

House Bill 809

In The House

February 19, 1981

Introduced and referred
to Committee on Judiciary.

April 23, 1981

Died in Committee.

1 HOUSE BILL NO. 809
2 INTRODUCED BY *Richard E. Manning*

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO LICENSE 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 INSTRUMENT CAPABLE OF
8 MEASURING OR RECORDING BODILY RESPONSES OR
9 PSYCHOPHYSIOLOGICAL ACTIVITIES; TO CREATE A BOARD OF
10 POLYGRAPH EXAMINERS WITH LICENSING AND REGULATORY POWERS
11 OVER THESE PERSONS AND INSTRUMENTS; TO PROVIDE PENALTIES FOR
12 VIOLATIONS; AND TO PROVIDE AN IMMEDIATE EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Board of polygraph examiners. (1) There is
16 a board of polygraph examiners.

17 (2) The board consists of five members appointed by
18 the governor and confirmed by the senate.

19 (a) Each member shall:

20 (i) be a citizen of the United States;

21 (ii) have been a resident of the state for at least 1
22 year before appointment; and

23 (iii) be a licensed polygraph examiner or, in the case
24 of the initial board, a person who fulfills the requirements
25 for a license under [sections 2 through 14].

1 (b) At least three members shall be public examiners
2 employed by the state or local government. No more than two
3 members may be employed by the same person or agency.

4 (3) In addition to the board members, the governor
5 shall appoint an advisory consultant who is an attorney
6 licensed to practice law in the state to assist the board.

7 (4) (a) Except as provided in subsection (4)(b),
8 members shall serve staggered 4-year terms.

9 (b) To implement the staggered-term system, two
10 members appointed to the initial board shall serve for 2
11 years, two members for 3 years, and one member for 4 years.

12 (5) If a vacancy on the board occurs, the governor
13 shall appoint a member to fill the position for the
14 unexpired term.

15 (6) The board is allocated to the department of
16 professional and occupational licensing for administrative
17 purposes only as prescribed in 2-15-121. However, the board
18 may hire its own personnel.

19 Section 2. Definitions. In [sections 2 through 14],
20 unless the context clearly indicates otherwise, the
21 following definitions apply:

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

24 (2) "Examinee" means an individual who is being
25 examined, tested, or questioned by an examiner for the

1 purpose of detecting deception or verifying truthfulness.

2 (3) "Examiner" means a person who:

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

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

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

16 Section 3. Minimum standards for instruments or
17 devices. (1) A person may not use or attempt to use any
18 instrument or device for the purpose of detecting deception,
19 verifying truthfulness, or assisting in the reporting of a
20 diagnostic opinion as to either of these unless the
21 instrument or device, at a minimum, is capable of recording
22 visually, permanently, and simultaneously indications of an
23 examinee's:

24 (a) cardiovascular pattern;

25 (b) respiratory pattern; and

1 (c) galvanic skin response pattern.

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

5 (3) The operation, use, or attempted use of an
6 instrument or device that does not meet the minimum
7 requirements stipulated in subsection (1) is subject to
8 penalties as provided in [section 15].

9 Section 4. Organization -- compensation and expenses
10 of members. (1) The board shall meet within 30 days
11 following [the effective date of this act] to elect a
12 chairman, vice-chairman, and secretary from its membership.
13 The term of office shall be 1 year.

14 (2) Board members are entitled to compensation of \$25
15 a day for attending board meetings and travel expenses as
16 provided for in 2-18-501 through 2-18-503.

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

21 (2) A majority of the members of the board constitutes
22 a quorum, and the vote of a majority of the board members is
23 sufficient for passage of any business or proposal that
24 comes before the board.

25 Section 6. Powers and duties of board. The board

1 shall:

2 (1) adopt rules in accordance with the Montana
3 Administrative Procedure Act to carry out the provisions of
4 [sections 2 through 15];

5 (2) administer, coordinate, and enforce the provisions
6 of [sections 2 through 15]; and

7 (3) adopt a seal by which the board may authenticate
8 its documents.

9 Section 7. License required. No person without first
10 securing a license as provided in [sections 2 through 14]
11 may:

12 (1) use or attempt to use any mechanical device or
13 instrument for the purpose of detecting deception, verifying
14 truthfulness, or reporting a diagnostic opinion regarding
15 either of these;

16 (2) purport to detect deception or verify truthfulness
17 through mechanical devices or instruments;

18 (3) advertise or represent that he can or does offer
19 the service of detecting deception, verifying truthfulness,
20 or reporting a diagnostic opinion regarding an individual's
21 deception or truthfulness through mechanical devices or
22 instruments;

23 (4) attempt to hold himself out as a polygraph
24 examiner or refer to himself by any terminology that would
25 indicate or convey the impression that he can or purports to

1 detect deception or verify truthfulness through mechanical
2 devices or instruments;

3 (5) use any of the technical descriptive terminology
4 peculiar to or interchangeable with the administration of
5 polygraph examinations, the interpretation thereof, or the
6 detection of deception and the verification of truthfulness
7 resulting therefrom.

8 Section 8. Issuance of examiner's license without
9 examination. (1) A person upon application to the board
10 dated within 90 days after [the effective date of this act]
11 and payment of the required license fee shall be issued an
12 examiner's license without examination if he satisfies the
13 ovens by affidavit or otherwise that he is qualified as
14 follows:

15 (a) he has actually engaged in the occupation,
16 profession, or practice as an examiner for at least 1 year
17 before applying under this subsection and, during that
18 period, has used instruments that satisfy the requirements
19 of [section 3]; and

20 (b) he substantially fulfills the requirements for
21 licensing in [section 9].

22 (2) (a) Except as provided in subsection (b), a
23 nonresident applicant licensed as a polygraph examiner in
24 another state shall upon application to the board and
25 payment of the required license fee be issued an examiner's

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1 license without examination if he satisfies the board by
2 affidavit or otherwise that he is qualified as follows:

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

6 (ii) he substantially fulfills the requirements for
7 licensing in [section 9].

8 (b) No license may be issued without examination under
9 subsection (2)(a) unless the state in which the applicant is
10 licensed has and maintains licensing requirements
11 substantially equivalent to those provided in [sections 2
12 through 15] and grants similar reciprocity to examiners
13 licensed in Montana.

14 Section 9. Issuance of examiner's license with
15 examination. (1) Upon application and payment of the
16 required fee, an applicant may be granted a license as an
17 examiner if he:

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

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

20 (c) has been a resident of the state for at least 6
21 months immediately before the date of his application;

22 (d) is of good moral character;

23 (e) has not been convicted of a felony or a
24 misdemeanor involving moral turpitude;

25 (f) has either of the following:

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

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; and

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

11 (2) The applicant must satisfy all other requirements
12 in this section before taking the qualification examination.

13 Section 10. Fees. (1) The board shall adopt and charge
14 nonrefundable examination, application, license, and renewal
15 fees commensurate with the costs of processing and issuing.

16 (2) All fees collected by the board under this section
17 must be deposited in the earmarked revenue fund for the use
18 of the board, subject to 37-1-101(6).

19 Section 11. Terms of license -- renewal. (1) An
20 examiner's license is issued for 1 year or such portion as
21 remains at the time issued and may be renewed, if it has not
22 been revoked or suspended, before December 31 of each year.
23 A license that is not renewed expires at midnight on
24 December 31.

25 (2) An examiner whose license has expired may at any

1 time within 2 years after the expiration date obtain a
 2 renewal license without examination. An examiner whose
 3 license expired while he was in active duty in the armed
 4 forces of the United States or the national guard may renew
 5 his license without examination within 2 years after
 6 discharge from service.

7 Section 12. Suspension and revocation. An examiner's
 8 license may be suspended for a fixed period or may be
 9 revoked if after a hearing before the board it is determined
 10 that the examiner:

- 11 (1) obtained the license by fraudulent representation;
- 12 (2) has been convicted of a felony or a crime
 13 involving moral turpitude, including but not limited to
 14 dishonesty, fraud, or unauthorized divulging or selling of
 15 information or evidence;
- 16 (3) employs misrepresentation, false promises, or
 17 misleading advertising for the purpose of directly or
 18 indirectly obtaining business;
- 19 (4) is incompetent to act as an examiner;
- 20 (5) allowed his license to be used by an unlicensed
 21 person;
- 22 (6) violated the provisions of [sections 2 through 14]
 23 or a rule adopted by the board;
- 24 (7) willfully or negligently aided or abetted another
 25 examiner in violating the provisions of [sections 2 through

1 14] or a rule adopted by the board;

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

6 (9) is mentally ill;

7 (10) failed to inform the examinee of all specific
 8 question areas to be explored before their actual
 9 exploration during an examination;

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

12 (a) he has a right to refuse or accept the
 13 examination;

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

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

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

20 (e) any information he volunteers could be used
 21 against him or made available to the party requesting the
 22 examination unless otherwise specified and agreed to in
 23 writing; or

24 (12) failed to inform the examinee of the results of an
 25 examination if so requested.

1 Section 13. Board hearing. Before refusing an
2 application or suspending or revoking a license, the board
3 shall notify the applicant or licensee by mail not less than
4 30 days before taking action. The notice must include a
5 statement that the applicant or licensee may request a
6 hearing within 20 days of receipt of the notice. If the
7 applicant or licensee requests a hearing within that period,
8 the provisions concerning contested cases in the Montana
9 Administrative Procedure Act apply to the hearing. An
10 applicant or examiner who is aggrieved by a final decision
11 in a contested case is also entitled to judicial review
12 under the Montana Administrative Procedure Act.

13 Section 14. Admissibility of results as evidence.
14 Nothing in [sections 2 through 13] permits the results of
15 polygraph examinations or lie detector tests to be
16 introduced or admitted as evidence in a court.

17 Section 15. Penalty. A person who violates [sections 2
18 through 14] is guilty of a misdemeanor and subject to a fine
19 not exceeding \$300 or imprisonment not exceeding 6 months,
20 or both.

21 Section 16. Effective date. This act is effective on
22 passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. 413-81

FISCAL NOTE

Form BD-15

In compliance with a written request received Feb. 20, 19 81, there is hereby submitted a Fiscal Note for H.B. 809 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA).

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:

"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 instrument capable of measuring or recording bodily responses or psychophysiological activities; to create a board of polygraph examiners with licensing and regulatory powers over these persons and instruments; to provide penalties for violations; and to provide an immediate effective date."

ASSUMPTIONS:

1. Assume 20 current members of the Montana Polygraph Association.
2. Assume administrative duties will require .03 FTE annually.
3. Assume 5 board members meet 2 times a year (10 meeting days) at \$25 compensation plus travel.
4. Assume \$150 license fee will be required for board operations annually.

FISCAL IMPACT:	FY 82	FY 83
Revenue	\$3000	\$3000
Expenditures	<u>\$2700</u>	<u>\$2900</u>
Balance Fiscal Year End	\$ 300	\$ 100

David M Lewis

BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 2-23-81