

SENATE BILL 476

IN THE SENATE

February 12, 1979	Introduced and referred to Committee on Judiciary.
February 13, 1979	Fiscal note requested.
February 19, 1979	Fiscal note returned.
	Committee recommend bill, as amended.
February 20, 1979	Printed and placed on members' desks.
February 21, 1979	Second reading, as amended.
February 22, 1979	Considered correctly engrossed.
February 23, 1979	Third reading, passed.

IN THE HOUSE

February 27, 1979	Introduced and referred to Committee on Judiciary.
March 15, 1979	Committee recommend bill, not concurred.
March 17, 1979	Report adopted.

IN THE SENATE

March 19, 1979	Returned from House, not concurred.
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Senate BILL NO. 476
Van Valkenburg Ryan

INTRODUCED BY _____
A BILL FOR AN ACT ENTITLED: "AN ACT TO LICENSE AND REGULATE PERSONS WHO PURPORT TO BE ABLE TO DETECT DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC OPINION OF EITHER THROUGH THE USE OF ANY DEVICE OR INSTRUMENTATION AS LIE DETECTORS, FORENSIC POLYGRAPHS, DECEPTOGRAPHS, EMOTIONAL STRESS METERS OR SIMILAR OR RELATED DEVICES AND INSTRUMENTS; TO CREATE A BOARD OF FORENSIC POLYGRAPH EXAMINERS WITH LICENSING AND REGULATORY POWERS OVER ALL SUCH PERSONS AND INSTRUMENTS; TO ESTABLISH MINIMUM STANDARDS AND REQUIREMENTS FOR ALL SUCH INSTRUMENTATION OR DEVICES; AND TO PROHIBIT THE USE OF INSTRUMENTS OR DEVICES WHICH DO NOT MEET MINIMUM STANDARDS AND REQUIREMENTS."

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

- Section 1. Board of forensic polygraph examiners. (1) There is a board of forensic polygraph examiners.
- (2) The board consists of five members appointed by the governor:
- (a) Two members shall be public examiners employed by separate and distinct law enforcement agencies who are at the time of appointment licensed, or in the case of the initial board, who fulfill the requirements for a license

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under the provisions of [sections 2 through 16], and who have at least 5 consecutive years of law enforcement experience and at least 2 consecutive years of experience administering polygraph examinations prior to their appointments.

(b) Two members shall be private examiners employed by separate and distinct persons or firms who are at the time of appointment licensed, or in the case of the initial board, who fulfill the requirements for a license under [sections 2 through 16], and who have at least 5 consecutive years of experience administering polygraph examinations prior to their appointments.

(c) One member shall be a representative of the public at large who is not engaged in administering polygraph examinations.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 2. Definitions. As used in [sections 2 through 16], the following definitions apply:

(1) "Board" means the board of forensic polygraph examiners provided for in [section 1].

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

1 truthfulness.

2 (3) "Examiner" means a person, other than an intern,
3 who does any of the following:

4 (a) purports to detect deception, verify truthfulness,
5 or provide a diagnostic opinion of either of these through
6 instrumentation or the use of a mechanical device;

7 (b) represents that he can or does offer the service
8 of detecting deception, verifying truthfulness, or providing
9 a diagnostic opinion of either of these through
10 instrumentation or the use of a mechanical device;

11 (c) uses instrumentation or a mechanical device to
12 measure or record an individual's bodily responses or
13 psycho-physiological activities to enable or assist the
14 detection of deception, the verification of truthfulness, or
15 the reporting of a diagnostic opinion regarding either of
16 these.

17 (4) "Intern" means an individual who is actively
18 engaged in an approved training program pursuant to becoming
19 an examiner.

20 (5) "Private examiner" means an examiner who performs
21 or purports to perform the service of detecting deception or
22 verifying truthfulness in any instance or under any
23 circumstance other than as a public examiner.

24 (6) "Public examiner" means an examiner who performs
25 or purports to perform the service of detecting or verifying

1 truthfulness exclusively in his official capacity as an
2 employee of an agency of the state or local government.

3 Section 3. Minimum standards for instruments or
4 devices. (1) A person may not use or attempt to use any
5 instrument or device for the purpose of detecting deception,
6 verifying truthfulness, or assisting in the reporting of a
7 diagnostic opinion as to either of these unless the
8 instrument or device, at a minimum, is capable of recording
9 visually, permanently, and simultaneously indications of an
10 individual's cardiovascular pattern and changes therein and
11 an individual's respiratory pattern and changes therein.

12 (2) Indications of other psycho-physiological changes
13 or bodily responses may also be recorded in addition to the
14 minimum standards stipulated in subsection (1).

15 (3) The operation, use, or attempted use of an
16 instrument or device for the purposes described that does
17 not meet the minimum requirements stipulated in subsection
18 (1) is subject to penalties as provided in [section 16].

19 Section 4. Organization -- compensation and expenses
20 of members. The board shall elect a chairman,
21 secretary-treasurer, and other necessary officers. Board
22 members may serve for a compensation of \$25 a day for
23 attending board meetings and shall be reimbursed for travel
24 expenses as provided for in 2-18-501 through 2-18-503, as
25 amended.

1 Section 5. Meetings -- quorum -- vote required for
2 action -- rulemaking power. (1) The board shall meet at
3 least once every 6 months at a place, day, and hour
4 determined by the board.

5 (2) A majority of the members of the board constitutes
6 a quorum, and the vote of a majority of the board members is
7 sufficient for passage of any business or proposal that
8 comes before the board.

9 (3) The board may adopt and enforce rules in
10 accordance with the Montana Administrative Procedure Act to
11 carry out the purposes of [sections 2 through 16] including
12 rules for the dissemination, retention, and destruction of
13 polygraph results to protect the general public.

14 Section 6. License required. No person without first
15 securing a license as provided in [sections 2 through 16]
16 may:

17 (1) use or attempt to use any instrumentation or
18 mechanical device for the purpose of detecting deception,
19 verifying truthfulness, or reporting a diagnostic opinion
20 regarding either of these;

21 (2) purport to detect deception or verify truthfulness
22 through instrumentation or mechanical devices;

23 (3) advertise or represent that he can or does offer
24 the service of detecting deception, verifying truthfulness,
25 or reporting a diagnostic opinion regarding an individual's

1 deception or truthfulness through instrumentation or
2 mechanical devices;

3 (4) attempt to hold himself out as a polygraph
4 examiner or refer to himself by any terminology which would
5 indicate or convey the impression that he can or does
6 purport to detect deception or verify truthfulness through
7 instrumentation or mechanical devices;

8 (5) use any of the technical descriptive terminology
9 peculiar to or interchangeable with the administration of
10 polygraph examinations, the interpretation thereof, or the
11 detection of deception and the verification of truthfulness
12 resulting therefrom.

13 Section 7. Issuance of examiner's license without
14 examination -- temporary examiner's license. (1) A person
15 upon application to the board dated within 1 year after [the
16 effective date of this act] and upon payment of the required
17 license fee shall be issued an examiner's license without
18 examination if he satisfies the registration requirements
19 established by the board and satisfies the board by
20 affidavit or otherwise that he is qualified as follows:

21 (a) he has actually engaged in the occupation,
22 profession, or practice as an examiner prior to January 1,
23 1975, and continuously since that time, utilizing
24 exclusively during that period instrumentation which
25 satisfies the requirements of [section 3];

1 (b) he has actually engaged in an internship training
 2 program, or similar arrangement on a full-time basis prior
 3 to [the effective date of this act] or has satisfactorily
 4 completed an internship training program or similar
 5 arrangement and has engaged in the occupation, profession,
 6 or practice as an examiner or intern prior to [the effective
 7 date of this act], utilizing exclusively during that period
 8 instrumentation that satisfies the requirements of [section
 9 3]; or

10 (c) he substantially fulfills the requirements for
 11 licensing as set forth in [section 8].

12 (2) The board may issue a temporary examiner's license
 13 to an applicant who otherwise qualifies under [section 8]
 14 except for the time and experience factors set forth in
 15 [section 8] to enable the fulfillment of these requirements
 16 by the applicant.

17 Section 8. Issuance of examiner's license with
 18 examination. (1) Upon application and payment of the
 19 required fee, an applicant may be granted a license as an
 20 examiner if he:

21 (a) is at least 18 years of age;

22 (b) is a citizen of the United States;

23 (c) has not been convicted of a felony within 5 years
 24 prior to his application;

25 (d) has either of the following:

1 (i) an academic degree at least at the baccalaureate
 2 level from an accredited college or university;

3 (ii) a high school diploma or its equivalent from an
 4 accredited high school and at least 5 years of continuous
 5 investigative experience with a recognized law enforcement
 6 or governmental investigative agency;

7 (e) has been a resident of the state for at least 6
 8 months immediately prior to the date of his application; and

9 (f) has satisfactorily passed the required qualifying
 10 examination conducted by the board or under its supervision
 11 to determine his competency to obtain a license to practice
 12 as an examiner.

13 (2) The applicant must satisfy all the other
 14 requirements in this section before taking the qualification
 15 examination.

16 Section 9. Intern's license. (1) A person may receive
 17 a license as an intern if he is engaging in an approved
 18 internship training program and he substantially fulfills
 19 the basic requirements of [this act] for licensing as an
 20 examiner.

21 (2) The applicant need not meet the experience and
 22 residence requirements in [section 8] to qualify for an
 23 intern's license.

24 Section 10. Temporary examiner's license. A person may
 25 receive a temporary examiner's license if he qualifies under

1 [section 7] r if he does not meet the residence
2 requirements set forth in [section 8] but does substantially
3 fulfill all the other qualifications for licensing as an
4 examiner under [sections 2 through 16].

5 Section 11. Licensing fees. The nonrefundable fees to
6 accompany applications for licensure under [this act] are:

- 7 (1) private examiner's license, \$100; renewal, \$50;
- 8 (2) public examiner's license, \$50; renewal, \$25;
- 9 (3) temporary examiner's license, \$100;
- 10 (4) intern's license, \$25;
- 11 (5) licensing examination fee, \$50.

12 Section 12. Terms of licenses -- renewal of licenses.

13 (1) Examiners' licenses and temporary examiners' licenses
14 are issued for 1 calendar year or such portion as remains at
15 the time issued. Each license may be renewed before December
16 31 of each year. A license that is not renewed expires at
17 midnight on December 31.

18 (2) Intern licenses are issued for 6 calendar months
19 and may be renewed for additional 6-month periods if the
20 intern satisfies the requirements of the board regarding the
21 internship.

22 Section 13. Renewal of licenses. The license of an
23 examiner that has not been revoked or suspended may be
24 renewed annually upon application and payment of the
25 required fee by the examiner.

1 Section 14. Suspension and revocation. An examiner's
2 license may be suspended for a fixed period or may be
3 revoked if after a hearing before the board, it is
4 determined that the examiner:

- 5 (1) obtained the license by fraudulent representation;
- 6 (2) has been convicted of a felony or a crime
7 involving moral turpitude, including but not limited to
8 dishonesty, fraud, or unauthorized divulging or selling of
9 information or evidence;
- 10 (3) employs misrepresentation, false promises, or
11 misleading advertising for the purpose of directly or
12 indirectly obtaining business or interns;
- 13 (4) is incompetent to act as an examiner;
- 14 (5) allowed his license to be used by an unlicensed
15 person;
- 16 (6) violated the provisions of [sections 2 through 16]
17 or a rule adopted by the board;
- 18 (7) is mentally ill;
- 19 (8) asked test questions during a polygraph
20 examination regarding the examinee's sexual practices, labor
21 unions, political or religious affiliations, or his marital
22 relationship, except where such questions have a bearing on
23 the areas or issues under examination;
- 24 (9) failed to inform the examinee of all specific
25 question areas to be explored prior to their actual

1 exploration during an examination;

2 (10) conducted an examination without having informed
3 the examinee that:

4 (a) he has a right to refuse or accept the
5 examination;

6 (b) he cannot be discharged from employment solely
7 because he refuses or accepts the examination;

8 (c) he has a right to halt the examination in progress
9 at any time;

10 (d) he is not required to answer any questions or give
11 any information;

12 (e) any information he volunteers could be used
13 against him or made available to the party requesting the
14 examination unless otherwise specified and agreed to in
15 writing.

16 Section 15. Admissibility of examination or test
17 results. Nothing in [sections 2 through 16] may be construed
18 to permit or alter the status of or admissibility of a
19 polygraph examination or lie detector test result as
20 evidence in a court. The decision for or against the
21 admissibility is a prerogative of the court.

22 Section 16. Penalty. A person who violates [sections 2
23 through 16] is guilty of a misdemeanor and subject to a fine
24 not exceeding \$500 or imprisonment not exceeding 6 months,
25 or both.

1 Section 17. Severability. If a part of this act is
2 invalid, all valid parts that are severable from the invalid
3 part remain in effect. If a part of this act is invalid in
4 one or more of its applications, the part remains in effect
5 in all valid applications that are severable from the
6 invalid applications.

-End-

STATE OF MONTANA

REQUEST NO. 335-79

FISCAL NOTE

Form BD-15

In compliance with a written request received Feb. 17, 1979, there is hereby submitted a Fiscal Note for SB 476 pursuant to Chapter 53, Laws of Montana, 1965 - Thirty-Ninth Legislative Assembly.

Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

DESCRIPTION OF PROPOSED LEGISLATION:

To create a board of forensic polygraph examiners; to license and regulate person who use any device or instrumentation as lie detectors, polygraphs, deceptographs, emotional stress meters or similar devices or instruments.

ASSUMPTIONS:

1. The Board will consist of 5 members.
2. The Board will hold 2 meetings per year.
3. There are 16 individuals in the state currently qualified to take or use polygraphs.
4. 10 new examiners will be licensed.
5. .10 FTE will be required.

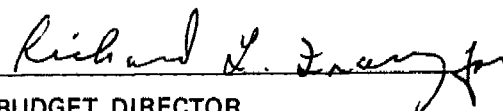
FISCAL IMPACT:

Additional revenue under proposed law \$2,500

It is assumed that the Board is intended to be self-supporting; therefore, expenditures will not exceed revenues.

TECHNICAL NOTE:

The bill does not provide the department to which the Board is attached. Also, there is no provision for depositing funds received into either the General Fund or an Earmarked Revenue Account.


BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2/17/79

SENATE BILL NO. 476

INTRODUCED BY VAN VALKENBURG, RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO LICENSE AND REGULATE PERSONS WHO PURPORT TO BE ABLE TO DETECT DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC OPINION OF EITHER THROUGH THE USE OF ANY DEVICE OR INSTRUMENTATION AS LIE DETECTORS, FORENSIC POLYGRAPHS, DECEPTOGRAPHS, EMOTIONAL STRESS METERS OR SIMILAR OR RELATED DEVICES AND INSTRUMENTS; TO CREATE A BOARD OF FORENSIC POLYGRAPH EXAMINERS WITH LICENSING AND REGULATORY POWERS OVER ALL SUCH PERSONS AND INSTRUMENTS; TO ESTABLISH MINIMUM STANDARDS AND REQUIREMENTS FOR ALL SUCH INSTRUMENTATION OR DEVICES; AND TO PROHIBIT THE USE OF INSTRUMENTS OR DEVICES WHICH DO NOT MEET MINIMUM STANDARDS AND REQUIREMENTS PROVIDING THAT LIE DETECTOR TEST RESULTS ARE NOT ADMISSIBLE AS EVIDENCE."

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

Section 1. Board of forensic polygraph examiners. (1)

There is a board of forensic polygraph examiners.

(2) The board consists of five members appointed by the governor.

(a) Two members shall be public examiners employed by separate and distinct law enforcement agencies who are at the time of appointment licensed, or in the case of the

initial board, who fulfill the requirements for a license under the provisions of [sections 2 through 16] and who have at least 5 consecutive years of law enforcement experience and at least 2 consecutive years of experience administering polygraph examinations prior to their appointments.

(b) Two members shall be private examiners employed by separate and distinct persons or firms who are at the time of appointment licensed, or in the case of the initial board, who fulfill the requirements for a license under [sections 2 through 16] and who have at least 5 consecutive years of experience administering polygraph examinations prior to their appointments.

(c) One member shall be a representative of the public at large who is not engaged in administering polygraph examinations.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 1. Definitions. As used in [sections 2 through 16 THIS ACT], the following definitions apply:

(1) "Board" means the board of forensic polygraph examiners provided for in [section 1].

(2) (1) "Examinee" means an individual who is being examined, tested, or questioned by an examiner or intern for

1 the purpose of detecting deception or verifying
2 truthfulness.

3 ~~(3)(2)~~ "Examiner" means a person ~~other than an~~
4 intern who does any of the following:

5 (a) purports to detect deception, verify truthfulness,
6 or provide a diagnostic opinion of either of these through
7 instrumentation or the use of a mechanical device;

8 (b) represents that he can or does offer the service
9 of detecting deception, verifying truthfulness, or providing
10 a diagnostic opinion of either of these through
11 instrumentation or the use of a mechanical device;

12 (c) uses instrumentation or a mechanical device to
13 measure or record an individual's bodily responses or
14 psycho-physiological activities to enable or assist the
15 detection of deception, the verification of truthfulness, or
16 the reporting of a diagnostic opinion regarding either of
17 these.

18 ~~(4) "Intern" means an individual who is actively~~
19 ~~engaged in an approved training program pursuant to becoming~~
20 ~~an examiner.~~

21 ~~(5) "Private examiner" means an examiner who performs~~
22 ~~or purports to perform the service of detecting deception or~~
23 ~~verifying truthfulness in any instance or under any~~
24 ~~circumstance other than as a public examiner.~~

25 ~~(6) "Public examiner" means an examiner who performs~~

1 ~~or purports to perform the service of detecting or verifying~~
2 ~~truthfulness exclusively in his official capacity as an~~
3 ~~employee of an agency of the state or local government.~~

4 Section 2. Minimum standards for instruments or
5 devices. (1) A person may not use or attempt to use any
6 instrument or device for the purpose of detecting deception,
7 verifying truthfulness, or assisting in the reporting of a
8 diagnostic opinion as to either of these unless the
9 instrument or device, at a minimum, is capable of recording
10 visually, permanently, and simultaneously indications of an
11 individual's cardiovascular pattern and changes therein and
12 an individual's respiratory pattern and changes therein.

13 (2) Indications of other psycho-physiological changes
14 or bodily responses may also be recorded in addition to the
15 minimum standards stipulated in subsection (1).

16 ~~(3) The operation, use, or attempted use of an~~
17 ~~instrument or device for the purposes described that does~~
18 ~~not meet the minimum requirements stipulated in subsection~~
19 ~~(1) is subject to penalties as provided in [section 16].~~

20 Section 4. Organization, compensation and expenses
21 of members. The board shall elect a chairman,
22 secretary, treasurer, and other necessary officers. Board
23 members may serve for a compensation of \$625 a day for
24 attending board meetings and shall be reimbursed for travel
25 expenses as provided for in 2-18-501 through 2-18-503, as

1 amended

2 Section 5. Meetings. quorum. vote required for
 3 action. rulemaking powers. (1) The board shall meet at
 4 least once every 6 months at a place, day, and hour
 5 determined by the board.

6 (2) A majority of the members of the board constitutes
 7 a quorum, and the vote of a majority of the board members is
 8 sufficient for passage of any business or proposal that
 9 comes before the board.

10 (3) The board may adopt and enforce rules in
 11 accordance with the Montana Administrative Procedure Act to
 12 carry out the purposes of [sections 2 through 16] including
 13 rules for the dissemination, retention, and destruction of
 14 polygraph results to protect the general public.

15 Section 6. License required. No person without first
 16 securing a license as provided in [sections 2 through 16]
 17 may:

18 (1) use or attempt to use any instrumentation or
 19 mechanical device for the purpose of detecting deception,
 20 verifying truthfulness, or reporting a diagnostic opinion
 21 regarding either of these;

22 (2) purport to detect deception or verify truthfulness
 23 through instrumentation or mechanical devices;

24 (3) advertise or represent that he can or does offer
 25 the service of detecting deception, verifying truthfulness,

1 or reporting a diagnostic opinion regarding an individual's
 2 deception or truthfulness through instrumentation or
 3 mechanical devices;

4 (4) attempt to hold himself out as a polygraph
 5 examiner or refer to himself by any terminology which would
 6 indicate or convey the impression that he can or does
 7 purport to detect deception or verify truthfulness through
 8 instrumentation or mechanical devices;

9 (5) use any of the technical descriptive terminology
 10 peculiar to or interchangeable with the administration of
 11 polygraph examinations, the interpretation thereof, or the
 12 detection of deception and the verification of truthfulness
 13 resulting therefrom.

14 Section 7. Issuance of examiner's license without
 15 examination. temporary examiner's license. (1) A person
 16 upon application to the board dated within 1 year after [the
 17 effective date of this act] and upon payment of the required
 18 license fee shall be issued an examiner's license without
 19 examination if he satisfies the registration requirements
 20 established by the board and satisfies the board by
 21 affidavit or otherwise that he is qualified as follows:

22 (a) he has actually engaged in the occupation,
 23 profession, or practice as an examiner prior to January 1,
 24 1975, and continuously since that time, utilizing
 25 exclusively during that period instrumentation which

1 satisfies the requirements of [section 3]†
 2 (b) he has actually engaged in an internship training
 3 program or similar arrangement on a full-time basis prior
 4 to [the effective date of this act] or has satisfactorily
 5 completed an internship training program or similar
 6 arrangement and has engaged in the occupation profession
 7 or practice as an examiner or intern prior to [the effective
 8 date of this act] utilizing exclusively during that period
 9 instrumentation that satisfies the requirements of [section
 10 3]† or
 11 (c) he substantially fulfills the requirements for
 12 licensing as set forth in [section 8]†
 13 (2) The board may issue a temporary examiner's license
 14 to an applicant who otherwise qualifies under [section 8]†
 15 except for the time and experience factors set forth in
 16 [section 8] to enable the fulfillment of these requirements
 17 by the applicants
 18 Section 8. Issuance of examiner's license with
 19 examinations (1) Upon application and payment of the
 20 required fee an applicant may be granted a license as an
 21 examiner if he:
 22 (a) is at least 18 years of age†
 23 (b) is a citizen of the United States†
 24 (c) has not been convicted of a felony within 5 years
 25 prior to his application†

1 (d) has either of the following†
 2 (i) an academic degree at least at the baccalaureate
 3 level from an accredited college or university†
 4 (ii) a high school diploma or its equivalent from an
 5 accredited high school and at least 5 years of continuous
 6 investigative experience with a recognized law enforcement
 7 or governmental investigative agency†
 8 (e) has been a resident of the state for at least 6
 9 months immediately prior to the date of his application† and
 10 (f) has satisfactorily passed the required qualifying
 11 examination conducted by the board or under its supervision
 12 to determine his competency to obtain a license to practice
 13 as an examiner†
 14 (2) The applicant must satisfy all the other
 15 requirements in this section before taking the qualification
 16 examination
 17 Section 9. Intern's license (1) A person may receive
 18 a license as an intern if he is engaging in an approved
 19 internship training program and he substantially fulfills
 20 the basic requirements of [this act] for licensing as an
 21 examiner†
 22 (2) The applicant need not meet the experience and
 23 residence requirements in [section 8] to qualify for an
 24 intern's license†
 25 Section 10. Temporary examiner's license (1) A person

1 may receive a temporary examiner's license if he qualifies
 2 under [section 7] or if he does not meet the residence
 3 requirements set forth in [section 8] but does substantially
 4 fulfill all the other qualifications for licensing as an
 5 examiner under [sections 2 through 16].

6 Section 11. Licensing fees. The nonrefundable fees to
 7 accompany applications for licensure under [this act] are:
 8 (1) private examiner's license \$100; renewal \$50;
 9 (2) public examiner's license \$50; renewal \$25;
 10 (3) temporary examiner's license \$100;
 11 (4) intern's license \$25;
 12 (5) licensing examination fee \$50.

13 Section 12. Terms of licenses. Renewal of licenses:
 14 (1) Examiner's licenses and temporary examiner's licenses
 15 are issued for 1 calendar year or such portion as remains at
 16 the time issued. Each license may be renewed before December
 17 31 of each year. A license that is not renewed expires at
 18 midnight on December 31.

19 (2) Intern licenses are issued for 6 calendar months
 20 and may be renewed for additional 6-month periods if the
 21 intern satisfies the requirements of the board regarding the
 22 internships.

23 Section 13. Renewal of licenses. The license of an
 24 examiner that has not been revoked or suspended may be
 25 renewed annually upon application and payment of the

1 required fee by the examiner.

2 Section 3. Suspension and revocation **PROHIBITED**

3 **PRACTICES.** An examiner's license may be suspended for a
 4 fixed period or may be revoked if after a hearing before the
 5 board it is determined that the examiner:

- 6 (1) obtained the license by fraudulent representation;
- 7 (2) has been convicted of a felony or a crime
- 8 involving moral turpitude including but not limited to
- 9 dishonesty, fraud or unauthorized divulging or selling of
- 10 information or evidence;
- 11 (3) employs misrepresentation, false promises, or
- 12 misleading advertising for the purpose of directly or
- 13 indirectly obtaining business or intern;
- 14 (4) is incompetent to act as an examiner;
- 15 (5) allowed his license to be used by an unlicensed
- 16 person;
- 17 (6) violated the provisions of [sections 2 through 16]
- 18 or a rule adopted by the board;
- 19 (7) is mentally ill;
- 20 (8) asked (1) NO EXAMINER MAY:

21 (A) ASK test questions during a polygraph examination
 22 regarding the examinee's sexual practices, labor unions,
 23 political or religious affiliations, or his marital
 24 relationship, except where such questions have a bearing on
 25 the areas or issues under examination;

1 ~~(9)(B)~~ failed **FAIL** to inform the examinee of all
2 specific question areas to be explored prior to their actual
3 exploration during an examination; OR

4 ~~(10)(L)~~ conducted **CONDUCT** an examination without
5 having informed **FIRST INFORMING** the examinee that:

6 ~~(i)~~ he has a right to refuse or accept the
7 examination;

8 ~~(ii)~~ he cannot be discharged from employment solely
9 because he refuses or accepts the examination;

10 ~~(iii)~~ he has a right to halt the examination in
11 progress at any time;

12 ~~(iv)~~ he is not required to answer any questions or
13 give any information;

14 ~~(v)~~ any information he volunteers could be used
15 against him or made available to the party requesting the
16 examination unless otherwise specified and agreed to in
17 writing.

18 (2) REFUSAL TO TAKE THE EXAMINATION MAY NOT BE USED IN
19 ANY MANNER WHATSOEVER.

20 Section 4. Admissibility **ADMISSION** of examination or
21 test results **AS EVIDENCE PROHIBITED**. Nothing in {sections--2
22 through--16} may be construed to permit or alter the status
23 of or admissibility of a polygraph **POLYGRAPH** examination or
24 lie detector test result **RESULTS MAY NOT BE ADMITTED** as
25 evidence in a **ANY COURT OR ADMINISTRATIVE PROCEEDING**. The

1 decision--for--or--against--the--admissibility--is--a--prerogative
2 of--the--courts

3 Section 5. Penalty **CRIMINAL PENALTY**. A person who
4 violates [sections--2--through--16 **THIS ACT**] is guilty of a
5 misdemeanor and subject to a fine not exceeding \$500 or
6 imprisonment not exceeding 6 months, or both.

7 SECTION 6. THERE IS A NEW MCA SECTION THAT READS:

8 Civil action for damages. A person who suffers damages
9 as a result of a violation of [this act] may bring a civil
10 action for damages against the examiner who violated [this
11 act]. In such an action, the measure of damages is three
12 times the sum that would compensate the plaintiff for the
13 actual detriment he has suffered.

14 Section 7. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

-End-

SENATE BILL NO. 476

INTRODUCED BY VAN VALKENBURG, RYAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO LICENSE AND REGULATE PERSONS WHO PURPORT TO BE ABLE TO DETECT DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC OPINION OF EITHER THROUGH THE USE OF ANY DEVICE OR INSTRUMENTATION AS LIE DETECTORS, FORENSIC POLYGRAPHS, DECEPTOGRAPHS, EMOTIONAL STRESS METERS OR SIMILAR OR RELATED DEVICES AND INSTRUMENTS; TO CREATE A BOARD OF FORENSIC POLYGRAPH EXAMINERS WITH LICENSING AND REGULATORY POWERS OVER ALL SUCH PERSONS AND INSTRUMENTS; TO ESTABLISH MINIMUM STANDARDS AND REQUIREMENTS FOR ALL SUCH INSTRUMENTATION OR DEVICES; AND TO PROHIBIT THE USE OF INSTRUMENTS OR DEVICES WHICH DO NOT MEET MINIMUM STANDARDS AND REQUIREMENTS ~~PROVIDING THAT LIE DETECTOR TEST RESULTS ARE NOT ADMISSIBLE AS EVIDENCE.~~"

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

Section 1. Board of forensic polygraph examiners. (1)

There is a board of forensic polygraph examiners.

(2) The board consists of five members appointed by the governor.

(a) Two members shall be public examiners employed by separate and distinct law enforcement agencies who are at the time of appointment licensed or in the case of the

initial board who fulfill the requirements for a license under the provisions of [sections 2 through 16] and who have at least 5 consecutive years of law enforcement experience and at least 2 consecutive years of experience administering polygraph examinations prior to their appointments.

(b) Two members shall be private examiners employed by separate and distinct persons or firms who are at the time of appointment licensed or in the case of the initial board who fulfill the requirements for a license under [sections 2 through 16] and who have at least 5 consecutive years of experience administering polygraph examinations prior to their appointments.

(c) One member shall be a representative of the public at large who is not engaged in administering polygraph examinations.

(3) Each member shall serve for a term of 4 years.

(4) The board is allocated to the department for administrative purposes only as prescribed in 2-15-121.

Section 1. Definitions. As used in [sections 2 through 16 THIS ACT], the following definitions apply:

(1) "Board" means the board of forensic polygraph examiners provided for in [section 1].

(2)(1) "Examinee" means an individual who is being examined, tested, or questioned by an examiner or intern for

1 the purpose of detecting deception or verifying
2 truthfulness.

3 ~~(3)(2)~~ "Examiner" means a person ~~other than~~ an
4 intern who does any of the following:

5 (a) purports to detect deception, verify truthfulness,
6 or provide a diagnostic opinion of either of these through
7 instrumentation or the use of a mechanical device;

8 (b) represents that he can or does offer the service
9 of detecting deception, verifying truthfulness, or providing
10 a diagnostic opinion of either of these through
11 instrumentation or the use of a mechanical device;

12 (c) uses instrumentation or a mechanical device to
13 measure or record an individual's bodily responses or
14 psycho-physiological activities to enable or assist the
15 detection of deception, the verification of truthfulness, or
16 the reporting of a diagnostic opinion regarding either of
17 these.

18 ~~(4)~~ "Intern" means an individual who is actively
19 engaged in an approved training program pursuant to becoming
20 an examiner.

21 ~~(5)~~ "Private examiner" means an examiner who performs
22 or purports to perform the service of detecting deception or
23 verifying truthfulness in any instance or under any
24 circumstance other than as a public examiner.

25 ~~(6)~~ "Public examiner" means an examiner who performs

1 ~~or purports to perform the service of detecting or verifying~~
2 ~~truthfulness exclusively in his official capacity as an~~
3 ~~employee of an agency of the state or local government.~~

4 Section 2. Minimum standards for instruments or
5 devices. (1) A person may not use or attempt to use any
6 instrument or device for the purpose of detecting deception,
7 verifying truthfulness, or assisting in the reporting of a
8 diagnostic opinion as to either of these unless the
9 instrument or device, at a minimum, is capable of recording
10 visually, permanently, and simultaneously indications of an
11 individual's cardiovascular pattern and changes therein and
12 an individual's respiratory pattern and changes therein.

13 (2) Indications of other psycho-physiological changes
14 or bodily responses may also be recorded in addition to the
15 minimum standards stipulated in subsection (1).

16 ~~(3)~~ ~~The operation, use, or attempted use of~~ an
17 ~~instrument or device for the purposes described that does~~
18 ~~not meet the minimum requirements stipulated in subsection~~
19 ~~(1) is subject to penalties as provided in [section 16].~~

20 Section 4. Organization, compensation and expenses
21 of members. The board shall elect a chairman,
22 secretary, treasurer, and other necessary officers. Board
23 members may serve for a compensation of \$25 a day for
24 attending board meetings and shall be reimbursed for travel
25 expenses as provided for in 2-10-501 through 2-10-503, as

1 amended

2 Section 5--Meetings-----quorum-----vote-required-for
 3 action-----rulemaking-power--(1)--The--board--shall--meet--at
 4 least--once--every--6--months--at--a--place--day--and--hour
 5 determined-by-the-board

6 (2)--A-majority-of-the-members-of-the-board-constitutes
 7 a-quorum--and-the-vote-of-a-majority-of-the-board-members-is
 8 sufficient-for-passage-of-any-business--or--proposal--that
 9 comes-before-the-board

10 (3)--The--board--may--adopt--and--enforce--rules--in
 11 accordance-with-the-Montana-Administrative-Procedure-Act--to
 12 carry--out-the-purposes-of-[sections-2-through-16]-including
 13 rules-for-the-dissemination--retention--and--destruction--of
 14 polygraph-results-to-protect-the-general-public

15 Section--6--License-required--No-person-without-first
 16 securing--a--license--as-provided-in-[sections-2-through-16]
 17 may

18 (1)--use--or--attempt--to--use--any--instrumentation--or
 19 mechanical--device--for--the-purpose-of-detecting-deception--
 20 verifying-truthfulness--or-reporting--a--diagnostic--opinion
 21 regarding-either-of-these

22 (2)--purport-to-detect-deception-or-verify-truthfulness
 23 through-instrumentation-or-mechanical-devices

24 (3)--advertise--or--represent-that-he-can-or-does-offer
 25 the-service-of-detecting-deception--verifying--truthfulness

1 or--reporting-a-diagnostic-opinion-regarding-an-individual's
 2 deception--or--truthfulness--through--instrumentation--or
 3 mechanical-devices

4 (4)--attempt--to--hold--himself--out--as--a--polygraph
 5 examiner--or--refer-to-himself-by-any-terminology-which--would
 6 indicate--or--convey--the--impression--that--he--can--or--does
 7 purport-to-detect-deception-or-verify--truthfulness--through
 8 instrumentation-or-mechanical-devices

9 (5)--use--any--of-the-technical--descriptive-terminology
 10 peculiar-to-or-interchangeable-with--the--administration--of
 11 polygraph--examinations--the-interpretation--thereof--or--the
 12 detection-of-deception--and--the-verification-of--truthfulness
 13 resulting--therefrom

14 Section--7--Issuance--of--examiner's--license--without
 15 examination--temporary-examiner's-licenses--(1)--A--person
 16 upon-application-to-the-board-dated-within-1-year-after-[the
 17 effective-date-of-this-act]-and-upon-payment-of-the-required
 18 license--fee--shall--be-issued-on-examiner's-license-without
 19 examination-if-he-satisfies--the--registration--requirements
 20 established--by--the--board--and--satisfies--the--board--by
 21 affidavit-or-otherwise-that-he-is-qualified-as-follows

22 (a)--he--has--actually--engaged--in--the--occupation--
 23 profession--or--practice--as--an-examiner--prior--to--January--17
 24 1975--and--continuously--since--that--time--utilizing
 25 exclusively--during--that--period--instrumentation--which

1 satisfies the requirements of [section 3]†
 2 (b) -- he has actually engaged in an internship training
 3 program -- or -- similar arrangement on a full-time basis prior
 4 to [the effective date of this act] -- or -- has satisfactorily
 5 completed -- an -- internship -- training -- program -- or -- similar
 6 arrangement and has engaged in the occupation -- profession
 7 or practice as an examiner or intern prior to [the effective
 8 date -- of this act] utilizing exclusively during that period
 9 instrumentation that satisfies the requirements of [section
 10 3]† or
 11 (c) -- he substantially fulfills the requirements for
 12 licensing as set forth in [section 8]†
 13 (2) -- The board may issue a temporary examiner's license
 14 to an applicant who otherwise qualifies under [section 8]†
 15 except for the time and experience factors set forth in
 16 [section 8]† to enable the fulfillment of these requirements
 17 by the applicant.
 18 Section 8 -- issuance -- of -- examiner's -- license -- with
 19 examination -- (1) -- Upon application and payment of the
 20 required fee -- an applicant may be granted a license as an
 21 examiner if he†
 22 (a) -- is at least 18 years of age†
 23 (b) -- is a citizen of the United States†
 24 (c) -- has not been convicted of a felony within 5 years
 25 prior to his application†

1 (d) -- has either of the followings†
 2 (i) -- an academic degree at least at the baccalaureate
 3 level from an accredited college or university†
 4 (ii) -- a high school diploma or its equivalent -- from an
 5 accredited high school -- and at least 5 years of continuous
 6 investigative experience with a recognized law enforcement
 7 or governmental investigative agency†
 8 (e) -- has been a resident of the state for at least 6
 9 months immediately prior to the date of his application† and
 10 (f) -- has satisfactorily passed the required qualifying
 11 examination -- conducted by the board or under its supervision
 12 to determine his competency to obtain a license to practice
 13 as an examiner.
 14 (2) -- The applicant -- must -- satisfy -- all -- the -- other
 15 requirements in this section before taking the qualification
 16 examination.
 17 Section 9 -- intern's license -- (1) -- A person may receive
 18 a license as an intern if he is engaging in an approved
 19 internship training program and he substantially fulfills
 20 the basic requirements of [this act] -- for licensing -- as -- an
 21 examiner.
 22 (2) -- The applicant -- need -- not -- meet the experience and
 23 residence requirements in [section 8] -- to -- qualify -- for -- an
 24 intern's license.
 25 Section 10 -- Temporary -- examiner's -- license -- A person

1 may receive a temporary examiner's license if he qualifies
 2 under [section 7] or if he does not meet the residence
 3 requirements set forth in [section 8] but does substantially
 4 fulfill all the other qualifications for licensing as an
 5 examiner under [sections 2 through 16].

6 Section 11. Licensing fees. The nonrefundable fees to
 7 accompany applications for licensure under [this act] are:
 8 (1) private examiner's license - \$100; renewal - \$50;
 9 (2) public examiner's license - \$50; renewal - \$25;
 10 (3) temporary examiner's license - \$100;
 11 (4) intern's license - \$25;
 12 (5) licensing examination fee - \$50.

13 Section 12. Terms of licenses. Renewal of licenses.
 14 (1) Examiners' licenses and temporary examiners' licenses
 15 are issued for a calendar year or such portion as remains at
 16 the time issued. Each license may be renewed before December
 17 31 of each year. A license that is not renewed expires at
 18 midnight on December 31.

19 (2) Intern licenses are issued for 6 calendar months
 20 and may be renewed for additional 6-month periods if the
 21 intern satisfies the requirements of the board regarding the
 22 internship.

23 Section 13. Renewal of licenses. The license of an
 24 examiner that has not been revoked or suspended may be
 25 renewed annually upon application and payment of the

1 required fee by the examiner.

2 Section 3. Suspension and revocation **PROHIBITED**

3 **PRACTICES.** An examiner's license may be suspended for a
 4 fixed period or may be revoked if after a hearing before the
 5 board it is determined that the examiner:

6 (1) obtained the license by fraudulent representation;
 7 (2) has been convicted of a felony or a crime
 8 involving moral turpitude, including but not limited to
 9 dishonesty, fraud, or unauthorized divulging or selling of
 10 information or evidence;

11 (3) employs misrepresentation, false promises, or
 12 misleading advertising for the purpose of directly or
 13 indirectly obtaining business or interns;

14 (4) is incompetent to act as an examiner;

15 (5) allowed his license to be used by an unlicensed
 16 person;

17 (6) violated the provisions of [sections 2 through 16]
 18 or a rule adopted by the board;

19 (7) is mentally ill;

20 (8) asked 111 NO EXAMINER MAY:

21 1A1 ASK test questions during a polygraph examination
 22 regarding the examinee's sexual practices, labor unions,
 23 political or religious affiliations, or his marital
 24 relationship, except where such questions have a bearing on
 25 the areas or issues under examination;

1 ~~(9)(B)~~ failed FAIL to inform the examinee of all
2 specific question areas to be explored prior to their actual
3 exploration during an examination; OR

4 ~~(10)(C)~~ conducted CONDUCT an examination without
5 having informed FIRST INFORMING the examinee that:

6 ~~(i)~~ he has a right to refuse or accept the
7 examination;

8 ~~(ii)~~ he cannot be discharged from employment solely
9 because he refuses or accepts the examination;

10 ~~(iii)~~ he has a right to halt the examination in
11 progress at any time;

12 ~~(iv)~~ he is not required to answer any questions or
13 give any information;

14 ~~(v)~~ any information he volunteers could be used
15 against him or made available to the party requesting the
16 examination unless otherwise specified and agreed to in
17 writing.

18 (2) REFUSAL TO TAKE THE EXAMINATION MAY NOT BE USED IN
19 ANY MANNER WHATSOEVER.

20 Section 4. ~~Admissibility~~ ADMISSION of examination or
21 test results ~~AS EVIDENCE PROHIBITED~~. Nothing in [sections 2
22 through 16] may be construed to permit or alter the status
23 of or admissibility of a polygraph POLYGRAPH examination or
24 the detector test result RESULTS MAY NOT BE ADMITTED as
25 evidence in a ANY court ~~OR ADMINISTRATIVE PROCEEDINGS~~. The

1 ~~decision for or against the admissibility is a prerogative~~
2 ~~of the courts~~

3 Section 4. Penalty CRIMINAL PENALTY. A person who
4 violates [sections 2 through 16 THIS ACT] is guilty of a
5 misdemeanor and subject to a fine not exceeding \$500 or
6 imprisonment not exceeding 6 months, or both.

7 SECTION 5. THERE IS A NEW MCA SECTION THAT READS:

8 Civil action for damages. A person who suffers damages
9 as a result of a violation of [this act] may bring a civil
10 action for damages against the examiner who violated [this
11 act]. In such an action, the measure of damages is three
12 times the sum that would compensate the plaintiff for the
13 actual detriment he has suffered.

14 Section 6. Severability. If a part of this act is
15 invalid, all valid parts that are severable from the invalid
16 part remain in effect. If a part of this act is invalid in
17 one or more of its applications, the part remains in effect
18 in all valid applications that are severable from the
19 invalid applications.

-End-