volunteers could be used
20 against him or made available to the party requesting the
21 examination unless otherwise agreed to in writing; or

22 (11) has failed to inform the examinee of the results
23 of an examination if requested.

24 Section 14. Hearing. Before refusing an application or
25 suspending or revoking a license, the department shall

1 notify the applicant or examiner by mail not less than 30
2 days before taking any action. The notice must advise the
3 applicant of the intended action and must include a
4 statement that the applicant or examiner may request a
5 hearing within 20 days of receipt of the notice. If the
6 applicant or examiner requests a hearing within that period,
7 a hearing must be granted, and contested case provisions of
8 the Montana Administrative Procedure Act apply to the
9 hearing. An applicant or examiner who is aggrieved by a
10 final decision in a contested case is entitled to judicial
11 review under the Montana Administrative Procedure Act.

12 Section 15. Penalty. Any person who violates any of
13 the provisions of [sections 1 through 14] is guilty of a
14 misdemeanor and is punishable by a fine of not more than
15 \$500 or by imprisonment in the county jail for a period not
16 to exceed 6 months or both such fine and imprisonment.

17 ~~Section 15. Effective dates. This act is effective on~~
18 ~~passage and approval.~~

19 Section 16. Codification instruction. Sections 1
20 through 14 are intended to be codified as an integral part
21 of Title 37, and the provisions of Title 37, chapter 1,
22 apply to sections 1 through 14, except that nothing
23 contained in Title 37, chapter 1, grants additional
24 rulemaking authority to the department for the purpose of
25 administering this act.

-End-

VISITORS' REGISTER

HOUSE

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COMMITTEE

BILL

HB 452

Date _____

1/28/83

SPONSOR

[illegible]

IF YOU CARE TO WRITE COMMENTS, ASK SECRETARY FOR LONGER FORM.

PLEASE LEAVE PREPARED STATEMENT WITH SECRETARY.