

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 concurrent 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.

1                    HOUSE BILL NO. 639  
 2    INTRODUCED BY NATHAN  
 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 FOR EXAMINATIONS AND INSTRUMENTS  
 10    RELATING TO PSYCHOLOGICAL STRESS EVALUATORS; REMOVING THE  
 11    PROHIBITION ON USE OF RESULTS OF A POLYGRAPH EXAMINATION AS  
 12    EVIDENCE; AMENDING SECTIONS 37-62-101, 37-62-202, AND  
 13    37-62-204, MCA; REPEALING SECTION 37-62-302, MCA; AND  
 14    PROVIDING AN IMMEDIATE EFFECTIVE DATE."

15  
 16    BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 17            Section 1. Section 37-62-101, MCA, is amended to read:  
 18            "37-62-101. Definitions. In this chapter, unless the  
 19    context clearly indicates otherwise, the following  
 20    definitions apply:  
 21            (1) "Department" means the department of commerce  
 22            provided for in Title 2, chapter 15, part 18.  
 23            (2) "Examinee" means an individual who is being  
 24            examined, tested, or questioned by an examiner for the  
 25            purpose of detecting deception or verifying truthfulness.

1            (3) "Examiner" means any person who:  
 2            (a) purports to be able to detect deception, verify  
 3            truthfulness, or provide a diagnostic opinion of deception  
 4            or truthfulness through the use of a mechanical device or  
 5            instrument;  
 6            (b) represents that he can or does offer the service  
 7            of detecting deception, verifying truthfulness, or providing  
 8            a diagnostic opinion of deception or truthfulness through  
 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  
 12            psychophysiological activities to enable or assist the  
 13            detection of deception, the verification of truthfulness, or  
 14            the reporting of a diagnostic opinion regarding deception or  
 15            truthfulness.

16            (4) "Internship" means the study of polygraphs and the  
 17            administration of polygraph examinations by a trainee under  
 18            the personal supervision and control of a licensed polygraph  
 19            examiner."

20            Section 2. Section 37-62-202, MCA, is amended to read:  
 21            "37-62-202. Issuance of examiner's license with  
 22            examination. Upon application and payment of the required  
 23            fee, an applicant must be granted a license as an examiner  
 24            if he:  
 25            (1) is at least 18 years old;



-2-            INTRODUCED BILL  
                   **HB 639**

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 high  
 7 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:  
 19 "37-62-204. Terms of license -- renewal. (1) An  
 20 examiner's license ~~is issued for a year or such portion as~~  
 21 ~~remains at the time of issuance and may be renewed, if it~~  
 22 ~~has not been revoked or suspended, on or before the date of~~  
 23 ~~expiration of the license. A 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 education  
 2 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 NEW SECTION. 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  
 21 administer a polygraph examination without first conducting  
 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 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 SECTION. 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.

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 stress

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

3 NEW SECTION. Section 8. Psychological stress  
4 evaluator instruments. An instrument used for psychological  
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  
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 8 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. Repealer. Section 37-62-302,  
18 MCA, is repealed.

19 NEW SECTION. Section 10. Codification instruction.  
20 Sections 4 through 8 are intended to be codified as an  
21 integral part of Title 37, chapter 62, and the provisions of  
22 Title 37, chapter 62, apply to sections 4 through 8.

23 NEW SECTION. 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

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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.

4       NEW SECTION. Section 12. Effective date. This act is  
5   effective on passage and approval.

-End-



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  
9 of polygraph operators") authority to write rules concerning  
10 the application and fee to be established for an intern  
11 license and for reporting content and procedures regarding  
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.



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8 NEW SECTION. Section 9. Effective date. This act is  
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8 NEW SECTION. Section 9. Effective date. This act is  
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-End-

# STANDING COMMITTEE REPORT

## SENATE

March 7 1985

MR. PRESIDENT

We, your committee on JUDICIARY

having had under consideration HOUSE BILL No. 639

third reading copy ( blue )  
color

(Senator Daniels)

### REVISION OF POLYGRAPH LICENSURE LAW

Respectfully report as follows: That HOUSE BILL No. 639

be amended as follows:

1. Title, lines 6 and 7.  
Following: "TRAINING;" on line 6  
Strike: remainder of line 6 through "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

*fo*  
AND AS AMENDED

BE CONCURRED IN

~~REPASS~~

~~RECONSIDER~~

*Joe Mazurek*  
.....  
Senator Joe Mazurek

Chairman.

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  
9 of polygraph operators") authority to write rules concerning  
10 the application and fee to be established for an intern  
11 license and for reporting content and procedures regarding  
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.

## 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-FOR-EXAMINATIONS--AND--INSTRUMENTS  
10 RELATING--TO--PSYCHOLOGICAL--STRESS-EVALUATORS; REMOVING-THE  
11 PROHIBITION-ON-USE-OF-RESULTS-OF-A-POLYGRAPH-EXAMINATION--AS  
12 EVIDENCE; AMENDING SECTIONS 37-62-101,--37-62-202, AND  
13 37-62-204, MCA; REPEALING--SECTION--37-62-302,--MCA; AND  
14 PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
15

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

17 Section 1. Section 37-62-101, MCA, is amended to read:

18 "37-62-101. Definitions. In this chapter, unless the  
19 context clearly indicates otherwise, the following  
20 definitions apply:

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

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

1 (3) "Examiner" means any person who:

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

6 (b) represents that he can or does offer the service  
7 of detecting deception, verifying truthfulness, or providing  
8 a diagnostic opinion of deception or truthfulness through  
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  
12 psychophysiological activities to enable or assist the  
13 detection of deception, the verification of truthfulness, or  
14 the reporting of a diagnostic opinion regarding deception or  
15 truthfulness.

16 (4) "Internship" means the study of polygraphs and the  
17 administration of polygraph examinations by a trainee under  
18 the personal supervision and control of a licensed polygraph  
19 examiner."

20 ~~Section 2. Section 37-62-202, MCA, is amended to read:~~

21 ~~"37-62-202. Issuance of examiner's license with~~  
22 ~~examination. Upon application and payment of the required~~  
23 ~~fee, an applicant must be granted a license as an examiner~~  
24 ~~if he:~~

25 ~~(i) is at least 18 years old;~~

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--high  
 7 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 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 such portion as  
 21 remains at the time of issuance and may be renewed, if it  
 22 has not been revoked or suspended, on or before the date of  
 23 expiration of the license. A 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 education  
 2       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       NEW SECTION. 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.

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 4. Pre-test procedure --  
 20 termination of examination. (1) An examiner may not  
 21 administer a polygraph examination without first conducting  
 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 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-SECTION:--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:~~

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~~

1 ~~stress-evaluator-examination-must-be-conducted-according--to~~  
2 ~~{section-5}:~~

3 ~~NEW-SECTION:--Section-8:--Psychological-----stress~~  
4 ~~evaluator-instruments:--An-instrument-used-for-psychological~~  
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~~  
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--8--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:--Repealer:--Section-37-62-302,~~  
18 ~~MCA,--is-repealed:~~

19 ~~NEW SECTION. SECTION 5. 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 6. Codification instruction.~~  
24 ~~Sections 4-through-8 3 AND 5 4 are intended to be codified~~  
25 ~~as an integral part of Title 37, chapter 62, and the~~

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

3 NEW SECTION. 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 NEW SECTION. Section 8. Effective date. This act is  
10 effective on passage and approval.

-End-