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,	. 197	79			Committee recommend bill, not concurred.
March 17,	. 197	79			Report adopted.
			IN	THE	SENATE
March 19,	. 197	79			Returned from House, not concurred.

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INTRODUCED BY Con John Ryan

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. ENOTIONAL
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.**

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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.

- 20 (2) The board consists of five members appointed by
 21 the governor:
- 22 (a) Two members shall be public examiners employed by 23 separate and distinct law enforcement agencies who are at 24 the time of appointment licensed, or in the case of the 25 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.

- 6 (b) Two members shall be private examiners employed by
 7 separate and distinct persons or firms who are at the time
 8 of appointment licensed, or in the case of the initial
 9 board, who fulfill the requirements for a license under
 10 [sections 2 through 16], and who have at least 5 consecutive
 11 years of experience administering polygraph examinations
 12 prior to their appointments.
- 13 (c) One member shall be a representative of the public
 14 at large who is not engaged in administering polygraph
 15 examinations.
- 16 (3) Each member shall serve for a term of 4 years.
- 17 (4) The board is allocated to the department for 18 administrative purposes only as prescribed in 2-15-121.
- Section 2. Definitions. As used in [sections 2 through
 16]. the following definitions apply:
- 21 (1) "Board" means the board of forensic polygraph
 22 examiners provided for in [section 1].
- 23 (2) "Examinee" means an individual who is being
 24 examined, tested, or questioned by an examiner or intern for
 25 the purpose of detecting deception or verifying

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truthfulness.

- 2 (3) "Examiner" means a person, other than an intern, who does any of the following:
 - (a) purports to detect deception, verify truthfulness, or provide a diagnostic opinion of either of these through instrumentation or the use of a mechanical device;
 - (b) represents that he can or does offer the service of detecting deception• verifying truthfulness• or providing a diagnostic opinion of either of these through instrumentation or the use of a mechanical device;
 - (c) uses instrumentation or a mechanical device to measure or record an individual's bodily responses or psycho-physiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding either of these.
 - (4) "Intern" means an individual who is actively engaged in an approved training program pursuant to becoming an examiner.
 - (5) "Private examiner" means an examiner who performs or purports to perform the service of detecting deception or verifying truthfulness in any instance or under any circumstance other than as a public examiner.
- (6) "Public examiner" means an examiner who performsor purports to perform the service of detecting or verifying

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

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

- (2) Indications of other psycho-physiological changes or bodily responses may also be recorded in addition to the minimum standards stipulated in subsection (1).
- (3) The operation, use, or attempted use of an instrument or device for the purposes described that does not meet the minimum requirements stipulated in subsection (1) is subject to penalties as provided in [section 16].
- Section 4. Organization compensation and expenses of members. The board shall elect a chairman, secretary-treasurer, and other necessary officers. Board members may serve for a compensation of \$25 a day for attending board meetings and shall be reimbursed for travely expenses as provided for in 2-18-501 through 2-18-503, as amended.

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

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- (2) A majority of the members of the board constitutes a quorum, and the vote of a majority of the board members is sufficient for passage of any business or proposal that comes before the board.
 - (3) The board may adopt and enforce rules in accordance with the Montana Administrative Procedure Act to carry out the purposes of [sections 2 through 16] including rules for the dissemination, retention, and destruction of polygraph results to protect the general public.
- Section 6. License required. No person without first securing a license as provided in [sections 2 through 16] may:
 - (1) use or attempt to use any instrumentation or mechanical device for the purpose of detecting deception, verifying truthfulness, or reporting a diagnostic opinion regarding either of these;
 - (2) purport to detect deception or verify truthfulness 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

- deception or truthfulness through instrumentation or
 mechanical devices;
 - (4) attempt to hold himself out as a polygraph examiner or refer to himself by any terminology which would indicate or convey the impression that he can or does purport to detect deception or verify truthfulness through instrumentation or mechanical devices:
 - (5) use any of the technical descriptive terminology peculiar to or interchangeable with the administration of polygraph examinations, the interpretation thereof, or the detection of deception and the verification of truthfulness 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 effective date of this act] and upon payment of the required 16 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];

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- (b) he has actually engaged in an internship training programs or similar arrangement on a full-time basis prior to [the effective date of this act] or has satisfactorily completed an internship training program or similar arrangement and has engaged in the occupations professions or practice as an examiner or intern prior to [the effective date of this act], utilizing exclusively during that period instrumentation that satisfies the requirements of [section 3]; or
- 10 (c) he substantially fulfills the requirements for 11 licensing as set forth in [section 8].
 - (2) The board may issue a temporary examiner's license to an applicant who otherwise qualifies under [section 8] except for the time and experience factors set forth in [section 8] to enable the fulfillment of these requirements 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:
 - (a) is at least 18 years of age;
 - (b) is a citizen of the United States;
- (c) has not been convicted of a felony within 5 years
 prior to his application;
- 25 (d) has either of the following:

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- (i) an academic degree at least at the baccalaureate 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;
 - (e) has been a resident of the state for at least 6 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.
- Section 9. Intern's license. (1) A person may receive
 a license as an intern if he is engaging in an approved
 internship training program and he substantially fulfics
 the basic requirements of [this act] for licensing as an
 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.
- Section 10. Temporary examiner's license. A person may receive a temporary examiner's license if he qualifies under

- 1 [section 7] r if he does not meet the residence requirements set forth in [section 8] but does substantially 2 fulfill all the other qualifications for licensing as an 3 examiner under [sections 2 through 16].
- Section 11. Licensing fees. The nonrefundable fees to 5 accompany applications for licensure under [this act] are: 6
 - (1) private examiner's license, \$100; renewal, \$50;
 - (2) public examiner's license, \$50; renewal, \$25;
- 9 (3) temporary examiner's license, \$100;
- (4) intern's license, \$25; 10
- 11 (5) licensing examination fee, \$50.
- 12 Section 12. Terms of licenses -- renewal of licenses.
- 13 (1) Examiners' licenses and temporary examiners' licenses
- are issued for 1 calendar year or such portion as remains at 14
- 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.
- (2) Intern licenses are issued for 6 calendar months 18
- and may be renewed for additional 6-month periods if the 19
- intern satisfies the requirements of the board regarding the 20
- 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 license may be suspended for a fixed period or may be revoked if after a hearing before the board: it is determined that the examiner:
 - (1) obtained the license by fraudulent representation;
- (2) has been convicted of a felony or a crime involving moral turpitude, including but not limited to dishonesty. fraud, or unauthorized divulging or selling of 9 information or evidence:
- 10 (3) employs misrepresentation, false promises, or misleading advertising for the purpose of directly or 11 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;
 - (7) is mentally ill;

- 19 (8) asked test questions during a polygraph 20 examination regarding the examinee's sexual practices, labor unions, political or religious affiliations, or his marital 21 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

exploration during an examination;

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- 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:
- (b) he cannot be discharged from employment solely
 because he refuses or accepts the examination;
 - (c) he has a right to halt the examination in progress at any time;
- 10 . (d) he is not required to answer any questions or give
 11 any information;
 - (e) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise specified and agreed to in writing.
 - Section 15. Admissibility of examination or test results. Nothing in [sections 2 through 16] may be construed to permit or alter the status of or admissibility of a polygraph examination or lie detector test result as evidence in a court. The decision for or against the admissibility is a prerogative of the court.
 - Section 16. Penalty. A person who violates [sections 2 through 16] is guilty of a misdemeanor and subject to a fine not exceeding \$500 or imprisonment not exceeding 6 months. or both.

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

-End-

STATE OF MONTANA

REQUEST NO. 335

FISCAL NOTE

Form BD-15

In compliance with a written request re			
for SB 476	pursuant to Chapter 53, Laws	of Montana, 1965 - Thirty-Ninth Le	gislative Assembly.
Background information used in developing	ig this Fiscal Note is available fr	om the Office of Budget and Progra	m 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: 4/19/79

46th Legislature S8 0476/02

ı	SENATE BILL NO. 476
2	INTRODUCED BY VAN VALKENBURG. RYAN
3	
4	A BILL FOR AN ACT ENTITLED: "AN ACT TO LEGENSE-AND REGULATE
5	PERSONS WHO PURPORT TO BE ABLE TO DETECT DECEPTION. VERIFY
6	TRUTHFULNESS. OR PROVIDE A DIAGNOSTIC OPINION OF EITHER
7	THROUGH THE USE OF ANY DEVICE OR INSTRUMENTATION AS LIE
8	DETECTORS, FORENSIC POLYGRAPHS, DECEPTOGRAPHS, EMOTIONAL
9	STRESS METERS OR SIMILAR OR RELATED DEVICES AND INSTRUMENTS;
10	TO-CREATE-ABOARDBFFBRENSECPBLYGRAPHEXAMINERSWITH
11	LIGENSINGANDREGULATORYPOWERS-BYER-ALL-SUCH-PERSONS-AND
12	INSTRUMENTS:-T8-ESTABLISH-MINIMUM-STANDARDS-AND-REQUIREMENTS
13	FBR-ALL-SUCH-INSTR UMENTATION-OR -DEVICES1-AND-TB-PROHIBIT-THE
14	USE-BF-INSTRUMENTS-BR-BEVICESWHICHBBNBTMEETMINIMUM
15	STANDARDSAND-REQUIREMENTS PROVIDING THAT LIE DETECTOR TEST
16	RESULIS ARE NOT ADMISSIBLE AS EVIDENCE."
17	
18	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19	Section-1Board-of-forensic-polygraph-examiners(1)
20	There-is-s-board-of-forensic-polygraph-examiners*
21	{2}The-board-consists-of-fivemembersappointedby
22	the-governor:
23	to)Twomembers-shall-be-public-exeminers-employed-by
24	separate-and-distinct-law-enforcement-agencieswhoareat
25	thetimeofappointmentlieansed,or-in-the-case-of-the

1	initial-boardy-who-fulfill-the-requirementsforalicense
Ż	undertheprovisionsoffsections-2-through-16jv-and-who
3	haveatleast5consecutiveyearsoflawenforcement
4	experienceandatleast-2-consecutive-years-of-experience
5	edministeringpolygraphexaminationspriortotheir
6	appointments
7	fbjTwo-members-sh oll-be-private-exeminers-employed-by
8	separateanddistinct-persons-or-firms-who-are-at-the-time
9	of-appointment-licensed,-orinthecaseoftheinitial
10	boardvwhofulfilltherequirementsfor-o-license-under
11	fsections-2-through-16],-and-who-have-at-least-5-consecutive
12	years-ofexperienceadministeringpolygraphexaminations
13	prior-to-their-appointments.
14	{c}One-member-shaff-be-a-representative-of-the-public
15	attorgewhoisnc:engagedin-edministering-polygraph
16	exeminations
17	(3)Each-member-shall-serve-for-a-term-of-4-yearsw
18	t++The-boardisattocatedtothedepartmentfor
19	administrative-purposes-only-as-prescribed-in-2-15-121*
20	Section 1. Definitions. As used in [sections-2-through
21	to INIS_ACI], the following definitions apply:
22	tt)#Board#meanstheboardofforensic-polygraph
23	examiners-provided-for-in-frection-iju
24	(2) (1) "Examinee" means an individual who is being
25	examined, tested, or questioned by an examiner or-intern for

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THIRD READING

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the	purpose	of	detecting	deception	or	verifying
truth	fulness.					

- t37121 "Examiner" means a persony--other--than---an interny who does any of the following:
- (a) purports to detect deception, verify truthfulness, or provide a diagnostic opinion of either of these through instrumentation or the use of a mechanical device;
- (b) represents that he can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of either of these through instrumentation or the use of a mechanical device;
- (c) uses instrumentation or a mechanical device to measure or record an individual's bodily responses or psycho-physiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding either of these.
- f*f==#intern#--means--sn--individual--who--is--octively
 engaged-in-an-approved-training-program-pursuant-to-becoming
 an-examiner*
- (5)--*Private--examiner*-means-an-examiner-who-performs
 or-purports-to-perform-the-service-of-detecting-deception-or
 verifying--truthfulness--in--any--instance--or---under---any
 circumstance-other-than-as-o-public-examiners

1	or-purports-to-perform-the-service-of-detecting-or-verifying
2	truthfulness-exclusively-in-hisofficialcapacityasan
3	employee-of-an-agency-of-the-state-or-local-government.

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

- (2) Indications of other psycho-physiological changes or bodily responses may also be recorded in addition to the minimum standards stipulated in subsection (1).
- (3)--The-operationy--usey--or--attempted--use--of---an
 instrument--or--device--for-the-purposes-described-that-does
 not-meet-the-minimum-requirements-stipulated--in--subsection
 [1]-is-subject-to-panelties-as-provided-in-fsection-16]*
- 5ection-tw--Brganization------compensation-and-expenses
 of---membersw----The---board---shall---elect---a---chairmony
 secretary-treasurerw--and--other--necessary---officersw-Board
 members-may-serve-for--a--compensation--of--625--a--day--for
 ottending--board-meetings-and-shall-be-reimbursed-for-travel
 expenses-as-provided-for-in-2-18-501--through--2-18-503y--as

1	smended⊎
2	Section-5*Meetingsquorumvote-required-for
3	actionrulemaking-powerv(l)-Theboardshallmeetat
4	lesstonceevery6monthsstaplaceydayyand-hour
5	determined-by-the-boards
6	(2)A-majority-of-the-members-of-the-board-constitutes
7	a-quorumy-and-the-vote-of-a-majority-of-the-board-mambars-is
8	sufficient-for-passage-ofanybusinessorproposalthat
9	comes-before-the-boards
10	(3)Theboardmayadoptandenforcerulesin
11	accordance-with-the-M ontane-Administrative-Procedure-Actt o
12	carryout-the-purposes-of-[sections-2-through-16]-including
13	rules-for-the-dissemination-retention-and-destruction-of
14	polygraph-results-to-protect-the-general-publics
15	Section6License-requiredNo-person-without-first
16	securingalicenseas-provided-in-[sections-2-through-16]
17	moy+
18	(1)use-orattempttouseanyinstrumentationor
19	mechanicaldeviceforthe-purpose-of-detecting-deceptionv
20	verifying-truthfulnessy-or-reportingadiagnosticopinion
21	regarding-either-of-theset
22	t2)purport-to-detect-deception-or-varify-truthfulness
23	through-instrumentation-or-mechanical-devices;
24	t3)advert÷seorrepresent-that-he-can-or-does-offer
25	the-service-of-detecting-deceptionverifyingtruthfulness-

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•	or reporting a grayhostic opinion regarding an individual.
2	deceptionortruthfulnessthroughinstrumentationo
3	mechanical-devices:
4	(4)attemptto hol dhimself outas ap ol ygrapl
5	examiner-or-refer-to-himself-by-any-terminology-whichwould
6	indicateorconveytheimpressionthatheean-or-does
7	purport-to-detect-deception-or-verifytruthfulnessthrough
8	instrumentation-or-mechanical-devices;
9	<pre>{5}useonyof-the-technical-descriptive-terminology</pre>
10	peculiar-to-or-interchangeable-withtheadministrationof
11	polygraphexaminationsythe-interpretation-thereofy-or-the
12	detection-of-deception-and-the-verification-oftruthfulnes
13	resulting-therefrom.
14	Section-7Issuanceofexaminer*slicensewithout
15	examinationtemporary-examinar*s-licensev(l)Aperson
16	upon-application-to-the-board-dated-within-l-year-after-fth
17	effective-date-of-this-actj-and-upon-payment-of-the-required
18	ticensefeeshallbe-issued-an-exominer*s-license-withou
19	examination-if-he-satisfiestheregistrationrequirement
20	estebiishedbytheboardandsatisfiestheboardby
21	affidavit-or-otherwise-that-he-is-qualified-as-follows:
55	ta)hehasactuallyengagedintheoccupations
23	professionyorpractice-as-an-examinar-prior-to-January-1:
24	1975yandcontinuouslysincethattimeyutilizing
25	exclusivelyduringthatperiodinstrumentationwhich

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satisfies-the-requirements-of-(section-3);
fb;ha-hos-actually-engaged-in-an-internshiptraining
programorsimitar-arrangement-on-a-full-time-basis-prior
to-fthe-effective-date-of-this-setjorhassatisfactority
completedaninternshiptrainingprogramorsimilar
arrangement-and-has-angaged-in-thaoccupationprofession-
or-practice-as-an-examinar-or-intern-prior-to-Ethe-affective
dataof-this-actjv-utilizing-exclusively-during-that-period
instrumentation-that-satisfies-the-requirements-offsection
3];-or
tetmesubstantiallyfulfillstherequirements-for
licensing-as-set-forth-in-fsection-8;
(2)The-board-may-issue- a-temporary-examiner*s-license
to-an-applicant-who-atherwise-qualificsunder[section8-]
exceptforthetimeendexperience-fectors-set-forth-in
faction-&j-to-enable-the-fulfillment-of-theserequirements
by-the-applicants
Section-8
exemination:(1)Uponapplicationandpaymentofthe
requiredfeerenapplicant-may-be-granted-a-license-as-en
examiner-if-he-
(a)is-at-least-18-years-of-age;
{b}+s-a-c+t+zon-of-tha-United-States+
(c)has-not-been-convicted-of-a-felony-within-5years

1	td;has-either-af-the-following:
2	titanacademicdegrae-at-least-at-the-baccalaureate
3	tovel-from-an-accredited-college-or-university;
4	titt-a-high-sehcol-diploma-or-itsequivalentfromar
5	occreditedhighschoolend-et-least-5-years-of-continuous
6	investigative-experience-with-a-recognizedlawenforcement
7	or-governmental-investigative-agancy;
8	tethesbeeneresident-of-the-state-for-at-least-
9	months-immediately-prior-to-the-date-of-his-application;-and
0	<pre>ff?has-satisfactorily-passed-the-requiredqualifying</pre>
1	examinationconducted-by-the-board-or-under-its-supervision
.2	to-determine-his-competency-to-obtain-a-license-toproctice
3	89-8N-exeminery
4	{2}Theapplicantmustsatisfyalltheother
5	requirements-in-this-section-before-taking-the-qualification
6	examinations
.7	Section-9Intern*s-license(1)-A-person-may-receive
8	a-license-es-en-intern-if-heisengaginginanapproved
9	internshiptrainingprogramand-he-substantially-fulfill:
0	the-basic-requirements-of-[this-act]forlicensingasa
1	exeminery
2	{2}Theapplicantneednotmeet-the-experience- and
3	residence-requirements-in-[section-8]toquolifyforor
4	internis-licenses
5	Section-18Iemporaryryaminerislicensei-nerso

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prior-to-his-application:

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1	may-receive-a-to-sporary-examinarts-license-ifhequalifies
2	underfsection7jorifhedoes-not-meet-the-rasidence
3	requirements-set-forth-in-[section-8]-but-does-substantially
4	fulfill-all-the-other-qualificationsforlicensingasan
5	examiner-under-factions-2-through-16js
6	Section-tiwticensing-feeswThe-nonrefundable-fees-to
7	accompanyapplicationsfor-licensure-under-[this-act]-area
8	(i)private-examiner*s-licensey-\$100;-renewaly-\$50;
9	t2}public-examineris-licensev-\$58;-renewalv-\$25;
10	<pre>†3;temporary-examiner*s-licensev-fi00;</pre>
11	(4)intern*s-licensey-\$25;
12	(5)licensing-examination-feey-150+
13	Section-12Terms-of-licensesrenewal-oflicenses
14	(1)Examiners≛licensesand-temporary-examiners≜-licenses
15	are-issued-for-i-calendor-year-or-such-portion-as-remains-at
16	the-time-fissed-Each-license-may-be-renewed-before-Becember
17	31-of-each-yearA-license-that-is-notrenewedexpiresat
18	midnight-on-December-31.
19	<pre>†2)Internlicensesare-issued-for-6-celender-months</pre>
20	and-may-be-renewed-for-additional6-monthperiodsifthe
21	intern-satisfies-the-requirements-of-the-board-regarding-the
22	înternshipe
23	Section-13*Renewaloflicenses*The-license-of-an
24	examiner-that-has-notbeenrevokedorsuspendedmaybe
25	renewedannuallyuponapplicationandpaymentofthe

•	required recoy the examinary
2	Section 3. Suspensionandrevocation PROHIBITE
3	PRACTICES. Anexaminer*sticensemaybe-suspended-for-
4	fixed-period-or-may-be-revoked-if-after-a-hearing-before-the
5	boordy-it-is-determined-that-the-exeminer:
6	<pre>figobtained-the-license-by-fraudulent-representation(</pre>
7	t2)hesbeenconvictedofafatonyoracrime
8	involvingmoralturpitudavincludingbutnot-limited-to
9	dishonestyv-fraudv-or-unauthorized-divulging-orsellingof
10	information-or-evidence;
11	t3}employsmisrepresentationfalsepromiseso
15	wistendingadvertisingforthepurposeofdirectlyor
13	indirectly-obtaining-business-or-interns;
14	<pre>f4}i9-incompetent-to-act-d9-dn-examiner;</pre>
15	<pre>f5}s1lowedhislicenseto-be-used-by-an-unlicensed</pre>
16	person:
17	t6}violated-the-provisions-of-fsections-2-through-16-
18	or-a-rute-adopted-by-the-board;
19	(?)is-mentally-ill
20	:XAM RANIMAKA QN_(1) bester-+0+
21	IAL_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 or

the areas or issues under examination:

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(9) (B)	faited EALL	to	inform	the	exami	i ne e	of	all
specific que	stion areas t	to be	explored	d prio	r to	their	ac	feud
exploration	during an exa	amina'	tion; <u>OR</u>					

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- tiBicl conducted <u>CONDUCI</u> an examination without having-informed <u>FIRSI_INFORMING</u> the examinee that:
- 6 totil he has a right to refuse or--occept the 7 examination;
- tby(!!!) he cannot be discharged from employment solely because he refuses or-eccepts the examination:
- fef(III) he has a right to halt the examination in progress at any time;
- 12 (d)(IV) he is not required to answer any questions or
 13 give any information;
 - te)(Y) any information he volunteers could be used against him or made available to the party requesting the examination unless otherwise specified and agreed to in writing.
 - 12) REFUSAL TO TAKE THE EXAMINATION MAY NOT BE USED IN
 ANY MANNER WHATSDEVER.
 - Section 4. Admissibility ADMISSION of examination or test results AS EVIDENCE PROHIBITED. Nothing-in-fractions--2 through--16]--may-be-construed-to-permit-or-alter-the-status of-or-admissibility-of-a-polygraph POLYGRAPH examination or lie detector test result RESULIS MAY NOT BE ADMITTED as evidence in a ANY court OR ADMINISTRATIVE PROCEEDING. The

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

3 Section 5. Penalty <u>CRIMINAL PENALTY</u>. A person who 4 violates [sections--2--through--16 <u>IHIS_ACT</u>] 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.

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

-End-

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ı	SENATE BILL NO. 476
2	INTRODUCED BY VAN VALKENBURG, RYAN
3	
4	A SILL FOR AN ACT ENTITLED: "AN ACT TO LEGENSE-AND REGULATE
5	PERSONS WHO PURPORT TO BE ABLE TO DETECT DECEPTION. VERIFY
6	TRUTHFUENESS. DR PROVIDE A DIAGNOSTIC OPINION OF EITHER
7	THROUGH THE USE OF ANY DEVICE OR INSTRUMENTATION AS LIE
8	DETECTORS, FORENSIC POLYGRAPHS, DECEPTOGRAPHS, EMOTIONAL
9	STRESS METERS OR SIMILAR OR RELATED DEVICES AND INSTRUMENTS+
10	TO-CREATE-ABOARDBFFORENSICPOLYGRAPHCXAMINERSWITH
11	ŁIGENSINGANDREGULATORYPOWERS-OVER-ALL-SUCH-PERSONS-AND
12	INSTRUMENTS+-TO-ESTABLISH-MINIMUM-STANDARDS-AND-REQUIREMENTS
13	FOR-ALL-SUCH-INSTRUMENTATION-OR-DEVICES+-AND-TO-PROHIDIT-THE
14	#56-8F-1N5TRUMENTS-8R-8EV16ESWH16H88N8TMEETM1N1MWM
15	STANDARDSAND-REQUIREMENTS PROVIDING-THAT-LIE-DETECTOR-TEST
16	RESULTS-ARE-NOT-ARMISSIBLE-AS-EVIDENCE."
17	
18	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19	Section-luBoard-of-farensic-polygraph-examinersu(1)
20	There-is-s-board-of-forensic-polygraph-examinars
21	(2)The-board-consists-of-fivemembersappointedby
22	the-governor+
23	<pre>{a}Twomembers-shaff-be-public-examiners-employed-by</pre>
24	separate-and-distinct-law-enforcement-agencieswhoareat
25	thetimeofappointmentlicensedyor-in-the-case-of-the

1	+N+f+9+-D08Lq4-RW0-4841+4+-FW0-48dq4-GWG-42340L014cdu3c
2	undertheprovisionsoffacetions-2-through-t6jv-end-who
3	hoveatleast5consecutiveyearsoflawenforcement
4	experienceandatleast-2-consecutive-years-of-experience
5	administeringpolygraphexaminationspriortotheir
6	appointments
7	<pre>fbjTwo-members-shaft-be-private-examiners-employed-by</pre>
8	separateanddistinct-persons-or-firms-who-are-at-the-time
9	of-appointment-ficensedy-orinthecaseoftheinitial
10	boardywhofulfilltherequirementsfor-a-license-under
11	{sections-2-through-16-jv-and-who-have-at-least-5-consecutive
12	years-afexperienceadministeringpolygraphexaminations
13	prior-to-their-appointmentsw
14	tc;One-member-shall-be-a-representative-of-the-public
15	atlargewhoisnotengagedin-administering-polygroph
16	examinations
17	t3;Each-member-shall-serve-for-a-term-of-4-years*
18	t+jThe-boardisallocatedtothedepartmentfor
19	administrative-purposes-anly-as-prescribed-in-2-15-121*
20	Section 1. Definitions. As used in [sections-2-through
21	16 IHIS ACI] the following definitions apply:
22	{ i}*Board*meansthe boardofforensic-polygraph
23	examiners-provided-for-in-fsection-lj=
24	<pre>{2}(1) "Examinee" means an individual who is being</pre>
25	examined, tested, or questioned by an examiner or-intern for

the	purpose	of	detecting	deception	or	verifying
truth	fulness.					

- t37(2) "Examiner" means a person--other--then---on
- (a) purports to detect deception verify truthfulness or provide a diagnostic opinion of either of these through instrumentation or the use of a mechanical device;
- (b) represents that he can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of either of these through instrumentation or the use of a mechanical device:
- (c) uses instrumentation or a mechanical device to measure or record an individual's bodily responses or psycho-physiological activities to enable or assist the detection of deception, the verification of truthfulness, or the reporting of a diagnostic opinion regarding either of these.
- t4;--*Intern*--means--on--individual--who--is--sctively
 engaged-in-on-approved-training-program-pursuant-to-becoming
 en-examiners
- t5;--*Private--exeminer*-means-on-exeminer-who-performs
 or-purports-to-perform-the-service-of-detecting-deception-or
 verifying--truthfulness--in--eny--instance--or---under----ony
 circumstance-other-then-as-a-public-exeminers
 - +61---Public--examiner--means-an-examiner-who-performs

-3-

or-purports-to-perform-the-service-of-detecting-or-verifying
truthfulness-exclusively-inhisofficialcopacityasan
employee-of-an-agency-of-the-state-or-local-governments.

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

- (2) Indications of other psycho-physiological changes or bodily responses may also be recorded in addition to the minimum standards stipulated in subsection (1).
- (3)--The--operationy--usey--or--attempted--use--of---on
 instrument--or--device--for-the-purposes-described-that-does
 not-meet-the-minimum-requirements-stipulated--in--subsection
 (11)-is-subject-to-ponoities-es-provided-in-fsection-16]*
- 5ection-4w--Brganization-----compensation-and-expenses
 of---membersw----The---board---shall---elect---a---chairmany
 secretary-treasurery--and--other--necessary--officersw-Board
 members-may-serve-for--a--compensation--of--\$25--a--day--for
 attending--board-meetings-and-shall-be-reimbursed-for-travel
 expenses-as-provided-for-in-2-18-581--through-2-18-583--as

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1	amended
2	Section-5Meetingsquorumvote-required-for
3	actionrulemaking-powervfly-Theboardshallmeetat
4	teastanceevery6monthsataplaceydayyand-hour
5	determined-by-the-boards
6	{2}A-majority-of-the-members-of-the-board-constitutes
7	a-quorumy-and-the-vote-of-a-majority-of-the-board-members-is
8	sufficient-for-possoge-ofanybusinessorproposaithat
9	comes-before-the-board*
10	t3;Theboardmayadoptandenforcerulesin
11	accordance-with-the-Montana-Administrative-Procedure-Actto
12	corryout-the-purposes-of-[sections-2-through-16]-including
13	rules-for-the-disseminationy-retentiony-onddestructionof
14	polygraph-results-to-protect-the-general-public-
15	Section6ticonse-requiredNo-person-without-first
16	securingalicenseas-provided-in-[sections-2-through-16]
<u>Ļ</u> 7	моу+
₿ 8	(1)use-orettempttauseanyinstrumentationor
19	mechanicaldeviceforthe-purpose-of-detecting-deceptions
20	verifying-truthfulnessy-or-reportingadiagnosticopinion
21	regarding-either-of-theset
22	12}purport-to-detect-deception-or-verify-truthfulness
23	through-instrumentation-or-mechanical-devices:
24	t3}mdvertiseorrepresent-that-he-can-or-does-offer
25	the-service-of-detecting-deception,-verifyingtruthfulness,

-5-

orreporting-a-diagnostic-opinion-regarding-an-individual-s
deceptionortruthfulnessthroughinstrumentationor
mechanical-devices;
14}attempttoholdhimselfout osapolygraph
examinar-or-refer-to-himself-by-any-terminology-whichwould
indicateorconveytheimpressionthethecan-or-does
purport-to-detect-deception-or-verifytruthfulnessthrough
instrumentation-or-mechanical-devices;
(5)useenyof-the-technical-descriptive-terminology
peculiar-to-or-interchangeable-withtheadministrationof
polygraphexaminationsythe-interpretation-thereofy-or-the
detection-of-deception-and-the-verification-oftruthfulness
resulting-therefrom
Section-7Issuenceofexaminer*slicensewithout
exeminationtemporary-exeminer*s-licenses(1)Aperson
upon-application-to-the-board-dated-within-l-year-after-fthe
effective-date-of-this-sctj-and-upon-payment-of-the-required
licensefeeshallbe-issued-an-examiner*s-license-without
examination-if-he-satisfiestheregistrationrequirements
establishedbytheboardandsatisfiestheboardby
offidavit-or-otherwise-that-he-is-qualified-as-follows+
telhehesectuallyengagedintheoccupationv
professionyorpractice-es-an-examiner-prior-to-demosry-ly
1975yandcontinuouslysincethattimeyutilizing
exclusivelyduringthotperiodinstrumentationwhich

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1	setisfies-the-requirements-of-[section-3];
2	{b}he-has-actually-engaged-in-an-internshiptraini ng
3	programvorsimilar-arrangement-on-o-full-time-basis-prior
4	to-fthe-effective-data-of-this-actjorhassatisfactority
5	completedeninternshiptrainingprogramorsimiter
6	arrangement-and-has-angaged-in-theoccupationprofession-
7	or-proctice-as-an-examiner-or-intern-prior-to-(the-effective
8	dateof-this-actjv-utilizing-exalusively-during-that-period
9	instrumentation-that-setisfies-the-requirements-offaction
lo	3-31-or
11	<pre>tathesubstantiallyfulfillstherequirements-for</pre>
12	licensing-as-set-forth-in-[section-8]*
13	{2}The-board-may-issue-e-temporary-exemi ner±s-license
14	to-an-applicant-who-otherwise-qualifiesunder[section8]
15	exceptforthetimeandexperience-factors-set-forth-in
6	{section=8}-to-enable-the-fulfillment-of-theserequirements
7	by-the-applicant.
8	Section-Buissuanceofexaminer-sicensewith
9	exemination(i)Uponapplicationendpaymentofthe
0	requiredfeereneppiicant-may-be-granted-d-lifense-as-on
1	examiner-if-hes
2	(a)is-st-least-18-years-of-age (
3	{b}-~is-a-citizen-of-the-United-States1
4	{c}has-not-been-convicted-of-a-felony-within-5years

1	td)nos-ercher-or-che-rostowshigs
2	(+)anacademicdegrae-at-least-at-the-baccaloureate
3	<pre>hevel-from-an-accrad/tad-college-or-university;</pre>
4	(++)-a-h+gh-school-diploma-or-+tsequ+valentfroman
5	accreditadhighschooland-at-least-5-years-of-continuous
6	investigativa-experience-with-a-recognizedlawenfarcement
7	or-governmental-investigative-agency;
8	{e}hasbeenarasident-af-the-state-for-at-least- 6
9	months-immediately-prior-to-the-date-of-his-applications-and
10	(f)has-satisfactorily-passed-the-requiredqualifying
11	exeminationconducted-by-the-board-or-under-its-supervision
12	to-determine-his-competency-to-obtain-a-license-topractice
13	as-an-examiner+
14	{2}Theapplicantmustsatisfyalltheother
15	requirements-in-this-section-before-taking-the-qualification
16	exemination
17	Section-9intern4s-license(l)-A-person-may-receive
18	a-licanse-as-an-intern-if-heisengaginginanapproved
19	internshiptrainingprogram-and-he-substantially-fulfills
20	the-basic-requirements-of-[this-act]forlicensingasan
21	examiners
22	{2}Theapplicantneednotmeet-the-experi ence-and
23	residence-requirements-in-[section8]toqualifyforan
24	internis-licenses
25	Section-10TemporaryexaminerislicenserA-person

prior-to-his-application;

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may-receive-a-temporary-examiner*s-license-ifhequalifies
under[section7]orifhedoes-not-meet-the-residence
requirements-set-forth-in-fsection-8j-but-docs-substantially
fulfill-all-the-other-qualificationsforlicensingasam
examiner-under-fsections-2-through-16]v
Section-livbicensing-feesuThe-monrefundable-fees-to
accompanyapplicationsfor-licensure-under-[this-act]-aret
<pre>†1}private-examiner*s-licensey-\$100;-renewalv-\$50;</pre>
{2}public-examiner*s-licensev-158;-renewalv-125;
(3)temporary-examiner*s-licensey-9188)
{4}intern*s-licensey-\$25f
(5)ticensing-examination-fact-158:
Section-12Terms-of-licensesrenewal-oflicenses
(1)Examiners*licensesond-temporary-examiners*-licenses
are-issued-for-1-calendar-year-or-such-portion-as-remains-et
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and-may-be-renewed-for-additional6-monthperiodsifthe
intern-sotisfies-the-requirements-of-the-board-regarding-the
internships
Section-13*Renewaloflicenses*The-license-of-an
examiner-that-has-notbeenrevokedorsuspendedmaybe
renewedengualiv

ı	required-fee-by-the-examinery
2	Section 3. Suspensionandrevocation PROMIBITED
3	PRACTICES. Anexaminer-shicensemaybe-suspended-for-
4	fixed-period-or-may-be-revoked-if-after-a-hearing-before-the
5	boardy-it-is-determined-that-the-examiner:
6	<pre>figobtained-the-license-by-froudulant-representation</pre>
7	{2}hasbeenconvictedofafelonyoracris
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9	dishonestyr-fraudy-or-unauthorized-divulging-orsellinge
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11	43;employsaisrepresentationfalsepromisesa
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15	t5}allowedhisltcenseto-be-used-by-an-unlicense
16	persont
17	. 16tviolated-the-provisions-of-facctions-2-through-16
18	or-a-ruie-adopted-by-the-boord;
19	tipis-montally-ill
20	+8+seked 111 NO EXAMINER MAY:

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1	(9)(B) foiled <u>FAIL</u> to inform the examines of all
2	specific question areas to be explored prior to their actual
3	exploration during an examination; QR
4	<pre></pre>
5	heving-informed FIRST INFORMING the examinee that:
6	tatill he has a right to refuse oraccept the
7	examination;
8	thatill he cannot be discharged from employment solely
9	because he refuses er-eccepts the examination:
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12	(d)(IV) he is not required to answer any questions or
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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 MAMMER WHATSOEVER.
20	Section-4Admissibility ABMISSIBN of-exemination-or
21	test-results <u>#5-EVIBENGE-PROHIBITED</u> # Nothing-in-factions2

through--14]--may-be-construed-to-permit-or-ofter-the-status

of-or-admissibility-of-a-polygraph PALYGRAPH examination--or

++e--detector--test--result RESULTS--MAY-NOT-BE-ADMITTED os

evidence-in-a ANY court OR -- ADMINISTRATIVE -- PROCEEDING --- The

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-End-

decision--for--or-against-the-admissibility-is-a-prerogative

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23 24