

Approved April 2, 1987  
Date

MINUTES OF THE Senate COMMITTEE ON Governmental Organization

The meeting was called to order by Senator Vidricksen at  
Chairperson

1:40 ~~am~~/p.m. on March 30, 1987 in room 531N of the Capitol.

All members were present except:

Senator Winter  
Senator Bogina  
Senator Francisco

Committee staff present:

Jill Wolters - Revisor

Conferees appearing before the committee:

Representative Nancy Brown - Stanley  
Tom Kelly - Director, Kansas Bureau of Investigation  
Bruce Howell - Greater Kansas City Polygraph Association  
Lt. Larry Griffin - Olathe Kansas Police Department  
Gary Cowden - Greater Kansas City Polygraph Association  
Pat Neal - Loss Prevention, Duckwall Alco, Inc.  
John Barker - County Attorney's Office, Dickinson County  
Steve Starr - President, Kansas Polygraphists Association  
Larry Johnson - Cross Country Investigators  
Loren Taylor - Legal Counsel, Kansas City Police Department  
Terry Breese - Capital Investigative Services

The Chairman called the meeting to order and introduced Representative Nancy Brown to speak on HB 2223 which concerns polygraphists.

Representative Brown distributed copies of her testimony (Exhibit A) which contained a breakdown of HB 2223 into more understandable components and explained in layman's terms what the bill really does. It was pointed out in discussion that the Senate does not confirm fee agencies as is written in line 0046 on page 2 of the bill.

Tom Kelly addressed the Committee stating that the KBI has received complaints that some law enforcement officers who are polygraph operators have been engaged in off duty polygraph examinations for hire outside the scope of their official duties. He proposed an amendment for Sect. 7 (b) (15) to correct this problem. (See Exhibit B)

Bruce Howell spoke on the problem of issues and answers and questioned why there was no licensing law per se. He suggested a bill be put together by Polygraph Examiners.

Larry Griffin testified that their Department had received numerous complaints concerning this matter and suggested that standards be set so that past problems can be eliminated.

Gary Cowden expressed frustration by some methods of examining. He stressed a need for legal requirements and suggested that remedies be set up for those whose rights are abused by improper examinations. (Exhibit C)

Pat Neal spoke of the use of polygraphists in the loss prevention program of Duckwall/Alco. He stated that this method was used on specific losses and supported HB 2223 on behalf of the Corporation. John Barker also spoke briefly in support of this bill.

Steve Starr suggested that the Committee look strongly at the regulatory action and Larry Johnson stated that the bill does not cover all possible instruments that are available today. He suggested that the requirement for a Bachelor Degree be eliminated and stressed that the bill must be fair and can't be discriminatory or prejudicial. He pointed out that these amendments were no

CONTINUATION SHEET

MINUTES OF THE Senate COMMITTEE ON Governmental Organization,  
room 531N, Statehouse, at 1:40 ~~a.m.~~ p.m. on March 30, 1987

introduced when this bill was in the House. (Exhibit D)

Loren Taylor stated that his Department has the largest truth verification program in Kansas. He pointed out the Grandfather Clause in lines 0271 - 0275 and suggested that modification be made to include Psychological Stress Evaluator Examinators. (Exhibit E)

Terry Breese spoke in opposition to some of the language of the bill. He pointed out that this was not the only form for Polygraph testing and it only recognizes a segment. He also mentioned that a BA Degree was not necessary for this kind of work and that schooling was the element to look at. He felt the intern system was only a delay tactic and that the cost of supporting the board is going to cause the license fee to be high even without the proposed tests to be administered by the board. (Exhibit F)

There being no more time the Chairman announced that there would be further discussion on this issue on Wednesday.

A motion to approve the minutes of the March 23rd minutes was made by Senator Strick and seconded by Senator Frey. Motion carried.

The meeting was then adjourned by the Chairman.

GUEST LIST

COMMITTEE: Senate Governmental Organization

DATE: March 30, 1987

NAME	ADDRESS	COMPANY/ORGANIZATION
Gally Streff	Lawrence	AP
Menni Tammie	630 Ks Ave	Board of Cosmetology
Lynnda Hartter	"	" "
Roger Palmer	Topeka	Am. Soc. for Ind. Security
Steve Star	Topeka	Ks Polygraph Association
GARY OWENSBY	TOPEKA	THE BENCHMARK COMPANY
Thomas E. Kelly	Topeka	KBT
Janey Brown	"	State Rep voice sponsor
Gilma George	1115 W. 10th Topeka	Electrolgic <sup>KAPE</sup> Organization
Barbara Kieffer	"	"
Frances Wenig	15 E. 7th Lawrence, Kansas	Electrolgic <sup>KAPE</sup> Studio
Sandra Schallenberg	Shawnee	Electrolgic KAPE
Dorely Thompson	6220 Antioch-Merriam	Electrolgic KAPE
Carol Brown	1119 Massachusetts, Lawrence	Electrolgic KAPE
Gary Cowden	110 S. Cherry, Olathe	Affiliated Enquiry, Inc.
BRUCE HOWELL	1105 CHERRY, OLATHE, KS	GREATER KANSAS CITY POLYGRAPH EXAMINERS
E. PAT NEAL	401 Cottage Ave	Abilene, KS Duckworth-Alco Corp
LARRY GRIFFIN	12609 Raintree Olathe	Olathe Police Dept.
JOHN BARKER	300 Hilltop Abilene	Dickinson Co <sup>Office</sup> Attorneys
Mark Stephenson	Topeka	Taton (Sen. Hoferer
Bill Bryson	Topeka	KCC
Ramon Power	<del>KERS</del> 345 W - Capitol Bldg.	KLRD
Curt Winegarner	1/2	Leg. Post. Audit
Ollye Rullstad	Topeka	Leg. Post. Audit
Terry Bress	2035 WESTERN AVE. TOPEKA	CAPITAL INVEST. AGENCY

LARRY G. JOHNSON  
LORRAINE J. MOYLAN  
LELAND E. ROLFE

6901 W 63RD ST. OP KS  
CITY HALL, KANSAS CITY, KANSAS  
Topeka, Kansas

CCIS, INC.  
KCK PD.  
DWR-KSBA



HB 2223 - ESTABLISHING KANSAS BOARD OF POLYGRAPHERS

Testimony by

Representative Nancy Brown

March 30, 1987

Mr. Chairman and members of the Senate Government Organization Committee:

It is my pleasure to testify before you today, as sponsor of HB 2223, An Act concerning polygraphists; establishing the Kansas board of polygraphists; providing for the licensure and regulation thereof.

There are numerous conferees much more knowledgeable and involved with polygraph testing than I, so my testimony will be brief. However, I thought I could make a contribution to the committee by breaking down the bill into more understandable components and explain in layman's terms what HB 2223 really does. I have attempted to do this through the attached document, which I would like to review with you very quickly.

After the review, I will introduce some of the conferees who inturn may make other introductions. In addition to those conferees who are listed as proponents of the bill, the following organizations also wish to go on record in support of the concept of HB 2223 (It is my understanding that no one from these organizations will be here to testify today):

Kansas Peace Officers Association

Kansas Sheriffs Association

KACP (Chiefs)

Kansas Troopers Association

KBI Agent Association

Kansas County/District Attorney

Kansas District Magistrate Judges

For your information, I have talked with Governor Hayden about this legislation and he asked me to forward a copy to Mr. Arthur Griggs, Assistant Secretary of Administration, for his comments. His response is attached, along with copies of two other letters in support of the proposed legislation.

Now I'd like to introduce some of the proponents who do wish to testify. And if you have any questions now or at the end of their testimony I will be happy to try to answer them. Thank you!

TESTIMONY BEFORE SENATE GOVERNMENT ORGANIZATION

on

HB - 2223 - ESTABLISHING KANSAS BOARD OF POLYGRAPHERS

Nancy Brown

March 30, 1987

What it does: (0042-0043)

Establishes the Kansas Board of Polygraphists - under the jurisdiction of the attorney general

Composition of Board: (0045-0046)

Five members appointed by attorney general, subject to confirmation of the Senate

Qualifications of Board Members: (0047-0074)

- U.S. Citizen, Kansas resident for 1 year
- Four members shall be licensed polygraphists and must have personally conducted at least 500 exams during 5 years preceding appointment
- Two shall be privately employed as polygraphists; Two shall be employed by law enforcement agencies as polygraphists
- Fifth member to be voting public member, registered voter (other qualifications relating polygraph interests - see bill)

Term of Office, Requirement: (0075-0094)

- Three Year Term, staggered
- No two members to reside in same congressional district
- Attorney General may remove from office
- Majority constitutes quorum
- No compensation paid, but entitled to reimbursement for mileage and expenses

Board Power: (0100-0118)

- Prescribe and use a seal
- Adopt rules and regulations
- Conduct exams and use license
- Fix and collect fees for the issuance and renewal of licenses



- Conduct examinations
- And others

Costs Involved: (0119- 0135)

- No cost to state
- Fees set to produce revenue
- All costs and expenses of administrating act shall be paid from fee fund

Licensure, Provisions and Issuance: (0136-0201)

- Effective January 1, 1988 - must be licensed
- Must take examination conducted under testing conditions established by Board
- Board grants a license as an intern or polygraphist
- License renewed annually

Qualifications: (0202-0254)

- Must take oath
- Applicant must be 21 years of age
- U. S. citizen
- Not convicted of felony or any crime involving moral turpitude
- Have bachelor's degree from accredited university or college, or
- Two years of study at accredited college or university, and two years experience as an investigator, or served a minimum of two years internship under supervision of licensed examiner
- Shall have completed polygraphy training course, 250 hours of recognized instruction
- Shall pass both a written and practical examination conducted or approved by the Board
- Shall successfully completed an internship under the personal supervision and control of polygraphist - 250 exams

Waivers by Board: (0261-0274)

- Education, training or internship may be waived
- Upon certain conditions as outlined

Revocation, Denial, Suspension: (0288-0340)

- One or a combination of causes as outlined

Filing of Complaint and District Court Proceedings: (0341-0375)

Effective Date: (0376-0377)

STATE OF KANSAS



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DEPARTMENT OF ADMINISTRATION

State Capitol  
Topeka 66612-1572  
(913) 296-3011

H. Edward Flentje, *Secretary*

February 13, 1987

TO: Representative Nancy Brown  
FROM: Arthur H. Griggs, Assistant Secretary of Administration *AG*  
SUBJECT: House Bill 2233

As you requested, I have read House Bill 2233, concerning polygraphists licensure.

I appreciate the sensitive nature of this type of testing and for that reason, I believe there may be some merit to the concept of licensing polygraphists and regulating administration of such examinations.

While my review did not reveal any glaring technical deficiencies in the bill, I do not have any great familiarity with polygraph testing. Therefore, I encourage you to work closely with the Attorney General's Staff and other law enforcement agencies in refining the bill further.

I hope that this information is of some help to you.

AHG:jDeS

**POLICE DEPARTMENT**  
**KANSAS CITY, MISSOURI 64106**



**LARRY J. JOINER**  
Chief of Police

February 12, 1987

Representative Nancy Brown  
State Capitol Building  
Room 181-W  
Topeka, Kansas 66612

Dear Ms. Brown:

I am presently employed as a polygraph examiner with the Kansas City, Missouri Police Department, and as such, have a vital interest in the profession regardless of jurisdiction. Though I do not claim to represent the position of my employer, I do send this letter as a token of my personal support for H.B. 2223 and your efforts on its behalf.

As a former examiner for ACE Hardware Corporation, a billion dollar retailer who maintains substantial representation throughout the Midwest, I was involved in efforts to defeat National anti-polygraph legislation. I enclose a letter I sent to Representative Pat Williams (D- Montana) on behalf of ACE Hardware Corporation in opposition to H.R. 1524, which subsequently died in the Senate. I include a copy of this letter because the points referenced in defense of polygraph remain valid today.

All individuals have a right to dignity and fair treatment in the polygraph setting, just as the examiner has the obligation to provide same. The burden of assuring this climate now rests with the legislature. By mandating uniformity in examiner training/competence and in the testing process itself, the legislature will best serve both it's Corporate and individual constituencies.

As so much public suspicion and fear is bred of ignorance, I see H.B. 2223 as a necessary foundation for the professional uniformity which will help overcome the damage of myth and misinformation. I applaud your efforts in this cause and sincerely hope the Kansas Legislature is farsighted enough to recognize the benefits to the State of professionalizing our field.

Respectfully,

A handwritten signature in cursive script that reads "Paul Vial".

Paul Vial  
Polygraph Unit

February 13, 1987

Representative Nancy Brown  
State Capitol Building  
Topeka, Kansas

Dear Representative Brown:

This letter is to voice my support for H.B. 2223.

Although I am not a resident of the State of Kansas, I previously have conducted polygraph examinations in your state as a result of my employment as a Special Agent of the Federal Bureau of Investigation, assigned to the Kansas City Division.

The polygraph profession would welcome a strong licensing bill such as H.B. 2223. Through such legislation I feel that many objectionable practices will be eventually eliminated. I urge your support in this matter. Thank you.

Sincerely,



Robert J. Bates

Federal Bureau of Investigation



**ROBERT J. BATES**  
Special Agent - Polygraph Examiner

811 Grand  
Kansas City, MO 64106

(816) 221-6100



THOMAS E. KELLY  
DIRECTOR

# KANSAS BUREAU OF INVESTIGATION

DIVISION OF THE OFFICE OF ATTORNEY GENERAL  
STATE OF KANSAS  
1620 TYLER  
TOPEKA, KANSAS 66612  
(913) 232-6000



ROBERT T. STEPHAN  
ATTORNEY GENERAL

TESTIMONY BY THOMAS E. KELLY

DIRECTOR, KANSAS BUREAU OF INVESTIGATION

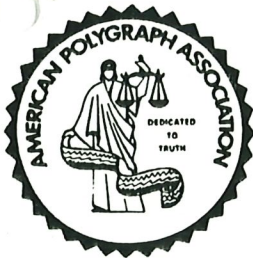
ON HOUSE BILL 2223

MARCH 30, 1987

In the past complaints have been made that some law enforcement officers who are polygraph operators have been engaged in off duty polygraph examinations for hire outside the scope of their official duties. It should be noted the licensing requirements of the Private Investigative or Security Operations KSA 75-7602 prohibits law enforcement officers to be licensed as a private detective or private detective agency. The act defines a private detective as any person who for any consideration whatsoever engages in detective business. Some of the complaints have come from properly licensed private investigators or the agencies claiming the officers are working outside the scope of their official duties and are not licensed as private detectives. It is believed this situation may be corrected by an amendment to HB 2223 by adding the following:

Sect. 7 (b)(15) No law enforcement officer or any person who holds a special commission from any law enforcement agency of the federal government or of the state or any political subdivision thereof, who is licensed by this act, may conduct a polygraph examination for hire outside the scope of his official duties.





# GREATER KANSAS CITY POLYGRAPH ASSOCIATION

COURT SQUARE BUILDING, 110 SOUTH CHERRY, SUITE B, OLATHE, KANSAS 66061 (913) 782-3134  
A DIVISION OF THE AMERICAN POLYGRAPH ASSOCIATION

My name is Gary Cowden and I am a polygraph examiner in Olathe, Kansas. I have a degree in Corrections and Psychology and I am a graduate of the National Training Center of Polygraph Science. I am a member of the American Polygraph Association, the Editor of the Newsletter of the Missouri Polygraph Association, and the Secretary-Treasurer of the Greater Kansas City Polygraph Association.

## OFFICERS

### PRESIDENT

Bruce Howell  
Court Square Building  
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(913) 782-3134

### VICE PRESIDENT

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8900 State Line Road  
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(913) 649-2999

### SECRETARY/TREASURER

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## BOARD OF GOVERNORS

### PAST PRESIDENT

Patsy Stoltzfus  
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(816) 471-3904

### MISSOURI REPRESENTATIVE

Harold Oldham  
Kansas City, Mo. Police Dept.  
Polygraph Unit  
1125 Locust Street  
Kansas City, MO 64106  
(816) 234-5163

### KANSAS REPRESENTATIVE

Rick Lees  
Olathe, Ks. Police Dept.  
501 East Highway 56  
Olathe, KS 66061  
(913) 782-4500

In my five years as a polygraph examiner, I have had the opportunity to gain extensive experience with the use of the polygraph and I believe it is an important investigative tool. I feel the U. S. Congress acted correctly when it voted 333-71 to support expanded use of the polygraph in protecting national security. The directors of our government's intelligence agencies have described the polygraph as a legitimate investigative tool that is valuable in helping them to carry out their mission. American business also needs this tool to fulfill its responsibility to protect billions of dollars in company and stockholder assets.

A report released by the U. S. Department of Justice states, "Up to 30% of the nation's employees are hard-core pilferers, and up to 80% will become involved in employee theft when no active prevention measures are employed."<sup>(1)</sup> The Commerce Department has estimated the cost of internal theft at \$40 billion annually, and has stated it is increasing at a compound rate of 15% per year.<sup>(2/3)</sup> The U. S. Chamber of Commerce estimates that 30% of business failures are a result of employee theft.<sup>(4)</sup> From the standpoint of the consumer, the polygraph is an important tool in controlling prices. The polygraph helps in isolating those few employees who violate their employers' trust, enabling businesses to control losses and therefore costs.

Anti-polygraph people always raise the invasion-of-privacy issue, usually from a lack of understanding or possibly as a defense so as not to have to take a polygraph exam. Realistically, data required on any employment application, whether used by government or by private industry, either strips or partially strips a person of their "privacy" at the outset. The American Polygraph Association and those states that require licensing of examiners have not ignored the privacy issue. Both have declared religious and racial matters, politics, sex, and union or labor-organization matters off-limits during pre-employment exams. Most legislators feel that employers should not have to hire people involved in criminal activities.

When you stop to think about it, polygraph science has many things in common with medical science. Both were born of a need - a need to identify and hopefully inhibit the spread of pain and grief. Both strive to protect us and improve our quality of life. Both are constantly evolving and improving. Both utilize sophisticated

instrumentation and knowledge, knowledge derived from extensive academic training and practical experience, to pursue their goals. Both require a high level of competency in their practitioners to achieve their objectives. Society has functioned, and could continue to function without either science. However, logic, common sense and experience have shown us we can function far better with an appropriate application of both of these valuable sciences.

The issue at hand is whether or not the state of Kansas should license polygraph examiners. There is no doubt that the quality of the polygraph instrument continues to improve, as does the quality of most examiners. However, the polygraph instrument today, even though it is an excellent piece of equipment which costs thousands of dollars, is still just an instrument. A tool. It is no better, nor worse than the person who is using it.

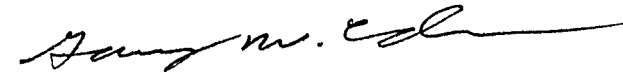
I have seen countless instances in which the polygraph has been invaluable to employees, employers and those who, through no fault of their own, have been wrongfully accused of illegal acts. Therefore, I strongly support legislation which would provide strict guidelines for examiners and strong protections for the rights of examinees. I believe that protections for examinees and guidelines for examiners are essential to protect all parties involved. I also believe it is the responsibility of the State to enact and enforce such legislation. States have the Constitutional right and duty to regulate the businesses and industries that provide goods and services to their citizens. They license doctors and dentists, insurance and real estate brokers, utility companies, baby sitters, and numerous other trade and professional groups. Most states have accepted this responsibility and, to date, at least 31 of them have passed legislation regulating the use of polygraph examinations and licensing of polygraph examiners.(5)

Legislators throughout our country are working to develop legislation which:

1. Protects the rights of those taking an examination;
2. Establishes training and educational requirements for examiners;
3. Sets standards for the type and quality of equipment used for examinations; and,
4. Restricts the types of questions asked during examinations.

This bill, H.B. 2223, would do exactly that. It would establish those rules necessary to both assist and protect every person who would come into contact with polygraph in the State of Kansas by eliminating those persons who are not qualified to conduct polygraph examinations and by holding those who are qualified accountable for their actions.

Thank You



Gary W. Cowden

- (1) Ron Young, "Balancing the Equation to Prevent Retail Losses", Security Management, March, 1985, pp. 87-88
- (2) Tobie Sullivan, "Are On-The-Job Honesty Tests the Best Policy?", Family Weekly, June, 1983, p. 12
- (3) Richard Phalon, "The Games Where Nobody Loses but Everybody Loses", Forbes, 123, April, 1979, pp. 55-63
- (4) Lynn Adkins, "The High Cost Of Employee Theft", Dun's Business Month, 120, October, 1982, pp. 66-76
- (5) Norman Ansley, Quick Reference Guide To Polygraph Admissibility, Licensing Laws, And Limiting Laws, 10th Edition, 1985, American Polygraph Association



# Cross Country Investigative Services

Cloverleaf Building 2, Suite 204, 6901 West 63rd Street, Overland Park, Kansas 66202  
(913) 362-6650

PRESENTATION TO: COMMITTEE  
REGARDING: HB-2223, 1987 SESSION  
MARCH 30, 1987

BY: Mr. Larry G. Johnson  
President/ Director  
Cross Country Investigative Services, Inc.  
6901 W. 63rd Street, Suite 204  
Overland Park, Kansas 66202  
(913) 362-6650

AS AN INSTRUCTOR IN AUDIO STRESS EVALUATION AND USER OF BOTH POLYGRAPH AND AN AUDIO STRESS INSTRUMENT, IT WOULD BE RATHER DIFFICULT FOR ME TO SAY, THAT I WAS IN FACT AGAINST THE BILL THAT YOU HAVE IN FRONT OF YOU.

IT WOULD BE EVEN MORE DIFFICULT FOR ME TO SAY THAT I WAS IN FAVOR OF THE SAME BILL AS IT IS NOW WRITTEN.

THE CURRENT ACT AS WRITTEN DOES NOT COVER ALL OF THE INSTRUMENTS THAT ARE ON THE MARKET TODAY. SOME OF THESE INSTRUMENTS ARE NO BETTER THAN FLIPPING A COIN OR DRAWING STRAWS. BUT THE POLYGRAPH AND DEKTOR'S PSE-101 ARE BOTH VIABLE TOOLS OF THE TRADE. THEY HAVE BEEN PROVEN, THEY HAVE BEEN TESTED AND THEY HAVE BEEN AROUND FOR A NUMBER OF YEARS. DEKTOR'S PSE WAS BEING DESIGNED DURING WORLD WAR 2, AND CAME INTO THE PUBLIC IN 1972. IT IS NOW BEING USED IN BOTH THE PUBLIC AND PRIVATE SECTORS IN MANY STATES, ONE OF WHICH IS KANSAS.

I WAS RECENTLY ASKED AS TO WHY I WAITED SO LONG TO BEGIN WORKING AGAIN ON A PROPOSAL SIMILAR TO HB-2223.

I SUPPOSE THAT THERE ARE SEVERAL REASONS:

#1. THE INTRODUCTION OF THE BILL WAS KEPT QUIET BY SOME OF THE POLYGRAPH PEOPLE AS THEY HAVE DONE IN THE PAST, INSTEAD OF RECOGNIZING THAT THEIR POLYGRAPH IS NOT THE ONLY INSTRUMENT CAPABLE OF INDICATING TRUTH AND DECEPTION WHEN IT IS USED PROPERLY.

#2. FURTHER, I FOUND IT RATHER DIFFICULT TO PAY THE REQUESTED FEE OF \$2,000 TO A SPONSOR OF A SIMILAR BILL THAT WAS INTRODUCED IN 1983, WHO HAS NOW BECOME A "PAID" LOBBYIST.

#3. BUT, PROBABLY THE MOST MEANINGFUL REASON, IS THAT A VERY WELL RESPECTED POLICE OFFICER, A FRIEND, AND A SUPPORTER OF THE LICENSING OF EXAMINERS IN THE STATE OF KANSAS AND OTHER STATES, WHO HAD ALWAYS KEPT TRACK OF SUCH LEGISLATION DIED A COUPLE OF YEARS AGO. I ALWAYS ENJOYED WORKING WITH HIM ON LEGISLATIVE PROPOSALS, AND IT IS FOR THIS REASON THAT I AM HERE TODAY.

I HOPE THAT SOME OF THE WORDING IN THE PROPOSED CHANGES THAT YOU HAVE IN FRONT OF YOU IS HOW HE WOULD OF WANTED IT WORDED.

YOU HAVE BEEN GIVEN YOU A COPY OF PROPOSED CHANGES IN HB-2223 THAT WOULD INCLUDE DEKTOR'S PSE AND POLYGRAPH TOGETHER.

I WOULD LIKE TO REVIEW SOME OF THE CHANGES AND THE REASONS FOR THESE CHANGES IN THE ACT OTHER THAN JUST THE INCLUSION OF PSE IN THE BILL.

#1. THE ELIMINATION OF A BACHELOR'S DEGREE REQUIREMENT.

THERE ARE A NUMBER OF SUCCESSFUL INDIVIDUALS AND EXAMINERS CURRENTLY TESTING THAT CAN NOT MEET THIS REQUIREMENT, AND TO THEM IT IS DISCRIMINATORY.

FURTHER, THE DEGREE COULD BE IN SWIMMING...TENNIS... BUSINESS... LAW ENFORCEMENT...OR ANYTHING.

SINCE A DEGREE IS NOT REQUIRED TO BE A BUSINESS OWNER, A LEGISLATOR, OR A POLICE OFFICER, WHY SHOULD A DEGREE BE REQUIRED IN THIS PROFESSION?

#2. THE ELIMINATION OF INTERNS.

UNLESS AN INTERN IS BEING MONITORED AND WITNESSED, WHAT PROTECTION DOES THE INDIVIDUAL HAVE THAT IS TAKING THE TEST?

IF THE PERSON HAS RECEIVED THE CORRECT TRAINING, HE SHOULD THEN BE GIVEN A LICENSE TO CONDUCT TESTS. HE IS THEN A GRADUATE OF AN APPROVED COURSE OF INSTRUCTION.

FURTHER, AN INTERN IS MORE THAN LIKELY KNOWN BY THE LICENSED EXAMINER AND UNLESS THEY HAVE A CONFLICT THEN THE REPORTS STAND A GOOD CHANCE OF CONTAINING BIASED OPINIONS AND RATINGS.

HAVING INSTRUCTED A NUMBER OF VERY QUALIFIED EXAMINERS, I WOULD FEEL NO REMORSE IN FAILING AN INDIVIDUAL DURING TRAINING IF HE WAS NOT PASSING AND BEFORE HE HAS THE OPPORTUNITY TO TEST A PERSON, AS SHOULD ANY OTHER INSTRUCTOR OR TEACHER.

WE DON'T HAVE INTERN DRIVERS ON OUR HIGHWAYS, SO WHY SHOULD WE HAVE INTERN EXAMINERS?

WE AS PROFESSIONAL EXAMINERS USING BOTH INSTRUMENTS DESIRE LICENSING IN OUR PROFESSION FOR TWO PRIMARY REASONS:

#1. TO PROTECT THE INDIVIDUALS THAT ARE TAKING THE TESTS.

#2. TO PROTECT OUR PROFESSION, FROM THE INDIVIDUALS NOT CONDUCTING TESTS PROPERLY.

THIS LEGISLATION WILL NOT ELIMINATE ALL OF THE PROBLEMS WITH EXAMINERS AND THEIR TESTING, BUT IT WILL ADD SOME CONTROLS AND ENFORCEMENT.

I AM SURE DEPENDING UPON WHO YOU ASK IN EITHER THE PSE OR POLYGRAPH FIELD THAT YOU WILL HEAR COMPLAINTS OR INADEQUACIES CONCERNING EITHER INSTRUMENT. WHAT I FEEL YOU SHOULD BE AWARE OF ARE THE FOLLOWING FACTS:

#1. THAT BOTH INSTRUMENTS 100% OF THE TIME DO WHAT THEY ARE DESIGNED TO DO.

#2. BOTH INSTRUMENTS REQUIRE HUMAN ASSISTANCE.

#3. THE HUMAN ASSISTANTS, CALLED EXAMINERS, ARE THE WEAKEST LINK IN THE INSTRUMENTS OPERATION.

YOU ARE NOT LICENSING INSTRUMENTS, YOU ARE NOT STATING THAT ONE IS BETTER THAN THE OTHER, BUT YOU ARE PROPOSING THE LICENSING OF EXAMINERS.

THE SAME WAY THAT YOU LICENSE DRIVERS, DOCTORS, LAWYERS, TEACHERS, AND BUSINESSES.

IF IN PROVIDING THESE PEOPLE A LICENSE TO CONDUCT A BUSINESS OR OPERATE A MOTOR VEHICLE GUARANTEES TO THE PUBLIC THAT NONE OF THEM WILL EVER MAKE A MISTAKE, THEN WE NEED TO LOOK AGAIN AT OTHER EXISTING LICENSES. BECAUSE SOME OF THOSE PEOPLE ARE STILL MAKING MISTAKES.

WE AS EXAMINERS WANT A LICENSING ACT TO PASS AND WOULD SUPPORT SUCH A LAW BECAUSE OF THAT CERTAIN FEW NOW CONDUCTING TESTS IN KANSAS CONTRARY TO THE WAY THAT THEY WERE TAUGHT OR TRAINED AND NOT IN A PROFESSIONAL MANNER.

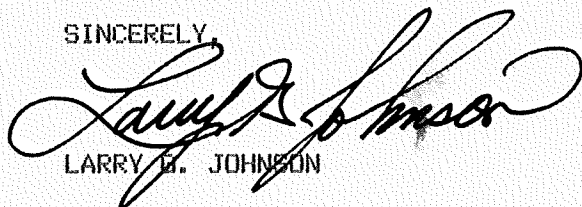
BUT THIS LICENSE MUST NOT BE DISCRIMINATORY, ARBITRARY, OR PREJUDICIAL. HB-2223 IS, IN ITS CURRENT STATE, JUST THAT. WE WOULD MORE THAN SUPPORT THE CHANGES AND LICENSING OF EXAMINERS USING THE STATE OF THE ART INSTRUMENTS THAT ARE AVAILABLE TODAY, THESE INCLUDE BOTH POLYGRAPH, HAVING SEVERAL BRAND NAMES AND DEKTOR'S PSE.

I HOPE THAT YOU UNDERSTAND AND MAKE THE CHANGES NECESSARY WHICH WILL THEN ALLOW A NUMBER OF INDIVIDUALS SUCH AS MYSELF TO CONTINUE IN BUSINESS IN THIS STATE AS A VOICE STRESS EXAMINER.

LADIES AND GENTLEMEN, THE LAW NEEDS TO BE CONCERNED WITH THE PROFESSIONALISM OF ALL OF THE EXAMINERS AND ONE THAT IN ITS FULLEST ENFORCEMENT.....DOES NOT RESTRICT TRADE OR DISCRIMINATE AND AT THE SAME TIME PROVIDE THE PROTECTION FOR ALL OF THE INDIVIDUALS BEING GIVEN AN EXAMINATION FOR ANY REASON.

SHOULD YOU HAVE ANY QUESTIONS, DO NOT HESITATE TO CALL UPON ME. THANK YOU, FOR THIS TIME TODAY !!!!

SINCERELY



LARRY B. JOHNSON

*How many  
PSE's in KS?*



HOUSE BILL No. 2223

AN ACT concerning the licensure and regulation of Examiners conducting Truth and Deception Testing; establishing the Kansas Board of Truth and Deception Examiners.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Board" means the Kansas board of truth and deception examiners.

(b) "Person" means any person, firm, association, partnership, corporation, government agency or subdivision, or any employee or agent thereof.

(c) "Polygraph" means any mechanical or electronic instrument or device, regardless of the name or design of the instrument or device, that is capable of simultaneously measuring and permanently recording at least:

- (1) Cardiovascular reactions;
- (2) respirations; and
- (3) electrodermal response,

which is used to test or question individuals to determine the truthfulness of the individual's responses.

(e) "Polygraphist" means a person licensed by the board to conduct polygraph examinations.

(f) "Voice Stress Analyzer" shall mean a mechanical or electronic instrument capable of recording the human voice, which detects and measures pitch amplitude, frequency, and other components of the human voice, and permanently records upon chart paper a tracing which is made from such a recording of the human voice, to determine the truthfulness of the individual's responses.

(g) "Voice Analysis Examiner" shall mean a person licensed by the board to conduct voice stress examinations.

Sec. 2. (a) There is hereby established, under the jurisdiction of the attorney general, the Kansas Board of Truth and Deception Examiners.

(b) The board shall consist of five members to be appointed by the attorney general, subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. No person shall be eligible for appointment as a member of the board unless such person is a citizen of the United States and is, and has been for a minimum of one year immediately preceding the appointment, a resident of Kansas.

(c) Four members of the board shall be licensed examiners, two of which are polygraph examiners and two of which are voice analysis examiners, each of whom shall have personally conducted at least 500 examinations during the five years immediately preceding the appointment. Of these four board members, one shall be privately employed as a polygraphist, one shall be privately employed as a voice analysis examiner, one shall be employed by a law enforcement agency as a polygraphist, and one shall be employed by a law enforcement agency as a voice analysis examiner. The first members of the board appointed to these positions shall meet these qualifications except for their lack of licensure as examiners, and shall seek to become licensed as soon as possible after appointment to the board.

(d) The fifth member of the board shall be a voting public member. Such member shall be a registered voter and a person who is not and never has been a member, nor the spouse of a member, of any profession licensed or regulated under this act; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated under this act, or an activity or organization directly related to any profession licensed or regulated under this act. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgement of a licensee or a candidate for licensure.

(e) Each member of the board appointed to serve a full term shall be appointed for a term of three years and shall serve until a successor is appointed and qualified, except of the first members of the board, one shall be appointed for a term of one year, two for terms of two years and two for terms of three years. Any member appointed to fill a vacancy shall be appointed for the unexpired term and shall serve until a successor is appointed and qualified.

(f) No two members shall reside in the same congressional district at the time of their appointment.

(g) The attorney general may remove any member of the board for misconduct, inefficiency, incompetency or neglect of duty.

(h) A majority of the members of the board shall constitute a quorum.

(i) No member of the board shall receive any compensation for the performance of official duties as such member but members shall be entitled to reimbursement for mileage and expenses as provided by K.S.A. 75-3223, and amendments thereto.

Sec. 3. (a) The members of the board shall conduct the first meeting as soon as practicable after appointment. The members shall immediately organize by electing a chairperson and vice-chairperson, and elections for these positions shall be conducted annually.

(b) The board shall have the power to prescribe and use a seal; adopt rules and regulations deemed necessary for the administration of this act; to conduct examinations and issue licenses; fix and collect fees for the issuance and renewal of licenses, including fees for late renewal, and for the conducting of examinations required by this act; administer oaths and hear testimony regarding disciplinary actions as provided in section 8 or preparatory to the filing of a complaint pursuant to section 8; require, by summons or subpoena, the attendance and testimony of witnesses, and the productions of books, papers and documents with respect to such testimony; employ such board personnel and incur such other expense as it deems necessary for the effectual administration of this act within appropriations therefor; and to do and perform all other acts and things committed to its charge and administration by this act or incidental thereto.

(c) The board shall cause a record to be kept of all its proceedings and shall preserve all complaints and all affidavits and other verified documents.

Sec. 4. (a) The board shall set the amount of the fees which this act authorizes and requires by rules and regulations adopted pursuant to section 3. The fees shall be set at a level to produce revenue which shall not exceed the cost and expense of administering this act.

(b) The board shall remit all monies received by or for it from fees, charges or penalties to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the board of truth and deception examiners fee fund which is hereby created. All costs and expense of administering this act shall be paid from this fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson or by a person or persons designated by the chairperson.

Sec. 5. (a) On and after January 1, 1988, no person by any means use or attempt to use any instrument or device as defined in this act for the purpose of attempting to verify truthfulness or detect deception, or reporting or assisting in the reporting of a diagnostic opinion regarding such truthfulness or deception unless such person is duly licensed as provided in this act or conduct examinations for remuneration, monetary or otherwise unless licensed as provided in this act.

(b) Any polygraph used by a polygraphist must be capable of simultaneously measuring and permanently recording at least:

- (1) Cardiovascular reactions;
- (2) respiration; and
- (3) electrodermal response.

(c) Any voice stress analyzer must be capable of recording the human voice, which detects and measures pitch, amplitude, frequency, and other components of the human voice and permanently records upon chart paper a tracing which is made from such a recording of the human voice.

(d) Before a polygraphist or voice stress examiner shall begin an examination, they shall receive a dated statement signed in their presence, by the person to who the examination is to be given, verifying that:

(1) The person knows that taking the examination is a voluntary act on such person's part;

(2) the person is aware of the option to decline to take the examination; and

(3) the person consents to disclosing the results of the examination and to whom the results shall be given.

(e) No polygraphist or voice stress examiner shall ask any questions during any examination concerning:

(1) Sexual behavior, unless such behavior is at issue or the examination is being conducted in the course of a criminal investigation or civil litigation;

(2) the political or religious beliefs of the person being given the examination, unless these beliefs are of issue.

(3) beliefs, affiliation or lawful activities regarding unions or labor organizations, unless these beliefs are of issue.

(f) Nothing in this section shall be construed to prevent the use of polygraph examinations or voice stress examinations by a law enforcement agency in connection with noncriminal investigations or other inquiries involving officers or employees of that agency nor shall this section be construed to serve as the basis or authority for any such officer or employee to decline or refuse to participate in a polygraph or voice stress examination.

(g) All examinations shall be conducted under such testing conditions as are established by rules and regulations of the board.

(h) All examination charts; information or question sheets, or both; agreements to submit to a polygraph or voice stress examination; examiner comments or opinions; written reports; documents and other pertinent papers concerning each examinations shall be kept together and maintained for a period of two years following the examination and upon request, shall be made available to the board or the board's designee. The board shall make such a request only upon receipt of a grievance or complaint or upon service of subpoena.

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In the case of examinations conducted by a law enforcement agency, only such reports, documents and papers as the law enforcement agency deems necessary to be made available, that is polygrams or voice stress charts, technique used, findings, and identification of question type and placement (relevant, control, and irrelevant) shall be furnished.

Sec. 6. (a) The board shall issue any qualified person a license as a polygraphist or voice stress examiner and any such license shall be renewed annually. Any person who does not renew the license within 60 days after the license renewal date shall pay a late renewal fee in addition to the required renewal fee. Any person who does not renew the license within two year after the license renewal date shall be subject to reexamination.

(b) The board shall adopt rules and regulations which designate the renewal date for licenses.

(c) Each application for the issuance of a polygraphist or voice stress examiner license shall be made on a form furnished to the applicant shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing the application, subject to the penalties for perjury, and shall be accompanied by the required application fee. Each applicant for a license as a polygraphist or voice stress examiner shall have attained the age of 21 years.

(d) Each applicant for license as a polygraphist or voice stress examiner shall meet the following requirements.

(1) Be a citizen of the United States;

(2) be a person who has not been convicted of a felony nor of any crime involving moral turpitude;

(3) submit to the board as proof, official transcripts and/or certificates of training for all college courses, technical courses and other educational credits claimed by the applicant.

(e) Each applicant for a license as a polygraphist shall have satisfactorily completed a polygraphy training course, consisting of at least 250 hours of instruction, that is recognized by the board and offered by any accredited college or university or any other institution approved by the board to offer such instruction.

(f) Each applicant for a license as a voice stress examiner shall have satisfactorily completed a voice stress training course, consisting of at least 112 hours of instruction, that is recognized by the board and offered by any accredited college or university or any other institution approved by the board to offer such instruction.



(g) The board may waive the education and training requirements of this section and grant a polygraphist or voice stress examiner's license to any applicant upon presentation of satisfactory evidence that the applicant has had prior training or experience substantially equivalent to these requirements, and that the applicant has been engaged in conducting examinations in this state for a least one year immediately proceeding the effective date of this act, has personally conducted at least 250 examinations and completed training as approved by the board.

(h) An examiner employed by a municipal, county, state, or federal agency shall not be required to pay any application or licensing fees so long as the sole use of the polygraph or voice stress analysis instruments is in performance of such examiner's official duties, provided that such examiner must be properly license.

(i) All licenses shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state. The board shall issue to each licensed examiner an identification card which must be in the examiner's possession when administering examinations at a location away from the normal place of business.

Sec. 7. (a) The board may deny, suspend or revoke, in accordance with the Kansas administrative procedure act, any license required pursuant to this act for one or any combination of causes stated in subsection (b).

(b) The board may cause a complaint to be filed against any holder of any license required by this act or any person who has failed to renew or has surrendered a license for any one or any combination of the following causes:

(1) Use of any controlled substance as defined in subsection (e) of K.S.A. 65-4101, and amendments thereto, or alcoholic beverage to an extend that such use impairs a person's ability to perform the work of an examiner.

(2) the person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of an examiner, for any offense an essential element of which is fraud, dishonesty or an act of violence or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to this act or in obtaining permission to take any examination given or required pursuant to this act;

(4) obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of an examiner;

(6) violation of, or assisting or enabling any person to violate, any provision of this act, or of any rules and regulations adopted pursuant to this act;

(7) impersonation of any person holding a license or allowing any person to use the licensee's license or diploma from any school;

(8) disciplinary action against the holder of a license or other right to conduct examinations granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) a person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) assisting or enabling any person to conduct or offer to conduct examinations for remuneration, monetary or otherwise, who is not currently licensed to do so under this act;

(11) issuance of a license based upon material mistake of fact;

(12) failure to display a valid license as required by rules and regulations adopted pursuant to this act;

(13) violation of any professional trust or confidence; or

(14) use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

(c) After the filing of the complaint, the proceedings shall be conducted in accordance with the Kansas administrative procedure act. Upon a finding that the grounds, provided in subsection (b), for disciplinary action are met, the board singly or in combination, may censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years; may suspend the person's license for a period not to exceed three years; or may revoke the person's license.

Sec. 8. (a) Upon application by the board and the necessary burden having been met, the district court may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a license is required upon a showing that such acts or practices were performed or offered to be performed without a license; or

(2) engaging in any practice or business authorized by a license issued pursuant to this act upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or any other state of the United States.

(b) Any such action shall be commenced in the county in which the conduct occurred or in the county in which the defendant resides or the county of the normal place of business in this state.

(c) Any action brought under this section shall be in addition to and not in lieu of any penalty provided by this act and may be brought concurrently with other actions to enforce this act.

Sec. 9. Any person found guilty of violating any provision of this act is guilty of a class A misdemeanor.

Sec. 10. If any provisions of this act or the application thereof to any person or circumstances is held invalid the invalidity does not affect other provisions or application of this act which can be given effect without the invalid provisions or application and to this end the provisions of this act are severable.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.

March 30, 1987

Governmental Organization Committee

Subject: House Bill No. 2223: An Act  
Concerning Polygraphists;  
Providing For the Licensure  
and Regulation Thereof; Estab-  
lishing the Kansas Board of  
Polygraphists.

Mr. Chairman, Ladies and Gentlemen  
of the Committee:

My name is Terry Breese, I am the owner  
of Capital Investigative Services, which  
is a Private Investigative Agency in  
Topeka, KS. I have 19 years of governmental  
and private security experience. As  
a corporate security executive I have  
used the services of both polygraph  
and PSE (Psychological Stress Evaluator)  
Examiners. I am also a PSE Examiner  
and have conducted over 700 PSE Truth  
and Deception Examinations. I am speaking  
to you as an oponent of HB No. 2223  
as it now reads. Although I say that  
I am an opponent of this bill in it's  
present form, I want to clearly state  
that I am NOT against licensure legislation.  
Prior to this meeting I tried to make  
available to each member of the committee,  
a booklet which I hope will acquaint  
you with the fact that Polygraph is  
not the only form of Truth and Deception

Testing currently in use in the United States and the State of Kansas. The materials in this booklet present some research and explanation of the PSE Model 101, produced by Dektor Counter-intelligence and Security Inc. If I have overlooked anyone I will be glad to provide a copy of the booklet at this time.

I feel that HB No. 2223 should not come into law because this bill supposedly only concerns polygraph. It is a bill that will establish licensure and regulation of polygraphists in the State of Kansas. Since there are other forms of Truth and Deception testing commonly used within Kansas, both in the public and the private sector, why set up licensure for only one segment of this industry? This bill as it is now written will recognize only polygraph as the form of Truth and Deception that can be licensed in Kansas. I feel this is discriminatory. It's like sending an inspector to look at 2 engines on a 4 engine aircraft in order to certify the aircraft as being in good working order. If you are going to pass legislation

it should encompass the Truth and Deception industry as a whole not just one segment of it. It will better regulate the quality and quantity of education for all Truth and Deception examiners in the State. It will also allow for a more uniform curriculum in the state recognized schools that can teach polygraph and PSE examiners. More importantly it will not discriminate against any one segment of this industry. If the bill is properly amended, it will not be restrictive of trade. Too often licensure regulations are put into effect to either gain revenue or limit a person from being able to afford to become a part of the industry. I recommend that you amend the bill in a manner that will not make it an undue economic hardship for a person to become a licensed examiner in the State of Kansas. The specific points I'm talking about are:

1. Requiring a 4 year baccalaureate degree to be a licensed polygraph or PSE examiner. Although I have a Bachelor of Science degree, I don not believe a 4 year college degree is necessary

to be able to run either a polygraph or PSE examination in a competent manner. The minimum number of hours at a state recognized school which teaches the proper operation of the polygraph or PSE equipment and how to conduct a proper examination, is all that should be required to gain a license.

2. The use of an intern system should not be necessary if the state approved schools are properly training examiners. The intern system only restricts the ability of a person to go into business. It provides a "cheap labor" system and puts an economic hardship in the way of a citizen who wishes to become part of the industry.

3. Requiring the board to give examinations after a person has completed the state approved schooling. The state approved schools should bear the burden and expense that would otherwise be incurred by the state board in the area of written and practical examinations, before a certificate of completion can be issued. The cost of supporting the board is going to cause the license fee to be high even without the proposed

tests to be administered by the board. The added administrative costs of the testing program are unneeded and may make the cost of supporting the board prohibitive.

I have enclosed an amended version of HB No. 2223 which would better cover Truth and Deception Testing in the State of Kansas. It eliminates the elements in the original HB No. 2223 which are restrictive of trade, but still allows for the licensure of both PSE and polygraph examiners. The board in this amended version will still give guidance under the direction of the Attorney General but the board's duties will not make it a heavy monetary burden on either the state or upon the individual examiners who will have to support it. The inclusion of PSE examiners will also almost double the number of examiners who will be supporting the cost of the state board.

I want to thank you for allowing me to speak before you today. I will be glad to answer any questions for you at this time.



## HOUSE BILL No. 2223

AN ACT concerning the licensure and regulation of Examiners conducting Truth and Deception Testing; establishing the Kansas Board of Truth and Deception Examiners.

Be it enacted by the Legislature of the State of Kansas:

Section 1. As used in this act:

(a) "Board" means the Kansas board of truth and deception examiners.

(b) "Person" means any person, firm, association, partnership, corporation, government agency or subdivision, or any employee or agent thereof.

(c) "Polygraph" means any mechanical or electronic instrument or device, regardless of the name or design of the instrument or device, that is capable of simultaneously measuring and permanently recording at least:

- (1) Cardiovascular reactions;
- (2) respirations; and
- (3) electrodermal response,

which is used to test or question individuals to determine the truthfulness of the individual's responses.

(e) "Polygraphist" means a person licensed by the board to conduct polygraph examinations.

(f) "Voice Stress Analyzer" shall mean a mechanical or electronic instrument capable of recording the human voice, which detects and measures pitch amplitude, frequency, and other components of the human voice, and permanently records upon chart paper a tracing which is made from such a recording of the human voice, to determine the truthfulness of the individual's responses.

(g) "Voice Analysis Examiner" shall mean a person licensed by the board to conduct voice stress examinations.

Sec. 2. (a) There is hereby established, under the jurisdiction of the attorney general, the Kansas Board of Truth and Deception Examiners.

(b) The board shall consist of five members to be appointed by the attorney general, subject to confirmation by the senate as provided by K.S.A. 75-4315b, and amendments thereto. No person shall be eligible for appointment as a member of the board unless such person is a citizen of the United States and is, and has been for a minimum of one year immediately preceeding the appointment, a resident of Kansas.

(c) Four members of the board shall be licensed examiners, two of which are polygraph examiners and two of which are voice analysis examiners, each of whom shall have personally conducted at least 500 examinations during the five years immediately preceeding the appointment. Of these four board members, one shall be privately employed as a polygraphist, one shall be privately employed as a voice analysis examiner, one shall be employed by a law enforcement agency as a polygraphist, and one shall be employed by a law enforcement agency as a voice analysis examiner. The first members of the board appointed to these positions shall meet these qualifications except for their lack of licensure as examiners, and shall seek to become licensed as soon as possible after appointment to the board.

(d) The fifth member of the board shall be a voting public member. Such member shall be a registered voter and a person who is not and never has been a member, nor the spouse of a member, of any profession licensed or regulated under this act; and a person who does not have and never has had a material, financial interest in either the providing of the professional services regulated under this act, or an activity or organization directly related to any profession licensed or regulated under this act. The duties of the public member shall not include the determination of the technical requirements to be met for licensure or whether any person meets such technical requirements or of the technical competence or technical judgement of a licensee or a candidate for licensure.

(e) Each member of the board appointed to serve a full term shall be appointed for a term of three years and shall serve until a successor is appointed and qualified, except of the first members of the board, one shall be appointed for a term of one year, two for terms of two years and two for terms of three years. Any member appointed to fill a vacancy shall be appointed for the unexpired term and shall serve until a successor is appointed and qualified.

(f) No two members shall reside in the same congressional district at the time of their appointment.

(g) The attorney general may remove any member of the board for misconduct, inefficiency, incompetency or neglect of duty.

(h) A majority of the members of the board shall constitute a quorum.

(i) No member of the board shall receive any compensation for the performance of official duties as such member but members shall be entitled to reimbursement for mileage and expenses as provided by K.S.A. 75-3223, and amendments thereto.

Sec. 3. (a) The members of the board shall conduct the first meeting as soon as practicable after appointment. The members shall immediately organize by electing a chairperson and vice-chairperson, and elections for these positions shall be conducted annually.

(b) The board shall have the power to prescribe and use a seal; adopt rules and regulations deemed necessary for the administration of this act; to conduct examinations and issue licenses; fix and collect fees for the issuance and renewal of licenses, including fees for late renewal, and for the conducting of examinations required by this act; administer oaths and hear testimony regarding disciplinary actions as provided in section 8 or preparatory to the filing of a complaint pursuant to section 8; require, by summons or subpoena, the attendance and testimony of witnesses, and the productions of books, papers and documents with respect to such testimony; employ such board personnel and incur such other expense as it deems necessary for the effectual administration of this act within appropriations therefor; and to do and perform all other acts and things committed to its charge and administration by this act or incidental thereto.

(c) The board shall cause a record to be kept of all its proceedings and shall preserve all complaints and all affidavits and other verified documents.

Sec. 4. (a) The board shall set the amount of the fees which this act authorizes and requires by rules and regulations adopted pursuant to section 3. The fees shall be set at a level to produce revenue which shall not exceed the cost and expense of administering this act.

(b) The board shall remit all monies received by or for it from fees, charges or penalties to the state treasurer at least monthly. Upon receipt of each such remittance the state treasurer shall deposit the entire amount thereof in the state treasury and the same shall be credited to the board of truth and deception examiners fee fund which is hereby created. All costs and expense of administering this act shall be paid from this fund. All expenditures from such fund shall be made in accordance with appropriation acts upon warrants of the director of accounts and reports issued pursuant to vouchers approved by the chairperson or by a person or persons designated by the chairperson.

Sec. 5. (a) On and after January 1, 1988, no person by any means use or attempt to use any instrument or device as defined in this act for the purpose of attempting to verify truthfulness or detect deception, or reporting or assisting in the reporting of a diagnostic opinion regarding such truthfulness or deception unless such person is duly licensed as provided in this act or conduct examinations for remuneration, monetary or otherwise unless licensed as provided in this act.

(b) Any polygraph used by a polygraphist must be capable of simultaneously measuring and permanently recording at least:

- (1) Cardiovascular reactions;
- (2) respiration; and
- (3) electrodermal response.

(c) Any voice stress analyzer must be capable of recording the human voice, which detects and measures pitch, amplitude, frequency, and other components of the human voice and permanently records upon chart paper a tracing which is made from such a recording of the human voice.

(d) Before a polygraphist or voice stress examiner shall begin an examination, they shall receive a dated statement signed in their presence, by the person to who the examination is to be given, verifying that:

(1) The person knows that taking the examination is a voluntary act on such person's part;

(2) the person is aware of the option to decline to take the examination; and

(3) the person consents to disclosing the results of the examination and to whom the results shall be given.

(e) No polygraphist or voice stress examiner shall ask any questions during any examination concerning:

(1) Sexual behavior, unless such behavior is at issue or the examination is being conducted in the course of a criminal investigation or civil litigation;

(2) the political or religious beliefs of the person being given the examination, unless these beliefs are of issue.

(3) beliefs, affiliation or lawful activities regarding unions or labor organizations, unless these beliefs are of issue.

(f) Nothing in this section shall be construed to prevent the use of polygraph examinations or voice stress examinations by a law enforcement agency in connection with noncriminal investigations or other inquiries involving officers or employees of that agency nor shall this section be construed to serve as the basis or authority for any such officer or employee to decline or refuse to participate in a polygraph or voice stress examination.

(g) All examinations shall be conducted under such testing conditions as are established by rules and regulations of the board.

(h) All examination charts; information or question sheets, or both; agreements to submit to a polygraph or voice stress examination; examiner comments or opinions; written reports; documents and other pertinent papers concerning each examinations shall be kept together and maintained for a period of two years following the examination and upon request, shall be made available to the board or the board's designee. The board shall make such a request only upon receipt of a grievance or complaint or upon service of subpoena.

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In the case of examinations conducted by a law enforcement agency, only such reports, documents and papers as the law enforcement agency deems necessary to be made available, that is polygrams or voice stress charts, technique used, findings, and identification of question type and placement (relevant, control, and irrelevant) shall be furnished.

Sec. 6. (a) The board shall issue any qualified person a license as a polygraphist or voice stress examiner and any such license shall be renewed annually. Any person who does not renew the license within 60 days after the license renewal date shall pay a late renewal fee in addition to the required renewal fee. Any person who does not renew the license within two year after the license renewal date shall be subject to reexamination.

(b) The board shall adopt rules and regulations which designate the renewal date for licenses.

(c) Each application for the issuance of a polygraphist or voice stress examiner license shall be made on a form furnished to the applicant shall contain a statement that it is made under oath or affirmation and that its representations are true and correct to the best knowledge and belief of the person signing the application, subject to the penalties for perjury, and shall be accompanied by the required application fee. Each applicant for a license as a polygraphist or voice stress examiner shall have attained the age of 21 years.

(d) Each applicant for license as a polygraphist or voice stress examiner shall meet the following requirements.

(1) Be a citizen of the United States;

(2) be a person who has not been convicted of a felony nor of any crime involving moral turpitude;

(3) submit to the board as proof, official transcripts and/or certificates of training for all college courses, technical courses and other educational credits claimed by the applicant.

(e) Each applicant for a license as a polygraphist shall have satisfactorily completed a polygraphy training course, consisting of at least 250 hours of instruction, that is recognized by the board and offered by any accredited college or university or any other institution approved by the board to offer such instruction.

(f) Each applicant for a license as a voice stress examiner shall have satisfactorily completed a voice stress training course, consisting of at least 112 hours of instruction, that is recognized by the board and offered by any accredited college or university or any other institution approved by the board to offer such instruction.

(g) The board may waive the education and training requirements of this section and grant a polygraphist or voice stress examiner's license to any applicant upon presentation of satisfactory evidence that the applicant has had prior training or experience substantially equivalent to these requirements, and that the applicant has been engaged in conducting examinations in this state for a least one year immediately proceeding the effective date of this act, has personally conducted at least 250 examinations and completed training as approved by the board.

(h) An examiner employed by a municipal, county, state, or federal agency shall not be required to pay any application or licensing fees so long as the sole use of the polygraph or voice stress analysis instruments is in performance of such examiner's official duties, provided that such examiner must be properly licensed.

(i) All licenses shall at all times be posted in a conspicuous place in the principal place of business of the licensee in this state. The board shall issue to each licensed examiner an identification card which must be in the examiner's possession when administering examinations at a location away from the normal place of business.

Sec. 7. (a) The board may deny, suspend or revoke, in accordance with the Kansas administrative procedure act, any license required pursuant to this act for one or any combination of causes stated in subsection (b).

(b) The board may cause a complaint to be filed against any holder of any license required by this act or any person who has failed to renew or has surrendered a license for any one or any combination of the following causes:

(1) Use of any controlled substance as defined in subsection (e) of K.S.A. 65-4101, and amendments thereto, or alcoholic beverage to an extent that such use impairs a person's ability to perform the work of an examiner.

(2) the person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions, or duties of an examiner, for any offense an essential element of which is fraud, dishonesty or an act of violence or for any offense involving moral turpitude, whether or not sentence is imposed;

(3) use of fraud, deception, misrepresentation or bribery in securing any license issued pursuant to this act or in obtaining permission to take any examination given or required pursuant to this act;

(4) obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of an examiner;

(6) violation of, or assisting or enabling any person to violate, any provision of this act, or of any rules and regulations adopted pursuant to this act;

(7) impersonation of any person holding a license or allowing any person to use the licensee's license or diploma from any school;

(8) disciplinary action against the holder of a license or other right to conduct examinations granted by another state, territory, federal agency or country upon grounds for which revocation or suspension is authorized in this state;

(9) a person is finally adjudged insane or incompetent by a court of competent jurisdiction;

(10) assisting or enabling any person to conduct or offer to conduct examinations for remuneration, monetary or otherwise, who is not currently licensed to do so under this act;

(11) issuance of a license based upon material mistake of fact;

(12) failure to display a valid license as required by rules and regulations adopted pursuant to this act;

(13) violation of any professional trust or confidence; or

(14) use of any advertisement or solicitation which is false, misleading or deceptive to the general public or persons to whom the advertisement or solicitation is primarily directed.

(c) After the filing of the complaint, the proceedings shall be conducted in accordance with the Kansas administrative procedure act. Upon a finding that the grounds, provided in subsection (b), for disciplinary action are met, the board singly or in combination, may censure or place the person named in the complaint on probation on such terms and conditions as the board deems appropriate for a period not to exceed five years; may suspend the person's license for a period not to exceed three years; or may revoke the person's license.

Sec. 8. (a) Upon application by the board and the necessary burden having been met, the district court may grant an injunction, restraining order or other order as may be appropriate to enjoin a person from:

(1) Offering to engage or engaging in the performance of any acts or practices for which a license is required upon a showing that such acts or practices were performed or offered to be performed without a license; or

(2) engaging in any practice or business authorized by a license issued pursuant to this act upon a showing that the holder presents a substantial probability of serious danger to the health, safety or welfare of any resident of this state or any other state of the United States.

(b) Any such action shall be commenced in the county in which the conduct occurred or in the county in which the defendant resides or the county of the normal place of business in this state.

(c) Any action brought under this section shall be in addition to and not in lieu of any penalty provided by this act and may be brought concurrently with other actions to enforce this act.

Sec. 9. Any person found guilty of violating any provision of this act is guilty of a class A misdemeanor.

Sec. 10. If any provisions of this act or the application thereof to any person or circumstances is held invalid the invalidity does not affect other provisions or application of this act which can be given effect without the invalid provisions or application and to this end the provisions of this act are severable.

Sec. 11. This act shall take effect and be in force from and after its publication in the statute book.