HOUSE BILL NO. 639

،

INTRODUCED BY NATHE

BY REQUEST OF THE DEPARTMENT OF COMMERCE

IN THE HOUSE

February 2, 1985	Introduced and referred to Committee on Business and Labor.
February 5, 1985	Fiscal Note requested.
February 7, 1985	Fiscal Note returned.
February 9, 1985	Committee recommend bill do pass as amended. Report adopted.
	Statement of Intent attached.
	Bill printed and placed on members' desks.
February 11, 1985	Second reading, do pass.
February 12, 1985	Considered correctly engrossed.
February 13, 1985	Third reading, passed.
	Transmitted to Senate.
IN THE	SENATE
February 14, 1985	Introduced and referred to Committee on Judiciary.
March 7, 1985	Committee recommend bill be concurred in as amended. Report adopted.
March 9, 1985	Second reading, concurred in.

March 12, 1985		Third reading, concurred in. Ayes, 31; Noes, 19.
		Returned to House with amendments.
	IN THE	HOUSE
March 13, 1985		Received from Senate.
April 8, 1985		Second reading, pass consideration.
		On motion, Senate amendments placed on second reading this day.
		Second reading, amendments concurred in.
		On motion, rules suspended and bill placed on third reading this day.
		Third reading, amendments concurred in.
		Sent to enrolling.
		Reported correctly enrolled.

• •

LC 0744/01

ntana Legislative Council

1	HOUSE BILL NO. 639	1	(3) "Examiner" means any person who:
2	INTRODUCED BY NATH-	2	(a) purports to be able to detect deception, verify
3	BY REQUEST OF THE DEPARTMENT OF COMMERCE	3	truthfulness, or provide a diagnostic opinion of deception
4		4	or truthfulness through the use of a mechanical device or
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING POLYGRAPH	5	instrument;
6	LICENSURE LAWS BY CREATING INTERNSHIP TRAINING; REQUIRING	6	(b) represents that he can or does offer the service
7	FINGERPRINTS OF APPLICANTS; ESTABLISHING A PRE-TEST	7	of detecting deception, verifying truthfulness, or providing
8	PROCEDURE; SETTING DATES FOR LICENSE RENEWAL; AND	8	a diagnostic opinion of deception or truthfulness through
9	ESTABLISHING REQUIREMENTS FOR EXAMINATIONS AND INSTRUMENTS	9	the use of a mechanical device or instrument; or
10	RELATING TO PSYCHOLOGICAL STRESS EVALUATORS; REMOVING THE	10	(c) uses a mechanical device or instrument to measure
11	PROHIBITION ON USE OF RESULTS OF A POLYGRAPH EXAMINATION AS	11	or record an individual's bodily responses or
12	EVIDENCE; AMENDING SECTIONS 37-62-101, 37-62-202, AND	12	psychophysiological activities to enable or assist the
13	37-62-204, MCA; REPEALING SECTION 37-62-302, MCA; AND	13	detection of deception, the verification of truthfulness, or
14	PROVIDING AN IMMEDIATE EFFECTIVE DATE."	14	the reporting of a diagnostic opinion regarding deception or
15		15	truthfulness.
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	16	(4) "Internship" means the study of polygraphs and the
17	Section 1. Section 37-62-101, MCA, is amended to read:	17	administration of polygraph examinations by a trainee under
1 8	"37-62-101. Definitions. In this chapter, unless the	18	the personal supervision and control of a licensed polygraph
19	context clearly indicates otherwise, the following	19	examiner."
20	definitions apply:	20	Section 2. Section 37-62-202, MCA, is amended to read:
21	(1) "Department" means the department of commerce	21	"37-62-202. Issuance of examiner's license with
22	provided for in Title 2, chapter 15, part 18.	22	examination. Upon application and payment of the required
23	(2) "Examinee" means an individual who is being	23	fee, an applicant must be granted a license as an examiner
24	examined, tested, or questioned by an examiner for the	24	if he:
25	purpose of detecting deception or verifying truthfulness.	25	(1) is at least 18 years old;
			INTRODUCED BILL

INTRODUCED BILL - 2 -HB 639

LC 0744/01

LC 0744/01

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

2 (3) is of good moral character;

3 (4) has successfully completed a course in polygraph
4 instruction at an American polygraph association accredited
5 institution;

6 (5) has a high school diploma from an accredited high7 school or its equivalent; and

8 (6) has successfully passed an examination conducted 9 by the department that tests the applicant's general 10 knowledge of the use of the polygraph or a comparable 11 examination conducted by another state whose law requires 12 successful completion of the examination as qualification 13 for a license; and

14 (7) has submitted with his application a full set of 15 fingerprints made at a law enforcement agency by an agent or 16 officer of such agency on forms supplied by the agency or by 17 the department."

Section 3. Section 37-62-204, MCA, is amended to read: 18 "37-62-204. Terms of license -- renewal. (1) An 19 20 examiner's license is-issued-for-1-year-or-such--portion--as remains--at--the--time-of-issuance-and-may-be-renewed;-if-it 21 22 has-not-been-revoked-or-suspended;-on-or-before-the-date--of expiration--of--the--license--A-license-that-is-not-renewed 23 expires at midnight on the-date-set-by-the-department March 24 1 of each year and is renewable only after payment of a 25

renewal fee and proof of compliance with continuing eduction
 requirements as provided by 37-62-207.

3 (2) An examiner whose license has expired may at any 4 time within 2 years after the expiration date obtain a renewal license without examination upon payment of a 5 6 renewal fee to the department. An examiner whose license expired while he was on active duty in the armed forces of 7 the United States or the national quard may, notwithstanding R the provisions of 10-1-605, renew his license without 9 examination within 2 years after discharge from service." 10

11 <u>NEW SECTION.</u> Section 4. Internship license. (1) Upon 12 application, payment of fees, and approval by the 13 department, a polygraph intern license must be issued to an 14 applicant and is valid for 12 months.

15 (2) Each licensed intern must be supervised by a 16 licensed polygraph examiner who shall, in accordance with 17 rules established by the department, file reports concerning 18 intern training.

NEW SECTION, Section 5. Pre-test ----19 procedure termination of examination. (1) An examiner may 20 not administer a polygraph examination without first conducting 21 22 a pre-test interview with the person to be examined. The 23 examinee must be informed of all issues about which he will 24 be examined and which will be reported by the examiner. All 25 questions to be asked during the examination must be written

1 and read verbatim to the examinee during the pre-test
2 interview.

3 (2) Written, signed, and dated consent must be given4 by the examinee prior to any polygraph examination.

5 (3) Upon the request of the examinee, all pre-test 6 procedures or polygraph examinations in progress must 7 terminate immediately. The examiner may, in his discretion, 8 terminate any examination for any reason.

9 <u>NEW SECTION.</u> Section 6. Psychological stress 10 evaluator license -- experience. (1) No person may test 11 another using a machine that measures and records voice 12 reactions to determine psychological stress, unless licensed 13 by the department.

14 (2) An applicant for a psychological stress evaluator
15 license must successfully complete a course of formal
16 instruction at a psychological stress evaluator school
17 approved by the department.

18 (3) Any psychological stress evaluation school or
19 course approved by the department must consist of not less
20 than 112 hours of actual classroom instruction in
21 psychological stress evaluation.

(4) Application for a license under this section mustbe on forms provided by the department.

24NEW SECTION.Section 7.Psychologicalstress25evaluator examination -- procedure.Any psychological stress

1 evaluator examination must be conducted according to
2 [section 5].

NEW SECTION. Section 8. Psychological stress ٦ evaluator instruments. An instrument used for psychological 4 5 stress evaluator examinations must be capable of measuring 6 and recording voice reactions on a graph. This recording 7 must be in a form suitable for examination by another 8 psychological stress evaluator examiner. The recordings must be maintained for a period of 5 years and must be made 9 10 available to the department or its designated representative on request. The instrument used for examinations must be 11 given maintenance, cleaning, adjustment, and demagnetizing 12 13 periodically as recommended by the manufacturer and not less than once after each 8 hours of continuous mechanical 14 15 operation. The examiner shall conduct a test pattern of the 16 instrument prior to each examination.

17 <u>NEW SECTION.</u> Section 9. Repealer. Section 37-62-302,
 18 MCA, is repealed.

<u>NEW SECTION.</u> Section 10. Codification instruction.
Sections 4 through 8 are intended to be codified as an
integral part of Title 37, chapter 62, and the provisions of
Title 37, chapter 62, apply to sections 4 through 8.

23 <u>NEW SECTION.</u> Section 11. Severability. If a part of
24 this act is invalid, all valid parts that are severable from
25 the invalid part remain in effect. If a part of this act is

LC 0744/01

- 1 invalid in one or more of its applications, the part remains
- 2 in effect in all valid applications that are severable from
- 3 the invalid applications.

r.

- 4 <u>NEW SECTION.</u> Section 12. Effective date. This act is
- 5 effective on passage and approval.

-End-

STATE OF MONTANA

REQUEST NO. FNN328-85

FISCAL NOTE

Form BD-15

In compliance with a written request received <u>February 5</u>, 19<u>85</u>, there is hereby submitted a Fiscal Note for <u>House Bill 639</u> 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:

A bill to revise laws of polygraph examiners to create an internship training provision; requiring fingerprints of applicants; establishing a pre-test procedure; setting dates for license renewal; establishing licensing requirements for psychological stress evaluators and removes the prohibition on use of results of polygraph examination as evidence.

ASSUMPTIONS:

- 1. Assume any costs can be absorbed with current operations.
- 2. Assume licensing program to continue operating at current level as only one person will be licensed as a psychological stress evaluator and expect only one intern registration per year.
- 3. Assume no effect on renewals as they are currently set at March 1st by rule (28 current licensees).

NO FISCAL IMPACT.

BUDGET DIRECTOR Office of Budget and Program Planning

Date: Feb 7, 1985 HR 639

49th Legislature

HB 0639/si

APPROVED BY COMM. ON BUSINESS AND LABOR

1	STATEMENT OF INTENT
2	HOUSE BILL 639
3	House Business and Labor Committee
4	

5 The proposed legislation provides a new license to be 6 issued by the department of commerce concerning polygraph 7 interns.

8 The proposals give the department (there is no "board of polygraph operators") authority to write rules concerning 9 10 the application and fee to be established for an intern license and for reporting content and procedures regarding 11 12 intern training. (See section 3 of the bill.) The rules 13 should be aimed at assuring that the intern is adequately 14 supervised and is given the instruction necessary to achieve 15 licensure.

In accordance with the statement of intent made by the
1983 legislature, no additional rulemaking powers are herein
granted to the department pursuant to Title 37, chapter 1.

Montana Legislative Council

SECOND READING

1	HOUSE BILL NO. 639
2	INTRODUCED BY NATHE
3	BY REQUEST OF THE DEPARTMENT OF COMMERCE
4	
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING POLYGRAPH
6	LICENSURE LAWS BY CREATING INTERNSHIP TRAINING; REQUIRING
7	FINGERPRINTS OF APPLICANTS; ESTABLISHING A PRE-TEST
8	PROCEDURE; SETTING DATES FOR LICENSE RENEWAL; AND
9	ESTABLISHING-REQUIREMENTS-POR-EXAMINATIONSANDINSTRUMENTS
10	RELATINGTOPSYCHOLOGICALSTRESS-EVALUATORS7-REMOVING-THE
11	PROHIBITION-ON-USE-OP-RESULTS-OF-A-FOLYGRAPH-EXAMINATIONAS
12	EVIDENCE; AMENDING SECTIONS 37-62-101, 37-62-202, AND
13	37-62-204, MCA; REPEALINGSECTION37-62-302,MCA; AND
14	PROVIDING AN IMMEDIATE EFFECTIVE DATE."
15	
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 37-62-101, MCA, is amended to read: "37-62-101. Definitions. In this chapter, 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: 1 2 (a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception 3 or truthfulness through the use of a mechanical device or 4 instrument; 5 (b) represents that he can or does offer the service 6 of detecting deception, verifying truthfulness, or providing 7 8 a diagnostic opinion of deception or truthfulness through the use of a mechanical device or instrument; or 9 (c) uses a mechanical device or instrument to measure 10 or record an individual's bodily 11 responses or 12 psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or 13 the reporting of a diagnostic opinion regarding deception or 14 15 truthfulness. (4) "Internship" means the study of polygraphs and the 16 17 administration of polygraph examinations by a trainee under the personal supervision and control of a licensed polygraph 18 19 examiner." 20 Section 2. Section 37-62-202, MCA, is amended to read: 21 "37-62-202. Issuance of examiner's license with examination. Upon application and payment of the required 22 23 fee, an applicant must be granted a license as an examiner 24 if he: is at least 18 years old; 25

-2-

HB 639

1

2

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

2 (3) is of good moral character;

3 (4) has successfully completed a course in polygraph
4 instruction at an American polygraph association accredited
5 institution;

6 (5) has a high school diploma from an accredited high7 school or its equivalent; and

8 (6) has successfully passed an examination conducted 9 by the department that tests the applicant's general 10 knowledge of the use of the polygraph or a comparable 11 examination conducted by another state whose law requires 12 successful completion of the examination as qualification 13 for a license; and

14 (7) has submitted with his application a full set of 15 fingerprints made at a law enforcement agency by an agent or 16 officer of such agency on forms supplied by the agency or by 17 the department."

18 Section 3. Section 37-62-204, MCA, is amended to read: "37-62-204. Terms of license -- renewal. (1) An 19 examiner's license is-issued-for-1-year-or-such--portion--as 20 remains--at--the--time-of-issuance-and-may-be-renewed;-if-it 21 has-not-been-revoked-or-suspended; -on-or-before-the-date--of 22 23 expiration--of--the--licenset--A-licensethat-is-not-renewed expires at midnight on the-date-set-by-the-department March 24 1 of each year and is renewable only after payment of a 25

-3-

renewal fee and proof of compliance with continuing eduction requirements as provided by 37-62-207.

3 (2) An examiner whose license has expired may at any 4 time within 2 years after the expiration date obtain a renewal license without examination upon payment of a 5 6 renewal fee to the department. An examiner whose license 7 expired while he was on active duty in the armed forces of 8 the United States or the national quard may, notwithstanding the provisions of 10-1-605, renew his license without 9 10 examination within 2 years after discharge from service."

11 <u>NEW SECTION.</u> Section 4. Internship license. (1) Upon 12 application, payment of fees, and approval by the 13 department, a polygraph intern license must be issued to an 14 applicant and is valid for 12 months.

15 (2) Each licensed intern must be supervised by a 16 licensed polygraph examiner who shall, in accordance with 17 rules established by the department, file reports concerning 18 intern training.

19 NEW SECTION. Section 5. Pre-test procedure ---20 termination of examination. (1) An examiner may not administer a polygraph examination without first conducting 21 22 a pre-test interview with the person to be examined. The 23 examinee must be informed of all issues about which he will 24 be examined and which will be reported by the examiner. All 25 questions to be asked during the examination must be written

-4-

1	and read verbatim to the examinee during the pre-test
2	interview.
3	(2) Written, signed, and dated consent must be given
4	by the examinee prior to any polygraph examination.
5	(3) Upon the request of the examinee, all pre-test
6	procedures or polygraph examinations in progress must
7	terminate immediately. The examiner may, in his discretion,
8	terminate any examination for any reason.
9	NEW-SECTIONSection-6Psychologicalstress
10	evaluatorlicenseexperience(l)-No-person-may-test
11	another-using-a-machinethatmeasuresandrecordsvoice
12	reactions-to-determine-psychological-stress;-unless-licensed
13	by-the-department.
14	{2}Anapplicant-for-a-psychological-stress-evaluator
15	licensemustsuccessfullycompleteacourseofformal
16	instructionatapsychologicalstressevaluatorschool
17	approved-by-the-department-
18	+3+Anypsychologicalstressevaluationschoolor
19	courseapprovedby-the-department-must-consist-of-not-less
20	than112hoursofactualclassroominstructionin
21	psychological-stress-evaluation-
22	(4)Applicationfor-a-license-under-this-section-must
23	be-on-forms-provided-by-the-department:
24	NEW-SECTIONSection-7Psychologicalstress
25	evaluatorexaminationprocedureAnypaychological

.-

*

~5-

HB 639

1	stress-evaluator-examination-must-be-conducted-accordingto
2	fsection-S].
3	NEW-SECTIONSection-8Psychologicalstress
4	evaluator-instrumentsAn-instrument-used-for-psychological
5	stress-evaluator-examinations-must-be-capableofmeasuring
6	andrecordingvoicereactionson-a-graphThis-recording
7	must-berin-re-formsuitableforexaminationbyanother
8	psychological-stress-evaluator-examiner-The-recordings-must
9	bemaintainedforaperiodof5-years-and-must-be-made
10	available-to-the-department-or-its-designated-representative
11	on-requestThe-instrument-usedforexaminationsmustbe
12	givenmaintenance;cleaning;-adjustment;-and-demagnetizing
13	periodically-as-recommended-by-the-manufacturer-and-not-less
14	than-onceaftereach8hoursofcontinuousmechanical
15	operation The examiner shall conduct a test pattern of the
16	instrument-prior-to-each-examination.
17	<u>NEW-SECTIONSection-9RepeaterSection-37-62-3027</u>
18	MCA7-is-repeated.
19	NEW SECTION. SECTION 6. EXTENSION OF AUTHORITY. ANY
20	EXISTING AUTHORITY OF THE DEPARTMENT OF COMMERCE TO MAKE
21	RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT IS
22	EXTENDED TO THE PROVISIONS OF THIS ACT.
23	NEW SECTION. Section 7. Codification instruction.
24	Sections 4 through-8 AND 5 are intended to be codified as an
25	integral part of Title 37, chapter 62, and the provisions of

-6-

HB 639

Title 37, chapter 62, apply to sections 4 through-8 AND 5.
 <u>NEW SECTION.</u> Section 8. 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.

8 <u>NEW SECTION.</u> Section 9. Effective date. This act is
9 effective on passage and approval.

-End-

1

23

4

HB 0639/si

STATEMENT	OF	INTENT

HOUSE BILL 639

House Business and Labor Committee

5 The proposed legislation provides a new license to be 6 issued by the department of commerce concerning polygraph 7 interns.

The proposals give the department (there is no "board 8 of polygraph operators") authority to write rules concerning 9 10 the application and fee to be established for an intern license and for reporting content and procedures regarding 11 12 intern training. (See section 3 of the bill.) The rules 13 should be aimed at assuring that the intern is adequately 14 supervised and is given the instruction necessary to achieve 15 licensure.

16 In accordance with the statement of intent made by the
17 1983 legislature, no additional rulemaking powers are herein
18 granted to the department pursuant to Title 37, chapter 1.

THIRD READING HB 639

ntana Legislative Council

.

÷

HB 0639/02

Montana Legislative Council

1	HOUSE BILL NO. 639	1	(3) "Examiner" means any person who:
2	INTRODUCED BY NATHE	2	(a) purports to be able to detect deception, verify
3	BY REQUEST OF THE DEPARTMENT OF COMMERCE	<u> </u>	truthfulness, or provide a diagnostic opinion of deception
4		4	or truthfulness through the use of a mechanical device or
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING POLYGRAPH	5	instrument;
6	LICENSURE LAWS BY CREATING INTERNSHIP TRAINING; REQUIRING	6	(b) represents that he can or does offer the service
7	FINGERPRINTS OF APPLICANTS; ESTABLISHING A PRE-TEST	7	of detecting deception, verifying truthfulness, or providing
8	PROCEDURE; SETTING DATES FOR LICENSE RENEWAL; AND	. 8	a diagnostic opinion of deception or truthfulness through
9	establishing-requirements-for-examinationsandinstruments	9	the use of a mechanical device or instrument; or
10	Relatingtopsychologicalstress-evaluators7-removing-the	10	(c) uses a mechanical device or instrument to measure
11	prohibition-on-use-of-results-of-a-polygraph-examinationas	11	or record an individual's bodily responses or
12	EVIDENCE; AMENDING SECTIONS 37-62-101, 37-62-202, AND	12	psychophysiological activities to enable or assist the
13	37-62-204, MCA; REPEALINGSECTION37-62-3027MCA; AND	13	detection of deception, the verification of truthfulness, or
14	PROVIDING AN IMMEDIATE EFFECTIVE DATE."	14	the reporting of a diagnostic opinion regarding deception or
15		15	truthfulness.
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	16	(4) "Internship" means the study of polygraphs and the
17	Section 1. Section 37-62-101, MCA, is amended to read:	17	administration of polygraph examinations by a trainee under
18	"37-62-101. Definitions. In this chapter, unless the	18	the personal supervision and control of a licensed polygraph
19	context clearly indicates otherwise, the following	19	examiner."
20	definitions apply:	20	Section 2. Section 37-62-202, MCA, is amended to read:
21	(1) "Department" means the department of commerce	21	"37-62-202. Issuance of examiner's license with
22	provided for in Title 2, chapter 15, part 18.	22	examination. Upon application and payment of the required
23	(2) "Examinee" means an individual who is being	23	fee, an applicant must be granted a license as an examiner
24	examined, tested, or questioned by an examiner for the	24	if he:
25	purpose of detecting deception or verifying truthfulness.	25	(1) is at least 18 years old;
	A		-2- НВ 639

1

2

(2) is a citizen of the United States;

2 (3) is of good moral character;

3 (4) has successfully completed a course in polygraph
4 instruction at an American polygraph association accredited
5 institution:

6 (5) has a high school diploma from an accredited high7 school or its equivalent; and

8 (6) has successfully passed an examination conducted
9 by the department that tests the applicant's general
10 knowledge of the use of the polygraph or a comparable
11 examination conducted by another state whose law requires
12 successful completion of the examination as qualification
13 for a license; and

14 (7) has submitted with his application a full set of 15 fingerprints made at a law enforcement agency by an agent or 16 officer of such agency on forms supplied by the agency or by 17 the department."

Section 3. Section 37-62-204, MCA, is amended to read: 18 "37-62-204. Terms of license -- renewal. (1) An 19 examiner's license is-issued-for-1-year-or-such--portion--as 20 remains--at--the--time-of-issuance-and-may-be-renewed;-if-it 21 has-not-been-revoked-or-suspendedy-on-or-before-the-date--of 22 23 expiration--of--the--license--A-license-that-is-not-renewed expires at midnight on the-date-set-by-the-department March 24 1 of each year and is renewable only after payment of a 25

renewal fee and proof of compliance with continuing eduction requirements as provided by 37-62-207.

3 (2) An examiner whose license has expired may at any 4 time within 2 years after the expiration date obtain a 5 renewal license without examination upon payment of a 6 renewal fee to the department. An examiner whose license 7 expired while he was on active duty in the armed forces of 8 the United States or the national guard may, notwithstanding 9 the provisions of 10-1-605, renew his license without 10 examination within 2 years after discharge from service."

11 <u>NEW SECTION.</u> Section 4. Internship license. (1) Upon 12 application, payment of fees, and approval by the 13 department, a polygraph intern license must be issued to an 14 applicant and is valid for 12 months.

(2) Each licensed intern must be supervised by a
licensed polygraph examiner who shall, in accordance with
rules established by the department, file reports concerning
intern training.

19 NEW SECTION. Section 5. Pre-test procedure - termination of examination. (1) An examiner may 20 not 21 administer a polygraph examination without first conducting 22 a pre-test interview with the person to be examined. The examinee must be informed of all issues about which he will 23 24 be examined and which will be reported by the examiner. All 25 questions to be asked during the examination must be written

- 3-

HB 639

HB 0639/02

-4-

HB 639

1 and read verbatim to the examinee during the pre-test
2 interview.

3 (2) Written, signed, and dated consent must be given
4 by the examinee prior to any polygraph examination.

5 (3) Upon the request of the examinee, all pre-test 6 procedures or polygraph examinations in progress must 7 terminate immediately. The examiner may, in his discretion, 8 terminate any examination for any reason.

14 (2)--An--applicant-for-a-psychological-stress-evaluator
15 license--must--successfully--complete--a--course--of--formal
16 instruction--at--a--psychological--stress--evaluator--school
17 approved-by-the-department-

18 (3)--Any--psychological--stress-evaluation--school--or 19 course--approved--by-the-department-must-consist-of-not-less 20 than--112--hours-of--actual---classroom---instruction---in 21 psychological-stress-evaluation-

22 (4)--Application--for-a-license-under-this-section-must
 23 be-on-forms-provided-by-the-department-

 24
 NEW-SECTION---Section-7:--Psychological-----stress

 25
 evaluator---examination-----procedure:---Any--psychological

~5-

stress-evaluator-examination-must-be-conducted-according--to

2 fsection-517

1

3 NBW-SECTION---Section-8---Psychological-----stress evaluator-instruments---An-instrument-used-for-psychological 4 5 stress-evaluator-examinations-must-be-capable--of--measuring 6 and--recording--voice--reactions--on-a-graph;-This-recording 7 must-be-in--a--form--suitable--for--examination--by--another в psychological-stress-evaluator-examinerr-The-recordings-must 9 be--maintained--for--a--period--of--5-years-and-must-be-made 10 available-to-the-department-or-its-designated-representative 11 on-request.-The-instrument-used--for--examinations--must--be 12 given--maintenance;--cleaning;-adjustment;-and-demagnetizing 13 periodically-as-recommended-by-the-manufacturer-and-not-less 14 than-once--after--each--B--hours--of--continuous--mechanical 15 operation---The-examiner-shall-conduct-a-test-pattern-of-the 16 instrument-prior-to-each-examination-17 NEW-SECTION---Section-9---Repeater---Section-37-62-302-18 MCA7-is-repealed. 19 NEW SECTION. SECTION 6. EXTENSION OF AUTHORITY. ANY EXISTING AUTHORITY OF THE DEPARTMENT OF COMMERCE TO MAKE 20 21 RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT IS 22 EXTENDED TO THE PROVISIONS OF THIS ACT. 23 NEW SECTION. Section 7. Codification instruction. Sections 4 through-8 AND 5 are intended to be codified as an 24 25 integral part of Title 37, chapter 62, and the provisions of

HB 0639/02

-6-

HB 639

Title 37, chapter 62, apply to sections 4 through-8 AND 5.
 <u>NEW SECTION.</u> Section 8. 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.

8 <u>NEW SECTION.</u> Section 9. Effective date. This act is
9 effective on passage and approval.

-End-

STANDING COMMITTEE REPORT

SEI	NATE		
		March 7	19.85
MR. PRESI	IDENT		
We, you	ur committee on		••••••
having had	under consideration HOUSE BILL		_{No} 639
	<u>third</u> reading copy (<u>blue</u>) color (Senator Daniels)		
	REVISION OF POLYGRAPH LICENSURE LAW		
Respectfully	y report as follows: That		No639
	be amended as follows:		
	 Title, lines 6 and 7. Following: "TRAINING;" on line 6 Strike: remainder of line 6 through "A 	APPLICANTS;" on line 7	
	2. Page 3, line 7. Following: " and " Insert: "and"		
	3. Page 3, lines 13 through 17. Following: "license" on line 13 Strike: remainder of line 13 through '	'department'' on line 17	

AND AS AMENDED

)

)

BE CONCURRED IN

RICKERSE

XXXXXX XXXXX

Marin	ule
Senator Joe Mazurek	Chairman.

HB 0639/si

to be

1	STATEMENT OF INTENT
2	HOUSE BILL 639
3	House Business and Labor Committee
4	
5	The proposed legislation provides a new license

6 issued by the department of commerce concerning polygraph 7 interns.

The proposals give the department (there is no "board 8 9 of polygraph operators") authority to write rules concerning 10 the application and fee to be established for an intern license and for reporting content and procedures regarding 11 12 intern training. (See section 3 of the bill.) The rules 13 should be aimed at assuring that the intern is adequately 14 supervised and is given the instruction necessary to achieve 15 licensure.

16 In accordance with the statement of intent made by the
17 1983 legislature, no additional rulemaking powers are herein
18 granted to the department pursuant to Title 37, chapter 1.

REFERENCE BILL HB 639

Montaria Legislative Council

1

1	HOUSE BILL NO. 639		
2	INTRODUCED BY NATHE		
3	BY REQUEST OF THE DEPARTMENT OF COMMERCE		
4			
5	A BILL FOR AN ACT ENTITLED: "AN ACT REVISING POLYGRAPH		
6	LICENSURE LAWS BY CREATING INTERNSHIP TRAINING; REQUIRING		
7	FINGERPRINTSOFAPPLICANTS; ESTABLISHING A PRE-TEST		
8	PROCEDURE; SETTING DATES FOR LICENSE RENEWAL; AND		
9	establishing-requirements-for-examinationsandinstruments		
10	Relating		
11	PROHIDITION-ON-USE-OP-RESULTS-OF-A-POLYGRAPH-EXAMINATIONAS		
12	BVIDENCET AMENDING SECTIONS 37-62-101737-62-2027 AND		
13	37-62-204, MCA; REPEALINGSECTION37-62-3027MCA; AND		
14	PROVIDING AN IMMEDIATE EFFECTIVE DATE."		
15			
16	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:		

Section 1. Section 37-62-101, MCA, is amended to read:
"37-62-101. Definitions. In this chapter, 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.

-1 Montana Legislative Council

2 (a) purports to be able to detect deception, verify truthfulness, or provide a diagnostic opinion of deception 3 or truthfulness through the use of a mechanical device or 4 5 instrument; 6 (b) represents that he can or does offer the service 7 of detecting deception, verifying truthfulness, or providing a diagnostic opinion of deception or truthfulness through 8 9 the use of a mechanical device or instrument: or 10 (c) uses a mechanical device or instrument to measure 11 or record an individual's bodily responses or psychophysiological activities to enable or assist the 12 13 detection of deception, the verification of truthfulness, or 14 the reporting of a diagnostic opinion regarding deception or 15 truthfulness. (4) "Internship" means the study of polygraphs and the 16 administration of polygraph examinations by a trainee under 17 the personal supervision and control of a licensed polygraph 18 19 examiner." Section-2:--Section-37-62-2027-MCAy-is-amended-to-read-20 21 #37-62-202---Issuance---of---examineris---license--with 22 feey--an--applicant-must-be-granted-a-license-as-an-examiner 23 24 if-he: 25 +1+--is-at-least-18-years-old;

(3) "Examiner" means any person who:

-2-

1	(2)is-a-citizen-of-the-United-States;			
2	{]}is-of-good-moral-character;			
3	{4}has-successfully-completed-a-courseinpolygraph			
4	instructionat-an-American-polygraph-association-accredited			
5	institution;			
6	{5}has-a-high-school-diploma-from-an-accreditedhigh			
7	school-or-its-equivalent; and			
8	(6)hassuccessfullypassed-an-examination-conducted			
9	bythedepartmentthatteststheapplicant'sgeneral			
10	knowledge-oftheuse-ofthepolygraphor-a-comparable			
11	examination-conducted-by-another-statewhoselawrequires			
12	successfulcompletionofthe-examination-as-qualification			
13	for-a-license <u>;-and</u>			
14	<u>{7}has-submitted-with-his-application-a-fullsetof</u>			
15	fingerprints-made-at-a-law-enforcement-agency-by-an-agent-or			
16	officer-of-such-agency-on-forms-supplied-by-the-agency-or-by			
17	the-department-"			
18	Section 2. Section 37-62-204, MCA, is amended to read:			
19	"37-62-204. Terms of license renewal. (1) An			
20	examiner's license is-issued-for-1-year-or-suchportionas			
2 1	remainsatthetime-of-issuance-and-may-be-renewed;-if-it			
22	has-not-been-revoked-or-suspended;-on-or-before-the-dateof			
23	expirationofthelicenseA-license-that-is-not-renewed			
24	expires at midnight on the-date-set-by-the-department March			
25	1 of each year and is renewable only after payment of a			

1 renewal fee and proof of compliance with continuing eduction

- 2 requirements as provided by 37-62-207.
- (2) An examiner whose license has expired may at any 3 time within 2 years after the expiration date obtain a 4 renewal license without examination upon payment of a 5 renewal fee to the department. An examiner whose license 6 expired while he was on active duty in the armed forces of 7 the United States or the national guard may, notwithstanding 8 9 the provisions of 10-1-605, renew his license without 10 examination within 2 years after discharge from service."

11 <u>NEW SECTION.</u> Section 3. Internship license. (1) Upon 12 application, payment of fees, and approval by the 13 department, a polygraph intern license must be issued to an 14 applicant and is valid for 12 months.

(2) Each licensed intern must be supervised by a
licensed polygraph examiner who shall, in accordance with
rules established by the department, file reports concerning
intern training.

NEW SECTION. Section 4. Pre-test procedure 19 --termination of examination. (1) An examiner may 20 not administer a polygraph examination without first conducting 21 a pre-test interview with the person to be examined. The 22 23 examinee must be informed of all issues about which he will be examined and which will be reported by the examiner. All 24 questions to be asked during the examination must be written 25

-4-

-3-

HB 639

HB 0639/03

HB 639

÷ .

1

2

3

4

5

6

7

8 9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

and read verbatim to the examinee during the pre-test	1	stress-evaluator-examination-must-be-conducted-accordingto
interview.		fsection-51;
(2) Written, signed, and dated consent must be given	3	<u>NEW-SECTION.</u> Section-8Psychologicalstress
by the examinee prior to any polygraph examination.	4	evaluator-instrumentsAn-instrument-used-for-psychological
(3) Upon the request of the examinee, all pre-test	5	stress-evaluator-examinations-must-be-capableofmeasuring
procedures or polygraph examinations in progress must	6	andrecordingvoicereactionson-a-graphThis-recording
terminate immediately. The examiner may, in his discretion,	7	must-be-inaformsuitableforexaminationbyanother
terminate any examination for any reason.		psychological-stress-evaluator-examinerThe-recordings-must
<u>NEW-SECTION.</u> Section-6Psychologicalstress	9	bemaintainedforaperiodof5-years-and-must-be-made
evaluatorlicenseexperience(l)-No-person-may-test		available-to-the-department-or-its-designated-representative
another-using-a-machinethatmeasuresandrecordsvoice		on-requestr-The-instrument-usedforexaminationsmustbe
reactions-to-determine-psychological-stress7-unless-licensed		givenmaintenance7cleaning7-adjustment7-and-demagnetizing
by-the-department.	13	periodically-as-recommended-by-the-manufacturer-and-not-less
(2)Anapplicant-for-a-psychological-stress-evaluator	14	than-onceaftereach8hoursofcontinuousmechanical
licensemustsuccessfullycompleteacourseofformal	15	operationThe-examiner-shall-conduct-a-test-pattern-of-the
instructionatapsychologicalstressevaluatorschool	16	instrument-prior-to-each-examination.
approved-by-the-department;		NEW-SECTIONSection-9RepeaterSection-37-62-3027
{]}Anypsychologicalstressevaluationschoolor	18	MCA7-is-repeated.
courseapprovedby-the-department-must-consist-of-not-less	19	NEW SECTION. SECTION 5. EXTENSION OF AUTHORITY. ANY
than112hoursofactualclassroominstructionin		EXISTING AUTHORITY OF THE DEPARTMENT OF COMMERCE TO MAKE
psychological-stress-evaluation.		RULES ON THE SUBJECT OF THE PROVISIONS OF THIS ACT IS
(4)Applicationfor-a-license-under-this-section-must	22	EXTENDED TO THE PROVISIONS OF THIS ACT.
be-on-forms-provided-by-the-department-		NEW SECTION. Section 6. Codification instruction.
NBW-SECTIONSection-7Psychologicalstress	24	Sections 4-through-0 3 AND 5 4 are intended to be codified
evaluatorexaminationprocedureAnypsychological	25	as an integral part of Title 37, chapter 62, and the
-5- HB 639		-6- HB 639

HB 639

provisions of Title 37, chapter 62, apply to sections 4
 through-8 3 AND 5 4.

3 <u>NEW SECTION.</u> Section 7. Severability. If a part of 4 this act is invalid, all valid parts that are severable from 5 the invalid part remain in effect. If a part of this act is 6 invalid in one or more of its applications, the part remains 7 in effect in all valid applications that are severable from 8 the invalid applications.

9 <u>NEW SECTION.</u> Section 8. Effective date. This act is
10 effective on passage and approval.

-End-

-7-