

HOUSE BILL NO. 452

INTRODUCED BY DAILY, QUILICI, PAVLOVICH, D. BROWN

IN THE HOUSE

January 22, 1983	Introduced and referred to Committee on Business and Industry.
January 31, 1983	Committee recommend bill do pass as amended. Report adopted. Statement of Intent attached.
February 1, 1983	Bill printed and placed on members' desks.
February 2, 1983	Second reading, do pass.
February 3, 1983	Considered correctly engrossed.
February 4, 1983	Third reading, passed. Transmitted to Senate.

IN THE SENATE

February 5, 1983	Introduced and referred to Committee on Judiciary.
February 23, 1983	Committee recommend bill be concurred in as amended. Report adopted.
March 4, 1983	Second reading, concurred in.
March 7, 1983	Third reading, concurred in. Ayes, 33; Noes, 15.

IN THE HOUSE

March 7, 1983

Returned to House with
amendments.

March 9, 1983

Second reading, pass
consideration.

March 10, 1983

Second reading, amendments
concurred in.

March 11, 1983

Third reading, amendments
concurred in.

Sent to enrolling.

Reported correctly enrolled.

1 *House* BILL NO. 452
 2 INTRODUCED BY *Daily Lumber Patch*
 3 *Dave Brown*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT LICENSING AND
 5 REGULATING PERSONS WHO PURPORT TO BE ABLE TO DETECT
 6 DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC
 7 OPINION OF DECEPTION OR TRUTHFULNESS THROUGH THE USE OF ANY
 8 DEVICE OR INSTRUMENT CAPABLE OF MEASURING OR RECORDING
 9 BODILY RESPONSES OR PSYCHOPHYSIOLOGICAL ACTIVITIES;
 10 PROVIDING LICENSING QUALIFICATIONS; PROVIDING FOR REVOCATION
 11 AND SUSPENSION OF LICENSES; GRANTING RULEMAKING AUTHORITY TO
 12 THE DEPARTMENT OF COMMERCE; PROVIDING PENALTIES; AND
 13 PROVIDING AN IMMEDIATE EFFECTIVE DATE."
 14
 15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 16 Section 1. Definitions. In [sections 1 through 14],
 17 unless the context clearly indicates otherwise, the
 18 following definitions apply:
 19 (1) "Department" means the department of commerce
 20 provided for in Title 2, chapter 15, part 18.
 21 (2) "Examinee" means an individual who is being
 22 examined, tested, or questioned by an examiner for the
 23 purpose of detecting deception or verifying truthfulness.
 24 (3) "Examiner" means any person who:
 25 (a) purports to be able to detect deception, verify

1 truthfulness, or provide a diagnostic opinion of deception
 2 or truthfulness through the use of a mechanical device or
 3 instrument;
 4 (b) represents that he can or does offer the service
 5 of detecting deception, verifying truthfulness, or providing
 6 a diagnostic opinion of deception or truthfulness through
 7 the use of a mechanical device or instrument; or
 8 (c) uses a mechanical device or instrument to measure
 9 or record an individual's bodily responses or
 10 psychophysiological activities to enable or assist the
 11 detection of deception, the verification of truthfulness, or
 12 the reporting of a diagnostic opinion regarding deception or
 13 truthfulness.
 14 Section 2. Minimum standards for instruments or
 15 devices. (1) No person may use or attempt to use any
 16 instrument or device for the purpose of detecting deception,
 17 verifying truthfulness, or assisting in the reporting of a
 18 diagnostic opinion as to deception or truthfulness unless
 19 the instrument or device, at a minimum, is capable of
 20 visually, permanently, and simultaneously recording
 21 indications of an examinee's:
 22 (a) cardiovascular pattern;
 23 (b) respiratory pattern; and
 24 (c) galvanic skin response pattern.
 25 (2) Indications of other psychophysiological changes

1 or bodily responses may also be recorded in addition to the
2 minimum standards provided in subsection (1).

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

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

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

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

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

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

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

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

25 (3) purport to detect deception or verify truthfulness

1 through mechanical devices or instruments; or

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

7 Section 5. Issuance of examiner's license without
8 examination -- reciprocity. (1) Upon application to the
9 department within 6 months after [the effective date of this
10 act] and payment of the required license fee, a person must
11 be issued an examiner's license without examination if he
12 has satisfied the department by affidavit or otherwise that
13 he:

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

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

21 (2) Except as provided in subsection (3), an applicant
22 licensed as a polygraph examiner in another state must, upon
23 application to the department and payment of the required
24 license fee, be issued an examiner's license without
25 examination if he satisfies the department by affidavit or

1 otherwise that he:

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

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

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

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

18 (1) is at least 18 years old;

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

20 (3) is of good moral character;

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

24 (5) has a high school diploma from an accredited high
25 school or its equivalent and at least 5 years of continuous

1 investigative experience with a recognized law enforcement
2 or governmental investigative agency; and

3 (6) has successfully passed an examination conducted
4 by the department that tests the applicant's general
5 knowledge of the use of the polygraph.

6 Section 7. Fees. (1) The department shall adopt and
7 charge nonrefundable application, license, and license
8 renewal fees, commensurate with costs in accordance with
9 37-1-134.

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

14 Section 8. Terms of license -- renewal. (1) An
15 examiner's license is issued for 1 year or such portion as
16 remains at the time of issuance and may be renewed, if it
17 has not been revoked or suspended, on or before the date of
18 expiration of the license. A license that is not renewed
19 expires at midnight on the date set by the department.

20 (2) An examiner whose license has expired may at any
21 time within 2 years after the expiration date obtain a
22 renewal license without examination upon payment of a
23 renewal fee to the department. An examiner whose license
24 expired while he was on active duty in the armed forces of
25 the United States or the national guard may, notwithstanding

the provisions of 10-1-605, renew his license without examination within 2 years after discharge from service.

Section 9. Form of license -- display of license. (1)

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

(a) the name of the examiner;

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

and

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

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

Section 10. Pocket card. Upon the issuance of a license, a pocket card of such size, design, and content as determined by the department must be issued without charge to the examiner, which card is evidence that the examiner is duly licensed.

Section 11. Admissibility of results as evidence. Nothing in [sections 1 through 14] permits the results of a polygraph examination or other test given by an examiner to be introduced or admitted as evidence in a court of law.

Section 12. Suspension and revocation. An examiner's license may be suspended for a fixed period or may be

revoked if, after a hearing before the department, it has been determined by competent evidence that the examiner:

(1) has obtained the license by fraudulent representation;

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

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

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

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

(6) has willfully or negligently aided or abetted another examiner in violating the provisions of [sections 1 through 14] or any rule adopted by the department;

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

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

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

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

3 (a) he has the right to refuse to participate in the
4 examination;

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

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

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

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

14 Section 13. Hearing. Before refusing an application or
15 suspending or revoking a license, the department shall
16 notify the applicant or examiner by mail not less than 30
17 days before taking any action. The notice must advise the
18 applicant of the intended action and must include a
19 statement that the applicant or examiner may request a
20 hearing within 20 days of receipt of the notice. If the
21 applicant or examiner requests a hearing within that period,
22 a hearing must be granted, and contested case provisions of
23 the Montana Administrative Procedure Act apply to the
24 hearing. An applicant or examiner who is aggrieved by a
25 final decision in a contested case is entitled to judicial

1 review under the Montana Administrative Procedure Act.

2 Section 14. Penalty. Any person who violates any of
3 the provisions of [sections 1 through 14] is guilty of a
4 misdemeanor and is punishable by a fine of not more than
5 \$500 or by imprisonment in the county jail for a period not
6 to exceed 6 months or both such fine and imprisonment.

7 Section 15. Effective date. This act is effective on
8 passage and approval.

9 Section 16. Codification instruction. Sections 1
10 through 14 are intended to be codified as an integral part
11 of Title 37, and the provisions of Title 37, chapter 1,
12 apply to sections 1 through 14, except that nothing
13 contained in Title 37, chapter 1, grants additional
14 rulemaking authority to the department for the purpose of
15 administering this act.

-End-

STATE OF MONTANA

REQUEST NO. 224-83

FISCAL NOTE

Form BD-15

In compliance with a written request received January 25, , 19 83 , there is hereby submitted a Fiscal Note for House Bill 452 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:

House Bill 452 licenses and regulates persons who purport to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception of truthfulness through the use of any device or instrument capable of measuring or recording bodily responses or psychophysiological activities; provides licensing qualifications; provides for revocation and suspension of licenses; grants rule-making authority to the Department of Commerce; provides penalties; and provides and immediate effective date.

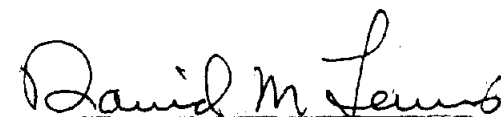
ASSUMPTIONS:

- 1) Assume 20 current members of the Montana Polygraph Association
- 2) Assume administrative duties will require .03 FTE annually
- 3) Assume \$150 annual license fee will be required for board operation

FISCAL IMPACT:

	<u>FY84</u>	<u>FY85</u>
Revenue	\$3000	\$3000
Expenditures	<u>(\$2600)</u>	<u>(\$2700)</u>
Fund Balance	\$ 400	\$ 300

FISCAL NOTE 9:E/1



BUDGET DIRECTOR

Office of Budget and Program Planning

Date: 1-31-83

1 STATEMENT OF INTENT

2 HOUSE BILL 452

3 House Business and Industry Committee

4

5 A statement of intent is required for this bill because
6 section 3 grants rulemaking authority to the Department of
7 Commerce.

8 It is the legislature's intent that the department
9 shall adopt rules setting forth the manner in which an
10 applicant must prove his fitness for licensure and adopt
11 rules specifying the fees authorized by section 7. The
12 department must also adopt rules establishing the date of
13 expiration of all licenses; it is contemplated that these
14 rules will establish a different numerical grouping so that
15 all licenses do not expire on one date. The department shall
16 also adopt rules specifying the form of the license and
17 pocket card. The department shall also adopt, under section
18 8, rules for continuing education of examiners. The
19 department may, under sections 3 and 15, adopt any or all
20 parts of the Attorney General's Model Rules which satisfy
21 the requirements of section 15. It is the legislature's
22 intent that no other rules than those required by section 15
23 and as may otherwise be authorized by the Administrative
24 Procedure Act, be adopted by the department to implement
25 this act.

Approved by Committee
on Business and Industry

HOUSE BILL NO. 452

INTRODUCED BY DAILY, QUILICI, PAVLOVICH, D. BROWN

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

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

Section 1. Definitions. In [sections 1 through 14 15],
unless the context clearly indicates otherwise, the
following definitions apply:

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

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

(3) "Examiner" means any person who:

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

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

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

Section 2. Minimum standards for instruments or
devices. (1) No person may 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 deception or truthfulness unless
the instrument or device, at a minimum, is capable of
visually, permanently, and simultaneously recording
indications of an examinee's:

(a) cardiovascular pattern;

(b) respiratory pattern; and

(c) galvanic skin response pattern.

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

(3) The operation, use, or attempted use by an examiner of an instrument or device that does not meet the minimum requirements provided in subsection (1) is subject to the penalties provided in [section 14 15].

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

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

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

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

Section 4. License required. No person may, unless licensed under the provisions of [sections 1 through 14 15]:

(1) hold himself out to be an examiner;

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

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

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

Section 5. Issuance of examiner's license without examination -- reciprocity. (1) Upon application to the department within 6 months after ~~[the effective date of this act]~~ and payment of the required license fee, a person must be issued an examiner's license without examination if he has satisfied the department by affidavit or otherwise that he:

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

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

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

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

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

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

8 (3) No license may be issued without examination under
9 subsection (2) unless the state in which the applicant is
10 licensed has and maintains licensing requirements
11 substantially equivalent to those provided in [sections 1
12 through 14 15] and grants reciprocity to examiners licensed
13 in Montana under terms similar to those provided in this
14 section.

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

19 (1) is at least 18 years old;

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

21 (3) is of good moral character;

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

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

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

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

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

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

18 ~~[HERE IS A NEW MCA SECTION THAT READS:~~

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

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

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

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

13 Section 10. Form of license -- display of license. (1)
14 A license issued under the provisions of [sections 1 through
15 14 15] must be in the form determined by the department and
16 must include:

- 17 (a) the name of the examiner;
- 18 (b) the name under which the examiner is to operate;
- 19 and
- 20 (c) the number of the license and the date on which
21 the license was issued.

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

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

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

5 Section 12. Admissibility of results as evidence.
6 Nothing in [sections 1 through 14 15] permits the results of
7 a polygraph examination or other test given by an examiner
8 to be introduced or admitted as evidence in a court of law.

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

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

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

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

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

22 (5) has violated the provisions of [sections 1 through
23 14 15] or any rule adopted by the department;

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

1 through 14 15] or any rule adopted by the department;

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

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

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

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

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

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16 progress at any time;

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

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

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

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

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

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

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

19 Section 16. Codification instruction. Sections 1
20 through 14 15 are intended to be codified as an integral
21 part of Title 37, and the provisions of Title 37, chapter 1,
22 apply to sections 1 through 14 15, except that nothing
23 contained in Title 37, chapter 1, grants additional
24 rulemaking authority to the department for the purpose of
25 administering this act.

-End-

1 STATEMENT OF INTENT

2 HOUSE BILL 452

3 House Business and Industry Committee

4
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6 section 3 grants rulemaking authority to the Department of
7 Commerce.

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13 expiration of all licenses; it is contemplated that these
14 rules will establish a different numerical grouping so that
15 all licenses do not expire on one date. The department shall
16 also adopt rules specifying the form of the license and
17 pocket card. The department shall also adopt, under section
18 9, rules for continuing education of examiners. The
19 department may, under sections 3 and 15, adopt any or all
20 parts of the Attorney General's Model Rules which satisfy
21 the requirements of section 15. It is the legislature's
22 intent that no other rules than those required by section 15
23 and as may otherwise be authorized by the Administrative
24 Procedure Act, be adopted by the department to implement
25 this act.

1 HOUSE BILL NO. 452

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

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4 A BILL FOR AN ACT ENTITLED: "AN ACT LICENSING AND
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6 DECEPTION, VERIFY TRUTHFULNESS, OR PROVIDE A DIAGNOSTIC
7 OPINION OF DECEPTION OR TRUTHFULNESS THROUGH THE USE OF ANY
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12 ~~FOR RENEWAL OF LICENSES~~; GRANTING RULEMAKING AUTHORITY TO
13 THE DEPARTMENT OF COMMERCE; ~~AND PROVIDING PENALTIES;--AND~~
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25 (3) "Examiner" means any person who:

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2 truthfulness, or provide a diagnostic opinion of deception
3 or truthfulness through the use of a mechanical device or
4 instrument;

5 (b) represents that he can or does offer the service
6 of detecting deception, verifying truthfulness, or providing
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9 (c) uses a mechanical device or instrument to measure
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15 Section 2. Minimum standards for instruments or
16 devices. (1) No person may use or attempt to use any
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19 diagnostic opinion as to deception or truthfulness unless
20 the instrument or device, at a minimum, is capable of
21 visually, permanently, and simultaneously recording
22 indications of an examinee's:

- 23 (a) cardiovascular pattern;
24 (b) respiratory pattern; and
25 (c) galvanic skin response pattern.

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

4 (3) The operation, use, or attempted use by an
5 examiner of an instrument or device that does not meet the
6 minimum requirements provided in subsection (1) is subject
7 to the penalties provided in [section 44 15].

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

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

12 (2) adopt rules in accordance with the Montana
13 Administrative Procedure Act to carry out the provisions of
14 [sections 5, 7 through 10, and 15 THIS ACT]; and

15 (3) investigate all complaints concerning violations
16 of [sections 1 through 44 15] unless the department
17 determines that any such complaint is frivolous or otherwise
18 lacking in merit.

19 Section 4. License required. No person may, unless
20 licensed under the provisions of [sections 1 through 44 15]:

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

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

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

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

8 Section 5. Issuance of examiner's license without
9 examination -- reciprocity. (1) Upon application to the
10 department within 6 months after ~~[the effective date of this~~
11 ~~act]~~ and payment of the required license fee, a person must
12 be issued an examiner's license without ~~examination~~ if he
13 has satisfied the department by affidavit or otherwise that
14 he

15 ~~{a} 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 standards of~~
19 ~~[section 23] and~~

20 ~~{b} meets the minimum requirements for licensing~~
21 ~~provided in [section 6(1) through (5)].~~

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

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

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

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

8 (3) No license may be issued without examination under
9 subsection (2) unless the state in which the applicant is
10 licensed has and maintains licensing requirements
11 substantially equivalent to those provided in [sections 1
12 through 14 15] and grants reciprocity to examiners licensed
13 in Montana under terms similar to those provided in this
14 section.

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

- 19 (1) is at least 18 years old;
20 (2) is a citizen of the United States;
21 (3) is of good moral character;
22 (4) has successfully completed a course in polygraph
23 instruction at an American polygraph association accredited
24 institution;
25 (5) has a high school diploma from an accredited high

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

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

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

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

18 THERE IS A NEW MCA SECTION THAT READS:

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

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

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

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

13 Section 10. Form of license — display of license. (1)
14 A license issued under the provisions of [sections 1 through
15 14 15] must be in the form determined by the department and
16 must include:

17 (a) the name of the examiner;
18 (b) the name under which the examiner is to operate;
19 and

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

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

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

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

5 Section 12. Admissibility of results as evidence.
6 Nothing in [sections 1 through 14 15] permits the results of
7 a polygraph examination or other test given by an examiner
8 to be introduced or admitted as evidence in a court of law.

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

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

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

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

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

22 (5) has violated the provisions of [sections 1 through
23 14 15] or any rule adopted by the department;

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

through ~~14 15~~] or any rule adopted by the department;

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

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

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

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

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

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

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

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

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

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

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

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

~~Section 15. Effective date. This act is effective on passage and approval.~~

Section 16. Codification instruction. Sections 1 through ~~14 15~~ are intended to be codified as an integral part of Title 37, and the provisions of Title 37, chapter 1, apply to sections 1 through ~~14 15~~, except that nothing contained in Title 37, chapter 1, grants additional rulemaking authority to the department for the purpose of administering this act.

-End-

March 1, 1983

SENATE STANDING COMMITTEE REPORT
(Judiciary)

That House Bill No. 452 be amended as follows:

1. Title, line 13.
Following: "COMMERCE;"
Insert: "PROHIBITING THE RESULTS OF A POLYGRAPH EXAMINATION FROM
BEING INTRODUCED OR ADMITTED INTO EVIDENCE;"
2. Page 8, line 5.
Strike: "Admissibility"
Insert: "Inadmissibility"
3. Page 8, line 6.
Strike: "Nothing in [sections 1 through 15] permits the"
4. Page 8, line 8.
Strike: "to"
Insert: "may not"

1 STATEMENT OF INTENT

2 HOUSE BILL 452

3 House Business and Industry Committee

4
5 A statement of intent is required for this bill because
6 section 3 grants rulemaking authority to the Department of
7 Commerce.

8 It is the legislature's intent that the department
9 shall adopt rules setting forth the manner in which an
10 applicant must prove his fitness for licensure and adopt
11 rules specifying the fees authorized by section 7. The
12 department must also adopt rules establishing the date of
13 expiration of all licenses; it is contemplated that these
14 rules will establish a different numerical grouping so that
15 all licenses do not expire on one date. The department shall
16 also adopt rules specifying the form of the license and
17 pocket card. The department shall also adopt, under section
18 8, rules for continuing education of examiners. The
19 department may, under sections 3 and 15, adopt any or all
20 parts of the Attorney General's Model Rules which satisfy
21 the requirements of section 15. It is the legislature's
22 intent that no other rules than those required by section 15
23 and as may otherwise be authorized by the Administrative
24 Procedure Act, be adopted by the department to implement
25 this act.

REFERENCE BILL
HB 452

1 HOUSE BILL NO. 452

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

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

17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

19 Section 1. Definitions. In [sections 1 through ~~14~~ 15],
20 unless the context clearly indicates otherwise, the
21 following definitions apply:

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

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 any person who:

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

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

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

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

25 (a) cardiovascular pattern;

(b) respiratory pattern; and

(c) galvanic skin response pattern.

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

(3) The operation, use, or attempted use by an examiner of an instrument or device that does not meet the minimum requirements provided in subsection (1) is subject to the penalties provided in [section 14 15].

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

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

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

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

Section 4. License required. No person may, unless licensed under the provisions of [sections 1 through 14 15]:

(1) hold himself out to be an examiner;

(2) use or attempt to use any mechanical device or instrument for the purpose of detecting deception, verifying

truthfulness, or reporting a diagnostic opinion regarding deception or truthfulness;

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

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

Section 5. Issuance of examiner's license without examination -- reciprocity. (1) Upon application to the department within 6 months after [the effective date of this act] and payment of the required license fee, a person must be issued an examiner's license without examination if he has satisfied the department by affidavit or otherwise that he:

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

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

(2) Except as provided in subsection (3), an applicant licensed as a polygraph examiner in another state must, upon

1 application to the department and payment of the required
2 license fee, be issued an examiner's license without
3 examination if he satisfies the department by affidavit or
4 otherwise that he:

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

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

10 (3) No license may be issued without examination under
11 subsection (2) unless the state in which the applicant is
12 licensed has and maintains licensing requirements
13 substantially equivalent to those provided in [sections 1
14 through ~~14~~ 15] and grants reciprocity to examiners licensed
15 in Montana under terms similar to those provided in this
16 section.

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

21 (1) is at least 18 years old;

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

23 (3) is of good moral character;

24 (4) has successfully completed a course in polygraph
25 instruction at an American polygraph association accredited

1 institution;

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

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

12 Section 7. Fees. (1) The department shall adopt and
13 charge nonrefundable application, license, and license
14 renewal fees, commensurate with costs in accordance with
15 37-1-134.

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

20 THERE IS A NEW MCA SECTION THAT READS:

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

Section 9. Terms of license -- renewal. (1) An examiner's license is issued for 1 year or such portion as remains at the time of issuance and may be renewed, if it has not been revoked or suspended, on or before the date of expiration of the license. A license that is not renewed expires at midnight on the date set by the department.

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

Section 10. Form of license -- display of license. (1) A license issued under the provisions of [sections 1 through 14 15] must be in the form determined by the department and must include:

- (a) the name of the examiner;
- (b) the name under which the examiner is to operate;
- and
- (c) the number of the license and the date on which the license was issued.

(2) The license must at all times be posted in a conspicuous place in the principal place of business of the

examiner.

Section 11. Pocket card. Upon the issuance of a license, a pocket card of such size, design, and content as determined by the department must be issued without charge to the examiner, which card is evidence that the examiner is duly licensed.

Section 12. ~~Admissibility~~ **INADMISSIBILITY** of results as evidence. ~~Nothing in [sections 1 through 14 15] permits the results~~ **RESULTS** of a polygraph examination or other test given by an examiner to ~~MAY NOT~~ be introduced or admitted as evidence in a court of law.

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

(1) has obtained the license by fraudulent representation;

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

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

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

(5) has violated the provisions of [sections 1 through

1 ±4 15] or any rule adopted by the department;

2 (6) has willfully or negligently aided or abetted

3 another examiner in violating the provisions of [sections 1

4 through ±4 15] or any rule adopted by the department;

5 (7) has failed to provide, within a reasonable amount

6 of time, information requested by the department relating to

7 a formal complaint filed with the department involving the

8 examiner;

9 (8) has been adjudicated by a decree of court to be

10 seriously mentally ill;

11 (9) has failed to inform the examinee of all specific

12 question areas to be explored before questions are actually

13 asked during an examination;

14 (10) has conducted an examination without having

15 informed the examinee that:

16 (a) he has the right to refuse to participate in the

17 examination;

18 (b) he has the right to halt the examination in

19 progress at any time;

20 (c) he is not required to answer any questions or give

21 any information; and

22 (d) any information he volunteers could be used

23 against him or made available to the party requesting the

24 examination unless otherwise agreed to in writing; or

25 (11) has failed to inform the examinee of the results

1 of an examination if requested.

2 Section 14. Hearing. Before refusing an application or

3 suspending or revoking a license, the department shall

4 notify the applicant or examiner by mail not less than 30

5 days before taking any action. The notice must advise the

6 applicant of the intended action and must include a

7 statement that the applicant or examiner may request a

8 hearing within 20 days of receipt of the notice. If the

9 applicant or examiner requests a hearing within that period,

10 a hearing must be granted, and contested case provisions of

11 the Montana Administrative Procedure Act apply to the

12 hearing. An applicant or examiner who is aggrieved by a

13 final decision in a contested case is entitled to judicial

14 review under the Montana Administrative Procedure Act.

15 Section 15. Penalty. Any person who violates any of

16 the provisions of [sections 1 through ±4 15] is guilty of a

17 misdemeanor and is punishable by a fine of not more than

18 \$500 or by imprisonment in the county jail for a period not

19 to exceed 6 months or both such fine and imprisonment.

20 ~~Section 15. Effective date. This act is effective on~~

21 ~~passage and approval.~~

22 Section 16. Codification instruction. Sections 1

23 through ±4 15 are intended to be codified as an integral

24 part of Title 37, and the provisions of Title 37, chapter 1,

25 apply to sections 1 through ±4 15, except that nothing

1 contained in Title 37, chapter 1, grants additional
2 rulemaking authority to the department for the purpose of
3 administering this act.

-End-