

Approved \_\_\_\_\_  
Date 4-26-89

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION

The meeting was called to order by \_\_\_\_\_ Senator Lana Oleen \_\_\_\_\_ at  
Chairperson

1:35 ~~am~~/p.m. on \_\_\_\_\_ March \_\_\_\_\_ 28 \_\_\_\_\_, 1989 in room 531-N of the Capitol.

All members were present except: Senator Gaines - Absent

Committee staff present: Jill Wolters - Revisor  
Julian Efird - Research  
Nancy Jones - Secretary

Conferees appearing before the committee: Senator Norma Daniels  
Bertha McDowell, Exec. Director, Epilepsy  
Kansas, Wichita  
Dr. William Svoboda, Chairman of Task Force  
Representative Nancy Brown  
James R. Davis, Kansas Polygraph Asso.  
Neal Woerman, Attorney General Office  
Maurice Gitlin, CORPORT Protective Service  
Jeff Gitlin, Alcops, Overland Park  
Lee Gitlin, Alcops, Overland Park

Hearings on:

SB 371 - Establishing the commission on epilepsy

Senator Daniels briefly reviewed legislative actions which led to the formation of the Advisory Commission on Epilepsy and the Task Force created to study problems and areas of challenges facing victims of epilepsy. Epilepsy occurs in 1% of the population and 22,000 Kansans are afflicted with the disorder. There are a number of governmental resources available but with no organization nor central agency, benefits and assistance available are not utilized effectively. This legislation places the commission within the Department of Health & Environment with selection of members by the Secretary of Health & Environment as well as other appointive authorities. Senator Daniels distributed the fiscal note on the Advisory Board for study by committee members.  
(Attachment 1)

Bertha McDowell stated that the Task Force collected a great deal of data and information regarding the various problems facing those suffering from seizures. The work needs to continue to offer a better quality of life to these people and a team effort is needed. This can be done effectively and efficiently with the formation of a Commission unifying the various agencies now dealing with the concerns.

Committee members felt consideration should be given to method of selection of membership on the commission as the Secretary would be totally in control. Also, a sunset provision for the commission could be applicable.  
(Attachment 2)

Dr. William Svoboda testifying in support of SB 371, stated the basis of the bill developed from recommendations of the task force. The needs and problems found with agencies currently working with epilepsy were outlined. It is felt the solution to the many problems, is to follow the Task Force recommendations and establish an Advisory Commission for effective organization of services available.  
(Attachment 3)

Committee members were asked to give attention to written testimony from Joan Strickler, Executive Director of the Kansas Advocacy & Protective Services, urging support for the proposed legislation.  
(Attachment 4)

CONTINUATION SHEET

MINUTES OF THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION,

room 531-N, Statehouse, at 1:35 ~~xxx~~ p.m. on March 28, 19 89

HB 2491 - Polygraphists' licensure and regulation

Julian Efird reviewed for the committee the background of the bill and the changes to conform to federal law including questions which are prohibited, definition of "poygraph" and requirement that applicants for licensure must submit evidence that they maintain a surety bond or professional malpractice insurance.

Representative Brown stated she has worked with interim committees and interested groups on the problems and concerns that are addressed in this legislation. It is felt establishment of the Commission will standardize practices and give positive directives for all polygraphists.

The committee expressed concern regarding composition and selection of the board.

James Davis testified that licensing of polygraph examiners is necessary for the protection of the people of Kansas from abuse of untrained examiners. He believes that current statutes governing examiners is not enforced. Mr. Brown feels it is time there is a separation of private detectives and polygraph examiners as there is a detrimental effect upon small businesses. (Attachment 5)

Neal Woerman stated that the Polygraph Protection Act of 1988 practically shut down the private polygraph industry. It also limited other uses of polygraphs by private employers. Under this act the approximate 10 private polygraphists in Kansas would be the only ones paying the license fee. Mr Woerman proposed an amendment which would repeal the entire polygraphists licensing and make it clear that a private polygraphist must be licensed as a private investigator. This action would eliminate creation of an unnecessary board. (Attachment 6 & 7)

Maurice Gitlin testifying in opposition to HB 2491, said private detectives have been complaining for years that policemen have been conducting polygraph tests in violation of the law for years. He further stated there has been much misinformation given regarding his profession and the use of the polygraph. (Attachment 8 & 9)

Previous laws have not been enforced regarding those in the polygraph profession and this law does not address the real concerns for those in private practice.

Jeff Gitlin speaking as an opponent to HB 2491 outlined sections of the licensing act which are of great concern as a practicing polygraph examiner. (Attachment 10)

Lee Gitlin testified as an opponent to HB 2491 and stated his concerns are with the reduced standards for board members, the definitions of polygraph examiners, proscribing certain questions being asked, required internships and grandfathering. (Attachment 11)

Meeting adjourned. The next meeting will be March 30, 1989.

GUEST LIST

COMMITTEE: SENATE GOVERNMENTAL ORGANIZATION

DATE 3/28/89

| NAME               | COMPANY / ORGANIZATION                     | ADDRESS           |
|--------------------|--|-------------------|
| Jeremy Kwonicki    | Lucas-Luray High School                    | Lucas, KS         |
| Daniel R Wallace   | Lucas-Luray High School                    | Lucas, KS         |
| Jennifer Zweifel   | Lucas-Luray High School                    | Lucas, KS         |
| Melba Gwaltney     | SRS/Rehabilitation Services                | Topeka            |
| William B. Sloboda | Epilepsy Task Force                        | Wichita, KS       |
| Bertha McDowell    | Epilepsy - Kansas                          | Wichita           |
| Terry Breeze       | Capital Investigative Services             | TOPEKA, KS        |
| LEE D. GITLIN      | ALLOPS, INC.                               | OVERLAND PARK, KS |
| MICKY GITLIN       | CORPORATE PROTECTIVE                       | " " "             |
| JAMES R. DAVIS     | KANSAS Polygraph Association - Emporia, KS |                   |
| JEFF GITLIN        | KKCPA   ACCOPS INC.                        | OVERLAND PARK, KS |
| Allen Raynor       | KANSAS Polygraph Association               | Madhattan, KS     |
| Steve Starr        | Attorney General Office                    | Topeka, KS        |
| Neil Woerman       | Attorney General                           | Topeka            |
| Hazel Gibbs        | Legislative Intern                         | Wichita           |
| S. Keady           | AA SENATE NAT. LEADER                      | TOPEKA            |

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT  
BUREAU OF MATERNAL AND CHILD HEALTH

SERVICES FOR CHILDREN WITH SPECIAL HEALTH CARE NEEDS

M E M O R A N D U M

Date: March 9, 1989  
To: Senator Norma Daniels  
From: Cassie Lauver *CL*  
Re: Fiscal Impact Statement of Advisory Board on  
Epilepsy

Attached is a copy of the fiscal impact statement developed in support of the proposed Advisory Board on Epilepsy. It has been reviewed by Secretary Grant before forwarding to you.

Please review and contact me at #1310 if you have questions.

Thank you.

Attachment

cc: Dr Stanley C Grant  
Dr Azzie Young

CL/mw

S.G.O.  
3-28-89  
ATTACH 1

KANSAS DEPARTMENT OF HEALTH AND ENVIRONMENT

Fiscal Note Worksheet

Bill No. \_\_\_\_\_ Abbreviated Bill Title: (Establishment of Advisory Board Epilepsy)

Sponsor: Senator Norma Daniels

Detailed Computation of Expenditures to Implement Bill:

|   | FY 1988 | FY 1990  |
|---|---------|----------|
| Salaries and Wages by Classification<br>OAIH *(.25) |         | \$4,741  |
| *using existing personnel                           |         |          |
| Contractual Services (list items)                   |         |          |
| 200 Phone   |         | 383      |
| KANSAN  |         | 500      |
| Postage   |         | 500      |
| 220 Printing  |         | 1,000    |
| 230 Rents   |         | 324      |
| **270 Other professional fees                       |         | 6,768    |
| Commodities (list items)                            |         |          |
| 370 Office and stationary supplies                  |         | 300      |
| Capital Outlay (list items)                         |         |          |
| 400 MC/Printer                                      |         | 3,300    |
| Aid to Local Units of Government                    |         |          |
| TOTAL EXPENDITURES                                  |         | \$18,378 |

Detailed Computation of Revenue Impact (increase or decrease) Created by t  
Bill and the Funds Affected:

The final outcome of this bill may include recommendations to change  
expand services under SHS and in this way affect the future cost  
delivering seizure related services.

Other KDHE Organizational Units Affected by the Bill:

None known.

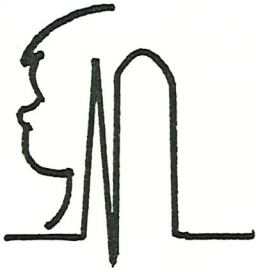
\*\*Based on a fifteen member commission (4 state employees).  
270 Other professional fees - 11 non-state employees reimbursed at \$35 per d  
(\$2,310) plus travel - averaging 300 miles X 6 meetings (\$4,458).  
Total \$6,768

I would like to thank the members of this committee for the opportunity to speak to you on behalf of Senate Bill 371 which would establish a commission on epilepsy.

My name is Bertha McDowall and I am the Executive Director of Epilepsy-Kansas which along with The Greater Kansas City Epilepsy League represent The Epilepsy Foundation of America in Kansas. I was also a member of the Task Force on Epilepsy and Other Related Seizure Disorders and a section leader for the Problems of Daily Living portion of the Task Force Report.

The Task Force collected a great deal of data and talked to many people about the various problems that having seizures had presented to them. We have listed in the Task Force Report the action steps that we recommend to make a better quality of life possible for these individuals. It is essential that we continue the work that we started last summer on this project; there is much to be done and it will take the work and dedication of a team effort to accomplish our recommendations in a coordinated fashion. A Commission such as that proposed in Senate Bill 371 would be such a working group.

Before the Task Force began, a comment was made by an observer " All we need is another Task Force Report to put on a shelf." We are here today to assure the Legislature and the population with seizures, their families and friends that we serve that we are willing to work to achieve the recommendations that were proposed by the Task Force and to insure future progress.



# NEUROLOGY & EPILEPTOLOGY

PEDIATRIC & ADOLESCENT

WILLIAM B. SVOBODA, M.D.  
PEDIATRIC NEUROLOGIST

ST. FRANCIS MEDICAL PARK PLAZA  
1035 N. EMPORIA, SUITE 270  
WICHITA, KANSAS 67214

TEL. (316) 267-5215

## SENATE BILL No. 371: ADVISORY COMMISSION ON EPILEPSY

BASIS: Recommendation 62 of the final report of the 1988 Kansas Task Force on Epilepsy and Other Seizure-Related Disorders urged the establishment of a multi-disciplinary advisory board of experts on epilepsy and its consequences to work with the state agencies and organizations to help develop recommended and needed services for those with epilepsy.

WHY? The Task Force identified the following needs:

1. Need to develop modern comprehensive (not just medical) services.
2. Need to coordinate existing and developing services between disciplines, agencies, and organizations.
3. Need to develop multi-disciplinary "whole person" approach.
4. Need to train All service providers at all levels.
5. Need to provide services to rural, minority, and under-privileged groups.
6. Need to establish multi-disciplinary resources of expertise.
7. Need to translate recommendations into actions.

### PRINCIPLE PRESENT PROBLEMS IDENTIFIED:

1. Epilepsy seen as only a medical problem.
  - a. Related problems in education, employment, emotions, etc. ignored or untreated, resulting in:
    1. poor seizure control
    2. poor functioning in daily living
    3. ultimate increased dependency
2. Management of epilepsy is often outdated, imprecise, thus ineffective.
3. Service provider groups and agencies:
  - a. Are undertrained regarding epilepsy
  - b. Do not cooperate-coordinate well with other providers
  - c. Overlap due to lack of coordination
  - d. Do not follow through
  - e. Are not aware of resources and expertise
4. Patients get lost in the shuffle and are unaware of needs and/or services available.
5. The more rural parts of Kansas provide the least services
  - a. Minority and underprivileged also understand.

Served.

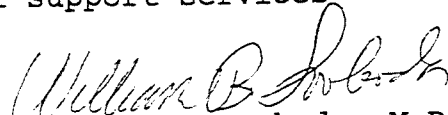
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3-28-89  
ATTACH 3

THE SOLUTION: As established at Federal and other state levels, the STATE TASK FORCE report should be followed up by the appointment of an ACTION COMMISSION ON EPILEPSY to translate the recommendations into programs and procedures. The present recommendation of the Kansas Task Force report suggests this be established as an Advisory Commission to STATE agencies and organizations.

1. To develop the Task Force recommendations.
2. To provide expertise and assistance to problems that arise.
3. To provide further planning as shall arise.

COST:

1. Cost should be limited to:
  - a. Travel expenses
  - b. Secretarial support services



William B. Svoboda, M.D.  
Chairman, 1988 Task Force on Epilepsy  
March, 29, 1989



# Kansas Advocacy & Protective Services, Inc.



Suite 2, the Denholm Bldg.  
513 Leavenworth  
Manhattan, KS 66502  
(913) 776-1541

**Chairperson**  
*R. C. (Pete) Loux*  
Wichita

**Vice Chairperson**  
*Robert Anderson*  
Ottawa

**Secretary**  
*Neil Benson*  
El Dorado

**Treasurer**  
*Robert Epps*  
Topeka  
*Rep. Rochelle Chronister*  
Neodesha

*Sen. Norma Daniels*  
Valley Center

*Sen. Ross O. Doyen*  
Concordia

*Harold James*  
Hugoton

*James Maag*  
Topeka

*W. Patrick Russell*  
Topeka

*Rep. Jack Shriver*  
Arkansas City

*Raymond L. Spring*  
Topeka

*W. H. Weber*  
Topeka

**Liaison to the Governor**  
*Jose A. de la Torre*

**Executive Director**  
*Joan Strickler*

TO: The Senate Committee on Governmental Organizations

Senator Lana Oleen, Chairperson

FROM: Kansas Advocacy and Protective Services, Inc.  
R. C. Loux, Chairperson

RE: S. B. 371

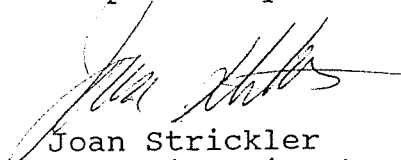
DATE: March 28, 1989

KAPS assists disabled children and adults in gaining access to the rights and services to which they are entitled. We fulfill the protection and advocacy requirements of P. L. 94-103, as amended, the Developmental Disabilities Act; and P. L. 99-319, as amended, the Protection and Advocacy for Mentally Ill Individuals Act. KAPS is a private, nonprofit corporation created specifically to serve this role in Kansas. We have been serving the state since 1977.

Through our work we became aware of many issues and problems that affect the lives of persons with disabilities - some affect most or many people and some are unique to specific handicapping conditions.

A Commission on Epilepsy can help to assure that the unique needs of persons with epilepsy and other seizure disorders are considered and addressed in Kansas. I support the establishment of such a Commission which could offer the information and recommendations needed to assist elected officials and public and private service providers to address problems and needs of Kansans with seizure disorders.

Respectfully Submitted,

  
Joan Strickler  
Executive Director

# Kansas Polygraph Association



\*\*\*

President

James R. Davis

\*\*\*

Vice-President

(Law Enforcement)

Allen Raynor

\*\*\*

Vice-President

(Private)

Larry W. Lane

\*\*\*

Secretary/Treasurer

Caroline Adams

\*\*\*

Board of Directors

Vic M. Strnad

Jim Martin

Steven R. Starr

\*\*\*

TESTIMONY OF JAMES R. DAVIS, PRESIDENT KANSAS POLYGRAPH ASSOCIATION FOR THE SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION  
28 MARCH 1989 REGARDING: SENATE BILL 2491

The Kansas Polygraph Association represents a cross section of private and governmental Polygraph Examiners from across the state of Kansas. We come before you today to discuss the licensing of Polygraph Examiners which we consider necessary not only to professionalize the Polygraph Industry, but for the protection of the people of the State of Kansas from the abuse of untrained and unskilled polygraph examiners. As the law stands now anyone claiming to have a polygraph instrument and an electrical outlet can claim to be a polygraph examiner.

While it is true that the current Private Investigators statutes in the state seems to require a Polygraph Examiner to have a Private Investigators license, that law is not enforced and to my knowledge never has been.

In 1986, Steve Starr, who was then, President of the Kansas Polygraph Association met with Attorney General Robert Stephen who agreed that Polygraph Examiners should be licensed. The KPA worked with Mr. Stephen's staff and with Representative Nancy Brown to draw up and revise a polygraph licensing law. The final law did not meet some of the standards recommended by the Kansas Polygraph Association. After several months the legislation was declared unenforceable by the Attorney General.

Again in 1988, we began to work with Representative Brown and her staff. You have the result before you labeled as Senate Bill 2491. The Kansas Polygraph Association supports SB2491 as it is written.

You will hear from someone today, who will ask you to wait because they have now made an eleventh hour attempt to write legislation to combine the Board of Polygraphists with a Board of Private Investigators. That bill is in the form of Senate Bill 379.

Unfortunately SB379 is an awkward, patchwork, of poorly written, un-researched and outdated legislation taken from an old Nevada statute. It defines a Polygraph as a "device which records or measures physiological effects of psychological stimuli". Now, what does that mean? It requires an instrument to be "of commercial manufacture" without regard to those small companies who specialize in custom instruments and is probably a violation of the laws of commerce. It requires an instrument to record "changes in skin resistance" when state of the art equipment now offers "skin conductance" as a parameter. It requires a licensing fee of \$750, plus a \$250 renewal fee, plus a \$100 examination fee, for each person licensed, which would run most small companies out of business.

5.62  
3-28-89  
ATTACH 5

I don't know how they do business in the State of Nevada, where gambling and prostitution are as common as wheat fields and dairy farms in Kansas. I am not qualified to testify to the qualifications of a Private Detective. I am a Police Officer and a Polygraph Examiner. I do have an opinion of what should be required of Polygraph Examiners in the State of Kansas.

We are not here today to debate SB379. Today you must determine whether the State of Kansas will go forward with Senate Bill 2491 which represents legislation that has been properly researched and written, or, whether you will wait until someone can write a decent revision of the Private Investigators statute. We believe that it is time to sever the Polygraph Examiners from the Private Detectives, especially in light of the effects on small businesses, of the Employee Polygraph Protection Act of 1988 by the federal government. We believe that it is time to professionalize the Polygraph Industry in the State of Kansas, today.

I would be happy to answer any questions you have.

Public Law 100-347  
100th Congress

An Act

June 27, 1988  
[H.R. 1212]

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

Employee  
Polygraph  
Protection Act  
of 1988,  
29 USC 2001  
note.

SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Polygraph Protection Act of 1988".

29 USC 2001.

SEC. 2. DEFINITIONS.

As used in this Act:

(1) **COMMERCE.**—The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(b)).

(2) **EMPLOYER.**—The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) **LIE DETECTOR.**—The term "lie detector" includes a polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(4) **POLYGRAPH.**—The term "polygraph" means an instrument that—

(A) records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(B) is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(5) **SECRETARY.**—The term "Secretary" means the Secretary of Labor.

29 USC 2002.

SEC. 3. PROHIBITIONS ON LIE DETECTOR USE.

Except as provided in sections 7 and 8, it shall be unlawful for any employer engaged in or affecting commerce or in the production of goods for commerce—

(1) directly or indirectly, to require, request, suggest, or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against—

Discrimination,  
prohibition.

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test, or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against, any employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act,

(B) such employee or prospective employee has testified or is about to testify in any such proceeding, or

(C) of the exercise by such employee or prospective employee, on behalf of such employee or another person, of any right afforded by this Act.

Discrimination,  
prohibition.

SEC. 4. NOTICE OF PROTECTION.

29 USC 2003.

The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act. Each employer shall post and maintain such notice in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.

SEC. 5. AUTHORITY OF THE SECRETARY.

29 USC 2004.

(a) **IN GENERAL.**—The Secretary shall—

(1) issue such rules and regulations as may be necessary or appropriate to carry out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

Regulations.

State and local  
governments.

Records.

(b) **SUBPOENA AUTHORITY.**—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49 and 50).

SEC. 6. ENFORCEMENT PROVISIONS.

29 USC 2005.

(a) **CIVIL PENALTIES.**—

(1) **IN GENERAL.**—Subject to paragraph (2), any employer who violates any provision of this Act may be assessed a civil penalty of not more than \$10,000.

(2) **DETERMINATION OF AMOUNT.**—In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) **COLLECTION.**—Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

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3-28-89  
ATTACH 6

(b) **INJUNCTIVE ACTIONS BY THE SECRETARY.**—The Secretary may bring an action under this section to restrain violations of this Act. The Solicitor of Labor may appear for and represent the Secretary in any litigation brought under this Act. In any action brought under this section, the district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act, including such legal or equitable relief incident thereto as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(c) **PRIVATE CIVIL ACTIONS.**—

(1) **LIABILITY.**—An employer who violates this Act shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(2) **COURT.**—An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by an employee or prospective employee for or on behalf of such employee, prospective employee, and other employees or prospective employees similarly situated. No such action may be commenced more than 3 years after the date of the alleged violation.

(3) **COSTS.**—The court, in its discretion, may allow the prevailing party (other than the United States) reasonable costs, including attorney's fees.

(d) **WAIVER OF RIGHTS PROHIBITED.**—The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement agreed to and signed by the parties to the pending action or complaint under this Act.

**SEC. 7. EXEMPTIONS.**

(a) **NO APPLICATION TO GOVERNMENTAL EMPLOYERS.**—This Act shall not apply with respect to the United States Government, any State or local government, or any political subdivision of a State or local government.

(b) **NATIONAL DEFENSE AND SECURITY EXEMPTION.**—

(1) **NATIONAL DEFENSE.**—Nothing in this Act shall be construed to prohibit the administration, by the Federal Government, in the performance of any counterintelligence function, of any lie detector test to—

(A) any expert or consultant under contract to the Department of Defense or any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor of such Department in connection with such activities.

(2) **SECURITY.**—Nothing in this Act shall be construed to prohibit the administration, by the Federal Government, in the performance of any intelligence or counterintelligence function, of any lie detector test to—

(A)(i) any individual employed by, assigned to, or detailed to, the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency,

(ii) any expert or consultant under contract to any such agency,

(iii) any employee of a contractor to any such agency,

(iv) any individual applying for a position in any such agency, or

(v) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency; or

(B) any expert, or consultant (or employee of such expert or consultant) under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being within a special access program under section 4.2(a) of Executive Order 12356 (or a successor Executive order).

(c) **FBI CONTRACTORS EXEMPTION.**—Nothing in this Act shall be construed to prohibit the administration, by the Federal Government, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) **LIMITED EXEMPTION FOR ONGOING INVESTIGATIONS.**—Subject to sections 8 and 10, this Act shall not prohibit an employer from requesting an employee to submit to a polygraph test if—

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, such as theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee had access to the property that is the subject of the investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer executes a statement, provided to the examinee before the test, that—

(A) sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees,

(B) is signed by a person (other than a polygraph examiner) authorized to legally bind the employer,

(C) is retained by the employer for at least 3 years, and

(D) contains at a minimum—

(i) an identification of the specific economic loss or injury to the business of the employer,

(ii) a statement indicating that the employee had access to the property that is the subject of the investigation, and

(iii) a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

(e) **EXEMPTION FOR SECURITY SERVICES.**—

(1) **IN GENERAL.**—Subject to paragraph (2) and sections 8 and 10, this Act shall not prohibit the use of polygraph tests on prospective employees by any private employer whose primary

Courts, U.S.  
Wages.

Wages.

Courts, U.S.

29 USC 2006.

Contracts.

Classified information.

Contracts.  
Classified information.

Fraud.  
Espionage.

business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of—

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 90 days after the date of the enactment of this Act, including—

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power,

(ii) public water supply facilities,

(iii) shipments or storage of radioactive or other toxic waste materials, and

(iv) public transportation, or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) ACCESS.—The exemption provided under this subsection shall not apply if the test is administered to a prospective employee who would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

(f) EXEMPTION FOR DRUG SECURITY, DRUG THEFT, OR DRUG DIVERSION INVESTIGATIONS.—

(1) IN GENERAL.—Subject to paragraph (2) and sections 8 and 10, this Act shall not prohibit the use of a polygraph test by any employer authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, II, III, or IV of section 202 of the Controlled Substances Act (21 U.S.C. 812).

(2) ACCESS.—The exemption provided under this subsection shall apply—

(A) if the test is administered to a prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(B) in the case of a test administered to a current employee, if—

(i) the test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacture, distribution, or dispensing of any such controlled substance by such employer, and

(ii) the employee had access to the person or property that is the subject of the investigation.

29 USC 2007.

#### SEC. 8. RESTRICTIONS ON USE OF EXEMPTIONS.

(a) TEST AS BASIS FOR ADVERSE EMPLOYMENT ACTION.—

(1) UNDER ONGOING INVESTIGATIONS EXEMPTION.—Except as provided in paragraph (2), the exemption under subsection (d) of section 7 shall not apply if an employee is discharged, disciplined, denied employment or promotion, or otherwise discriminated against in any manner on the basis of the analysis of a polygraph test chart or the refusal to take a polygraph test, without additional supporting evidence. The evidence required by such subsection may serve as additional supporting evidence.

(2) UNDER OTHER EXEMPTIONS.—In the case of an exemption described in subsection (e) or (f) of such section, the exemption

shall not apply if the results of an analysis of a polygraph test chart are used, or the refusal to take a polygraph test is used, as the sole basis upon which an adverse employment action described in paragraph (1) is taken against an employee or prospective employee.

(b) RIGHTS OF EXAMINEE.—The exemptions provided under subsections (d), (e), and (f) of section 7 shall not apply unless the requirements described in the following paragraphs are met:

(1) ALL PHASES.—Throughout all phases of the test—

(A) the examinee shall be permitted to terminate the test at any time;

(B) the examinee is not asked questions in a manner designed to degrade, or needlessly intrude on, such examinee;

(C) the examinee is not asked any question concerning—

(i) religious beliefs or affiliations,

(ii) beliefs or opinions regarding racial matters,

(iii) political beliefs or affiliations,

(iv) any matter relating to sexual behavior; and

(v) beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations; and

(D) the examiner does not conduct the test if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the actual testing phase.

(2) PRETEST PHASE.—During the pretest phase, the prospective examinee—

(A) is provided with reasonable written notice of the date, time, and location of the test, and of such examinee's right to obtain and consult with legal counsel or an employee representative before each phase of the test;

(B) is informed in writing of the nature and characteristics of the tests and of the instruments involved;

(C) is informed, in writing—

(i) whether the testing area contains a two-way mirror, a camera, or any other device through which the test can be observed,

(ii) whether any other device, including any device for recording or monitoring the test, will be used, or

(iii) that the employer or the examinee may (with mutual knowledge) make a recording of the test;

(D) is read and signs a written notice informing such examinee—

(i) that the examinee cannot be required to take the test as a condition of employment,

(ii) that any statement made during the test may constitute additional supporting evidence for the purposes of an adverse employment action described in subsection (a),

(iii) of the limitations imposed under this section,

(iv) of the legal rights and remedies available to the examinee if the polygraph test is not conducted in accordance with this Act, and

(v) of the legal rights and remedies of the employer under this Act (including the rights of the employer under section 9(c)(2)); and

Public health and safety.  
Defense and national security.  
State and local governments.  
Energy.

Water.  
Hazardous materials.  
Transportation.  
Securities.

Discrimination, prohibition.

Health and medical care.

(E) is provided an opportunity to review all questions to be asked during the test and is informed of the right to terminate the test at any time.

(3) **ACTUAL TESTING PHASE.**—During the actual testing phase, the examiner does not ask such examinee any question relevant during the test that was not presented in writing for review to such examinee before the test.

(4) **POST-TEST PHASE.**—Before any adverse employment action, the employer shall—

(A) further interview the examinee on the basis of the results of the test; and

(B) provide the examinee with—

(i) a written copy of any opinion or conclusion rendered as a result of the test, and

(ii) a copy of the questions asked during the test along with the corresponding charted responses.

(5) **MAXIMUM NUMBER AND MINIMUM DURATION OF TESTS.**—The examiner shall not conduct and complete more than five polygraph tests on a calendar day on which the test is given, and shall not conduct any such test for less than a 90-minute duration.

(c) **QUALIFICATIONS AND REQUIREMENTS OF EXAMINERS.**—The exemptions provided under subsections (d), (e), and (f) of section 7 shall not apply unless the individual who conducts the polygraph test satisfies the requirements under the following paragraphs:

(1) **QUALIFICATIONS.**—The examiner—

(A) has a valid and current license granted by licensing and regulatory authorities in the State in which the test is to be conducted, if so required by the State; and

(B) maintains a minimum of a \$50,000 bond or an equivalent amount of professional liability coverage.

(2) **REQUIREMENTS.**—The examiner—

(A) renders any opinion or conclusion regarding the test—

(i) in writing and solely on the basis of an analysis of polygraph test charts,

(ii) that does not contain information other than admissions, information, case facts, and interpretation of the charts relevant to the purpose and stated objectives of the test, and

(iii) that does not include any recommendation concerning the employment of the examinee; and

(B) maintains all opinions, reports, charts, written questions, lists, and other records relating to the test for a minimum period of 3 years after administration of the test.

#### SEC. 9. DISCLOSURE OF INFORMATION.

(a) **IN GENERAL.**—A person, other than the examinee, may not disclose information obtained during a polygraph test, except as provided in this section.

(b) **PERMITTED DISCLOSURES.**—A polygraph examiner may disclose information acquired from a polygraph test only to—

(1) the examinee or any other person specifically designated in writing by the examinee;

(2) the employer that requested the test; or

(3) any court, governmental agency, arbitrator, or mediator, in accordance with due process of law, pursuant to an order from a court of competent jurisdiction.

(c) **DISCLOSURE BY EMPLOYER.**—An employer (other than an employer described in subsection (a), (b), or (c) of section 7) for whom a polygraph test is conducted may disclose information from the test only to—

(1) a person in accordance with subsection (b); or

(2) a governmental agency, but only insofar as the disclosed information is an admission of criminal conduct.

#### SEC. 10. EFFECT ON OTHER LAW AND AGREEMENTS.

29 USC 2009.

Except as provided in subsections (a), (b), and (c) of section 7, this Act shall not preempt any provision of any State or local law or of any negotiated collective bargaining agreement that prohibits lie detector tests or is more restrictive with respect to lie detector tests than any provision of this Act.

#### SEC. 11. EFFECTIVE DATE.

29 USC 2001 note.

(a) **IN GENERAL.**—Except as provided in subsection (b), this Act shall become effective 6 months after the date of enactment of this Act.

(b) **REGULATIONS.**—Not later than 90 days after the date of enactment of this Act, the Secretary shall issue such rules and regulations as may be necessary or appropriate to carry out this Act.

Approved June 27, 1988.

Records.

29 USC 2008.

#### LEGISLATIVE HISTORY—H.R. 1212 (S. 1904):

HOUSE REPORTS: No. 100-208 (Comm. on Education and Labor) and No. 100-659 (Comm. of Conference).

SENATE REPORTS: No. 100-284 accompanying S. 1904 (Comm. on Labor and Human Resources).

#### CONGRESSIONAL RECORD:

Vol. 133 (1987): Nov. 4, considered and passed House.

Vol. 134 (1988): Mar. 1, 2, S. 1904 considered in Senate.

Mar. 3, H.R. 1212 considered and passed Senate, amended, in lieu of S. 1904.

June 1, House agreed to conference report.

June 9, Senate agreed to conference report.

WEEKLY COMPILATION OF PRESIDENTIAL DOCUMENTS, Vol. 24 (1988):  
June 27, Presidential statement.

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

Section I. K.S.A. 75-7b01 is hereby amended to read as follows:

(a) "Detective business" means the furnishing of, making of or agreeing to make any investigation for the purpose of obtaining information with reference to: Crime or wrongs done or threatened against the United States or any state or territory of the United States; the identity, habits, conduct, business, occupation, honesty, integrity, credibility, knowledge, trustworthiness, efficiency, loyalty, activity, movement, whereabouts, affiliations, associations, transactions, acts, reputation or character of any person; the location, disposition or recovery of lost or stolen property; the cause or responsibility for fires, libels, losses, accidents or damage or injury to persons or to property; or securing evidence to be used before any court, board, officer or investigating committee; *for the conducting of a polygraph examination unless done on behalf of a public agency by a law enforcement officer.*

(b) "Private detective" means any person who, for any consideration whatsoever, engages in detective business.

(c) "Private detective agency" means a person who regularly employs any other person, other than an organization, to engage in detective business.

(d) "Private patrol operator" means a person who, for any consideration whatsoever, agrees to furnish or furnishes a watchman, guard, patrolman or other person to protect persons or property or to prevent the theft, unlawful taking, loss, embezzlement, misappropriation or concealment of any goods, wares, merchandise, money, bonds, stocks, notes, documents, papers or property of any kind,

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or performs the service of such watchman, guard, patrolman or other person for any such purposes.

(e) "Law enforcement officer" means a law enforcement officer as defined by K.S.A. 21-3110.

(f) "Organization" means a corporation, trust, estate, partnership, cooperative or association.

(g) "Person" means an individual or organization.

(h) "Firearm permit" means a permit for the limited authority to carry a firearm by one licensed as a private detective.

(i) "Firearm" means:

(1) A pistol or revolver which is designed to be fired by the use of a single hand and which is designed to fire or capable of firing fixed cartridge ammunition; or

(2) any other weapon which will or is designed to expel a projectile by the action of an explosive and which is designed to be fired by the use of a single hand.

(j) "Client" means any person who engages the services of a private detective.

Section II. K.S.A. 75-7b01 and K.S.A. 1988 Supp. 75-740, 75-741, 75-742, 75-743, 75-744, 75-745, 75-746, 75-747, 75-748, 75-749 are hereby repealed.

Section III. This act shall take effect and be in force from and after it's publication in the statute book.

INTRO

GOOD AFTERNOON, MEMBERS OF THE COMMITTEE, FELLOW PROFESSIONALS, AND CONCERNED CITIZENS OF THE STATE OF KANSAS, MY NAME IS MICKEY GITLIN, I AM A LICENSED PRIVATE DETECTIVE/POLYGRAPHER, I OWN MY OWN COMPANY, CORPORATE PROTECTIVE SERVICE, LOCATED IN OVERLAND PARK, AND I ALSO REPRESENT THE ALCOPS CORPORATION, ALSO LOCATED IN OVERLAND PARK....

I WOULD LIKE TO BEGIN MY COMMENTS BY STATING THAT I HAVE BEEN A PRIVATE DETECTIVE FOR FORTY-TWO YEARS....

I HAVE BEEN A PRACTICING POLYGRAPH EXAMINER FOR OVER THIRTY YEARS....

I HAVE BEEN LICENSED IN MORE THAN TEN STATES AT VARIOUS TIMES DURING MY BUSINESS CAREER....

I HAVE BEEN LICENSED IN THE STATE OF KANSAS SINCE 1975, AS A PRIVATE DETECTIVE AND POLYGRAPH EXAMINER....

WHEN I APPLIED FOR MY LICENSE INITIALLY IN 1975, IT WAS EXPRESSLY UNDERSTOOD THAT THIS LICENSE GRANTED ME THE AUTHORITY TO CONDUCT POLYGRAPH EXAMINATIONS AS WELL AS PRACTICE AS A PRIVATE DETECTIVE....

IN THE STATES IN WHICH I HAVE BEEN LICENSED, WHEN LICENSING WAS IMPLEMENTED, THOSE OF US WHO ALREADY HAD LICENSES IN OTHER STATES WERE ALWAYS, AUTOMATICALLY GRANDFATHERED....

AND THAT'S MY MAIN CONCERN AS IT RELATES TO HR 2491....

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DISTINGUISHED MEMBERS OF THE COMMITTEE, FELLOW POLYGRAPHERS, AND CONCERNED CITIZENS OF THE STATE OF KANSAS, I WOULD LIKE TO TAKE THIS OPPORTUNITY TO THANK YOU FOR YOUR TIME AND YOUR INDULGENCE IN ALLOWING ME TO MAKE THIS PRESENTATION.....

I HAD A REAL FANCY SPEECH PREPARED, AND WHEN I FINISHED IT, AND EXAMINED THE CONTENTS, I WASN'T REALLY SATISFIED WITH WHAT I SAW....

I DIDN'T FEEL AS IF I REALLY GOT TO THE NITTY GRITTY OF WHAT THIS NEW BILL WAS ALL ABOUT....

I WOULD LIKE TO REMIND YOU THAT ORIGINALLY A SIMILAR BILL, HR 2223, WAS INTRODUCED BY REPRESENTATIVE BROWN TWO YEARS AGO....

THIS BILL IS SOMEWHAT SIMILAR AND I AM SURE THAT REPRESENTATIVE BROWN INTRODUCED THIS BILL WITH THE BEST OF INTENTIONS...

REPRESENTATIVE BROWN CAN TELL YOU OF THE HASSLES, LONG HOURS OF DISCUSSIONS, AND WRANGLING SHE WENT THROUGH WITH VARIOUS MEMBERS OF OUR PROFESSION IN TRYING TO PUT TOGETHER WHAT SHE REALLY FELT WAS A MEANINGFUL PIECE OF LEGISLATION....

SHE FELT THAT THIS BILL WOULD SATISFY OUR MEMBERS AS WELL AS PROTECT THE PEOPLE OF THE STATE OF KANSAS...

I AM SURE SHE CAN SPEAK FOR HERSELF IN THIS REGARD....

UNFORTUNATELY, AS WE ALL KNOW, HER ENDEAVORS BECAME A NIGHTMARE....

HR 2223 WAS PASSED BUT NEVER COULD BE IMPLEMENTED PRIMARILY DUE TO THE LACK OF COOPERATION AND MEANINGFUL DIALOGUE THAT COULD HAVE MADE THIS A SOUND, WORKABLE BILL....

I BECAME INVOLVED AFTER THE BILL WAS DRAFTED, PASSED, AND WAS WRITTEN INTO LAW....

AFTER CONSULTING WITH VARIOUS MEMBERS OF OUR PROFESSION, SEVERAL LEGISLATORS AND SEVERAL OF MY FELLOW RESIDENTS OF THE STATE OF KANSAS, I FOUND THAT THE BILL AS IT WAS WRITTEN LEFT MUCH TO BE DESIRED, AND NOW LET ME CUT TO THE NITTY GRITTY....

1) A BOARD WAS CHOSEN BY THE ATTORNEY GENERAL'S OFFICE, AND AS IT TURNED OUT, CERTAIN MEMBERS WERE NOT EVEN QUALIFIED TO BE ON THE BOARD.... (MORE ABOUT THAT LATER)....

2) SUGGESTIONS WERE MADE BY OUR ASSOCIATIONS AND INDIVIDUALS FOR CERTAIN REVISIONS TO BE MADE AND MOST OF THEM WERE COMPLETELY IGNORED, ALTHOUGH MANY OF THESE SUGGESTIONS WERE SOLID, HELPFUL SUGGESTIONS AND RECOMMENDATIONS....

SOME WERE ACCEPTED, AND IMPLEMENTED, OTHERS NOT....

3) MY MAJOR CONCERN AND THE CONCERN OF OTHERS IN MY PROFESSION, INCLUDING BOTH THE KANSAS POLYGRAPH ASSOCIATION AND THE GREATER KANSAS CITY POLYGRAPH ASSOCIATION, WERE CONCERNED WITH THE LANGUAGE RELATING TO THE GRANDFATHER CLAUSE, PAGE 8 SECTION 5, LINE 275....

WE OBJECTED TO THE WORDS "MAY WAIVE", AND RECOMMENDED THAT THESE WORDS BE CHANGED TO "SHALL WAIVE".....

THOSE OF US WHO HAVE BEEN PRACTICING POLYGRAPHISTS FOR MANY YEARS TOOK STRONG EXCEPTION TO THE CONCEPT OR IDEA THAT AFTER 10-15-20 AND 30 YEARS IN OUR PROFESSION, AS PRACTICING POLYGRAPHISTS, WE SHOULD HAVE TO BE SUBJECTED TO WRITTEN TESTS, PRACTICAL TESTS, AND ORAL TESTS, TO PROVE OURSELVES....

MIND YOU!! EVEN THOUGH WE WERE IN FACT LICENSED UNDER KSA 75-7b01 THROUGH 75-7b21....

NO PROVISION OF ANY KIND WAS MADE IN THIS BILL, 2491, OR 2223, FOR THOSE OF US WHO WERE ALREADY LICENSED....

INSTEAD, WE WERE COMPLETELY IGNORED, NOTWITHSTANDING PAGE 8, SECTION 5, LINE 275.....

NEEDLESS TO SAY, I MYSELF, THE KANSAS POLYGRAPH ASSOCIATION, THE GREATER KANSAS CITY POLYGRAPH ASSOCIATION, AND SEVERAL OTHER MEMBERS OF OUR PROFESSION, WERE MOST VOCAL AND ADAMANT ABOUT THIS PROVISION....

NOT ONLY DID WE, BUT THE BOARD OF POLYGRAPHERS AND OTHERS IN THE KANSAS GOVERNMENT, VOICE OUR DESIRE TO HAVE THE LANGUAGE CHANGED TO ALLOW FOR "BLANKET GRANDFATHERING" FOR ALL POLYGRAPHERS THAT WERE QUALIFIED, NOT TO MENTION THOSE OF US WHO WERE ALREADY LICENSED AS PER KSA 75-7b01 THROUGH 75-7b21....

IT ALMOST SEEMS AS IF THERE IS A SMALL, AND I MEAN SMALL PRESSURE GROUP THAT IS BEHIND THIS BILL EXCLUDING OF COURSE, REPRESENTATIVE BROWN WHOM WE REALLY BELIEVE IS ACTING IN THE BEST INTEREST OF HER CONSTITUENTS....

THANKS TO EPPA 1988, (THE FEDERAL PROHIBITION OF PRE-EMPLOYMENT POLYGRAPH TESTING), AND THEIR SEVERE RESTRICTIONS ON GENERAL OR SPECIFIC POLYGRAPH TESTING, SOME OF US HAVE ALREADY BEEN FORCED OUT OF BUSINESS, AND IT ALMOST SEEMS AS IF THIS BILL, 2491, IF PASSED, AS WRITTEN, WILL TAKE CARE OF THE REST OF US....

IS THIS REALLY WHAT THIS COMMITTEE WANTS TO DO....

THE ATTORNEY GENERAL'S OFFICE AND THE K.B.I. HAVE HAD THE RESPONSIBILITY AND THE AUTHORITY TO MONITOR, AND TO ENFORCE THE PROVISIONS OF THE PRIVATE DETECTIVE ACT, 75-7b01 THROUGH 75-7b21, WHICH WAS DESIGNED TO REGULATE THE PRIVATE DETECTIVES AND POLYGRAPHERS LICENSED UNDER THIS ACT....

BOTH AGENCIES HAVE HAD THEIR HANDS FULL, TRYING TO DO THIS....

NOW HERE WE COME, WITH STILL ANOTHER BILL, LAW, OR WHATEVER YOU CHOSE TO CALL IT, TO ADD TO WHAT THESE AGENCIES HAVE BEEN ABLE TO DO FOR ONE REASON OR ANOTHER, FOR THE PAST FOURTEEN YEARS....

WHAT GOOD DOES IT DO TO MAKE AND PASS LAWS THAT ARE NOT ENFORCED OR ENFORCEABLE....

..... NOW, I UNDERSTAND THAT A SENATE BILL, #379 HAS BEEN INTRODUCED THAT SEEKS TO COMBINE THE PRIVATE DETECTIVES AND POLYGRAPHISTS INTO ONE UNIT UNDER ONE BOARD....

.... AS I STATED EARLIER, THE ATTORNEY GENERAL'S OFFICE AND THE K.B.I. COULDN'T EVEN HANDLE THE PRIVATE DETECTIVE ACT, 75-7b01 THROUGH 75-7b21, WHICH WAS A MUCH SIMPLER LAW....

WHAT MAKES THEM THINK OR WHY SHOULD WE BELIEVE THAT THEY CAN HANDLE 2491 OR SB379....

NO! MY FELLOW KANSANS AND RESPECTED MEMBERS OF THIS COMMITTEE, I BELIEVE THAT THIS BILL, #2491, THAT IS BEFORE YOU NOW, NEEDS MORE WORK...

AND UNLESS IT CAN SERVE ALL OF THE PEOPLE OF KANSAS, AND THE MEMBERS OF MY PROFESSION, IT SHOULD BE SENT BACK FOR FURTHER STUDY, OR BE WITHDRAWN....

NOW, IF THE CHAIRPERSON WILL INDULGE ME, AND GIVE ME A LITTLE MORE TIME, I HAVE WITH ME, WHICH I HAVE DISTRIBUTED, EXHIBITS WHICH GO TO THE HEART OF THE ISSUES I HAVE DISCUSSED AND WILL SURELY SUPPORT AND VERIFY THE POSITION STATED IN MY PRESENTATION....

EXHIBITS???

THANK YOU ALL VERY MUCH FOR YOUR TIME, AND ONCE AGAIN, I APPRECIATE THIS OPPORTUNITY TO EXPRESS MY VIEWS....

## ILLUSTRATIONS

1. Board of Polygraphists. Meeting 12-7-87. Page 3, sec 6h - 6i, followed by paragraph beginning with "Any Person".
2. L1987 CH283 Proposed revisions. Revise sec. 6i
3. Grandfather, board suggestion, sec 6 (3), (B) (i)
4. Kansas Board of Polygraphists, September 29, 1987. Opinion request 2nd paragraph "in attorney general's opinion"... also last paragraph "specifically".
5. Kansas Board of Polygraphists, September 29, 1987. Opinion request, last paragraph "the duties of the public member".
6. Office of the Attorney General, Oct. 16, 1987, page 1, last paragraph "the public member". Also, page 2, last paragraph. Page 3, paragraph 3. Page 5, first paragraph starting with "two members". All relate to the duties of the public member which the present bill does not agree with.
7. Meeting of Board of Polygraphists, October 16, 1987, 11th paragraph, re "Ray Macey". Entire proceeding illegal and non binding.
8. House of representatives... letter to Howell and Davis from Rep. Brown. 3rd paragraph starting with "this has been discussed."
9. Newspaper articles relating to 1) confusion of the bill. 2) A.G.'s opinion. 3) Violations by exponents of the bill.
10. Letter to Rep. Brown from Mary K. Galligar, Kansas Legislative Research Dept. Page 5, last paragraph, also, 2nd part, page 5, starting with "an individual" paragraph 2, contradicts attorney General's opinions...page 10, paragraph 1, starting with the words "any person".
11. Letter to Rep. Brown from Gary Davis, 1st paragraph... He was and still is Chairman of the Board of Polygraphists. He thinks so.
12. Senator Boginas Bill SB614, page 2, line 0045, through 0047. Dissolves boards rules and regulations prior to May 1, 1989. To all intents and purposes, there are no rules and regulations as of this date.
13. Senate Bill #479, page 2, line 0061m. Contradictory, does it repeal KSA 75-7b03. YES IT DOES! BUT IS 479 IN EFFECT?
14. House Bill #2223...Supplemental note section, page 2, paragraph 2, AND final paragraph did not convey accurately the concerns of the Board members, the police, and fire departments as well as the private sector.

S.G.D.  
3-28-89  
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MEETING OF THE KANSAS BOARD OF POLYGRAPHERS  
December 7, 1987

PROPOSED MINUTES

The Kansas Board of Polygraphists met on December 7, 1987, at 10:00 a.m. in the conference room of the Attorney General's office, Kansas Judicial Center, 2nd Floor, Topeka, Kansas. Prior notice of the date, time and place of the meeting was provided to all individuals requesting notice. The meeting was open to the public.

Board members present were Gary Davis, Carla Stovall and Steve Starr. Also present were Mary Beth Mudrick, Executive Director of the Board, and 7 members of the public.

The minutes of the November 18, 1987 meeting were discussed. Gary Davis stated that on the second page the last sentence of the first paragraph was inaccurate. Mary Beth Mudrick was instructed to change that sentence to read, "Mr. Howell said his group favors the idea that perceptor trained examiners be required to take a test." The previous wording indicated Mr. Howell's group was opposed to perceptor trained examiners being tested. The minutes were approved subject to this change.

Mr. Davis advised Board members that the Legislative Joint Committee on Rules and Regulations would meet at 9:00 a.m., December 16, 1987, Room 527-S to discuss the Board's proposed rules and regulations. All Board members expressed their intent to attend the December 16 hearing.

Gary Davis indicated he did not have Penn Valley's application for approval with him at the meeting. Therefore, Penn Valley's application for approval was tabled.

The Board read through L. 1987, Ch. 283, and approved the proposed revisions:

Sec. 1(a): "Board" will be renamed as the Kansas Board of Investigative Professions.

Sec. 2(a): same change.

Sec. 2(b): Board membership will consist of the following:

- (i) A polygraphist with a private investigator's license (this individual can be employed in either the public or private sector);



Sec. 6(g): at the end of this section, change the period to a comma and add: "provided that no internship shall continue longer than one year without permission of the Board. Interns shall be given credit for examinations conducted prior to January 1, 1989."

Sec. 6(g): at the end of this section, change the period to a comma and add: "provided that no internship shall continue longer than one year without permission of the Board. Interns shall be given credit for examinations conducted prior to January 1, 1989."

\* Sec. 6(h): in the first sentence, after the words "may waive the" add: "education, training, internship and."

\* Sec. 6(i): The entire section is deleted and the following is substituted:

\* Any person who has been engaged in the occupation, business or profession of a polygraph examiner one year prior to the effective date of this Act, upon application, shall be issued a polygraph examiner's license. Application must be made within sixty (60) days of the effective date of the Act. Applicants must satisfy requirements of Sec. 6(c), (d), (1) and (2).

Sec. 6(j): The entire section is deleted and the following is substituted:

The application, licensing and examinations fees for any polygraph examiner employed by a law enforcement agency of a municipal, county or state agency shall be paid by the applicant's employer so long as the sole use of the polygraph is in performance of such examiner's official duties, provided that such polygraph examiner must be properly licensed. Licenses paid for from municipal, county or state funds shall be labeled "Law Enforcement Polygraphist."

The following was discussed but not voted upon: add 6(K) as follows:

Sec. 6(K): A polygraph examiner employed by a municipal, county, state or federal agency is not prohibited from conducting examinations outside of the performance of such examiner's official duties. However, if such examiner does perform polygraph examinations other than in the performance of official duties, the examiner must obtain a license as a polygraphist and pay the application and licensing fee.

Sec. 7(a): add "or revoke" to revoke, limit, restrict or refused to renew."

Sec. 7(b) (2): insert after "state", any territory of the United States.

L. 1987, Ch. 283  
Proposed revisions

Revise: Sec. 2: revise to change board to Kansas Board of Private Investigators and Polygraphists.

Board composition:

- 1 & 2) Two licensed polygraphists, one must have P.I. license, or both must have P.I. licenses;
- 3) Public member (state whether this person can vote on all requirements or not);
- 4) A law enforcement official (may want to designate deputy, etc.);
- 5) A licensed P.I. (not a polygraphist).

Would need to address whether polygraphists should represent both public and private sector.

Should address judicial/congressional district restrictions.

Should address qualifications of two polygraphists. (e.g., 500 exams -- private; ~~300~~ exams -- law enforcement).  
250

Sec. 5(e): look at Macey's proposal #7 dealing with law enforcement officers from other states doing exams in Kansas pursuant to agreement with Kansas law enforcement officials.

Revise: Sec. 5(a) as to date.

Revise: Sec. 6(h) to incorporate language of 6(i) re: waiver of education, training internship and examination.

Revise: Sec. 6(i)

\* Any person who has been engaged in the occupation, business or profession of a polygraph examiner one year prior to the effective date of this Act, upon application, be issued a polygraph examiner's license. Application must be made within sixty (60) days of the effective date of the Act. Applicant must satisfy requirements of Sec. 6(c), (d), (1) and (2). (Starr proposal)

*state citizenship*  
KPA proposes two year Grandfather clause.

BOARD SUGGESTIONS

*suggestions*

GRANDFATHER

\* Sec. 6 (3) (B) (i): Any person who has been engaged in the occupation, business or profession of a polygraph examiner one year prior to the effective date of this Act, shall, upon application, be issued a polygraph examiner's license. Application must be made within sixty (60) days of the effective date of the Act. Applicant must satisfy requirements of Sec. 6 (c), (d), (1) and (2).

BOARD MEMBERSHIP

Sec. 2 (c): Of the five Board Members, two shall be privately employed as polygraphists and shall have personally conducted at least 500 polygraph examinations during the five years immediately preceding the appointment; two shall be employed by law enforcement agencies as polygraphists and shall have personally conducted at least 300 polygraph examinations during the five years immediately preceding the appointment.

LAW ENFORCEMENT FEE

Sec. 6 (j): A polygraph examiner employed by a municipal, county, state, or federal agency shall not be required to pay full application or licensing fees so long as the sole use of the polygraph is in performance of such examiner's official duties, provided such examiner must be properly licensed.

*Oct 9/4*

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KANSAS BOARD OF POLYGRAPHERISTS  
Second Floor, Kansas Judicial Center  
Topeka, Kansas 66612

September 29, 1987

Honorable Robert T. Stephan  
Attorney General of Kansas  
Second Floor, Kansas Judicial Center  
Topeka, Kansas 66612

RE: Opinion Request

Dear General Stephan:

On July 1 of this year, L. 1987, Ch. 283, became effective providing for licensure and regulation of polygraphists. The Kansas Board of Polygraphists is now in the process of adopting rules and regulations for administration of this act. During this process, the Board has become aware of an area of overlap between the polygraphist act (L. 1987, Ch. 283) and K.S.A. 75-7b01 et seq., governing the licensure of private detectives.

In Attorney General Opinions 74-6 and 79-40, you concluded that a polygraph examiner must be licensed as a private detective. Attorney General Opinion No. 79-40 also states that a law enforcement officer is prohibited from being licensed as a private detective.

Comments from the public at recent Board meetings indicate that this overlap is causing confusion among perspective applicants for licensure under the recently passed polygraphists' act. Therefore, in order to clarify the status of existing laws governing licensure of polygraphists, the Kansas Board of Polygraphists has voted to ask for a formal opinion on this matter.

\* Specifically, the Board would like your Opinion to decide: Does an individual who obtains a license as a polygraphist or polygraphist intern pursuant to L. 1987, Ch. 283, also have to obtain a private detective license in order to conduct polygraph examinations?

Thank you for your attention to this matter.

Sincerely,

Mary Beth Mudrick

Mary Beth Mudrick  
Executive Director

KANSAS BOARD OF POLYGRAPHISTS  
Second Floor, Kansas Judicial Center  
Topeka, Kansas 66612

September 29, 1987

Honorable Robert T. Stephan  
Attorney General of Kansas  
Second Floor, Kansas Judicial Center  
Topeka, Kansas 66612

RE: Opinion Request

Dear General Stephan:

As you know, the Kansas Board of Polygraphists currently consists of three members appointed by you. Gary Davis and Steve Starr hold the private polygraphist positions and Carla Stovall is the public representative to the board. Although there are two board positions for law enforcement representatives, at this time no individual has been identified who meets the statutory requirements.

Since the three members appointed do constitute a quorum, the board has been meeting and has done considerable work on drafting rules and regulations, application forms and a written examination. The rules and regulations have been approved by the Secretary of Administration and by your office. A public hearing on the rules and regulations is set for October 16, 1987. Shortly after that meeting, the board will need to vote on the adoption of the rules and regulations. The board will also need to vote to approve the written examination. Since applicants must be licensed prior to January 1, 1988, in order to stay in this business, there is a definite need to proceed as quickly as possible to begin the licensing process.

A question has arisen regarding approval of the written examination and technical portions of the regulations. L. 1987, Ch. 283, section 2(d) states, in part:

\* { 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 the technical competence or technical judgment of a licensee or a candidate for licensure.

*ced 9/6*



Page 1

STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN  
ATTORNEY GENERAL

October 16, 1987

MAIN PHONE (913) 296-2215  
CONSUMER PROTECTION 296-3751  
ANTITRUST 296-5299

ATTORNEY GENERAL OPINION NO. 87- 152

Mary Beth Mudrick  
Executive Director  
Kansas Board of Polygraphists  
Kansas Judicial Center, 2nd Floor  
Topeka, Kansas 66612

Re: State Departments; Public Officers and  
Employees--Private Investigation or Security  
Operations Polygraphists--Board Meetings; Quorum  
and Voting

Synopsis: A quorum must be present before a public body can  
conduct business. Quorum for the five-member  
Kansas Board of Polygraphists (Board) is a  
majority of the total membership, or three  
members. Kansas case law provides that persons  
disqualified from voting cannot be counted toward  
the number necessary for a quorum.

Three positions on the Board have been filled by a  
public member, who is not a polygraphist and two  
privately employed polygraphists. The two  
positions for law enforcement representatives are  
vacant due to the lack of qualified persons. The  
public member of the Board is precluded by law from  
voting on "technical" matters. Therefore, it is  
our opinion that, while the Board may lawfully meet  
and take action on non-technical matters with its  
current three members, the Board cannot take action  
on technical matters due to lack of quorum. Cited  
herein: K.S.A. 1986 Supp. 77-201; 1987 House Bill  
No. 2223, L. 1987, ch. 283.

\*

\*

\*

Att 9/

Dear Ms. Mudrick:

As the Executive Director of the Kansas Board of Polygraphists (Board), you request our opinion concerning the number of persons necessary to constitute a quorum to conduct the Board's business.

The Kansas Board of Polygraphists was created by the 1987 session of the legislature to license and regulate polygraphists. 1987 House Bill No. 2223, L. 1987, ch. 283. Appointed by the Attorney General, the five members of the Board must meet the following qualifications:

"(b) 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 polygraphists, each of whom shall have personally conducted at least 500 polygraph examinations during the five years immediately preceding the appointment. Of these four board members, two shall be privately employed as polygraphists, and two shall be employed by law enforcement agencies as polygraphists. The first members of the board appointed to these positions shall meet these qualifications, except for their lack of licensure as polygraphists, 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." L.  
1987, ch. 283, §2. (Emphasis added).

The law precludes the public member from voting on "technical  
matters:

\* { "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 judgment of a  
licensee or a candidate for licensure."  
L. 1987, ch. 283, §2(d).

The Attorney General has appointed persons to fill the public board member position and the two private polygraphist positions. The two positions for law enforcement representatives remain vacant. At this time no individual has been identified who is currently employed by a law enforcement agency and meets the statutory 500 examinations requirement. Given the two vacancies on the Board, you ask whether the remaining members may adopt rules and regulations, approve the written examination, and vote on the applications for licensure of the two private polygraphist board members.

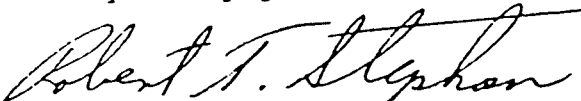
A quorum of the membership of a public body must be present to conduct the business of that body. Annot., 43 A.L.R.2d 698, §2 (1955); 59 Am.Jur.2d Parliamentary Law §7. The statutes concerning the Board of Polygraphists do not specify the number of members necessary to constitute a quorum. In the absence of such a provision, K.S.A. 1986 Supp. 77-201 Fourth applies to establish the quorum for the Board as the majority of the membership of the entire body. See FTC v. Flotill Products, Inc., 389 U.S. 179, 183-84, 88 S.Ct. 401, 402-03, 19 L.Ed.2d 398 (1967); Wycoff v. Board of County Commissioners, 191 Kan. 658 (1963); Chambers v. Herrick, 172 Kan. 510 (1952); Attorney General Opinion No. 87-132. In previous opinions we have stated that "majority" means the next whole number greater than half the total number of members. Attorney General Opinions No. 87-132, 87-45, 86-110, 83-174. The weight of authority is that a vacancy or vacancies on a board must be counted toward the total number of members from which the quorum is determined. See Annot., 43 A.L.R.2d 698, §5 (1955). See also Rockland Woods, Inc. v. Incorp. Village of Suffern, 340 N.Y.S.2d 513 (1973); State v. Gruber, 373

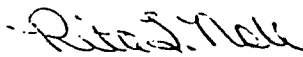


determination. Therefore, both vacancies must be filled in order to have a quorum of three to approve the licensure of Board members. Two members do not count towards quorum: the public member is disqualified by statute and the Board member whose application for licensure is under consideration is disqualified because of personal interest.

In summary, a quorum must be present before a public body can conduct business. Quorum for the five-member Kansas Board of Polygraphists (Board) is a majority of the total membership, or three members. Kansas case law provides that persons disqualified from voting cannot be counted toward the number necessary for a quorum. Three positions on the Board have been filled, the public member and two representatives from the private sector. The two positions for law enforcement representatives are vacant due to the lack of qualified persons. The public member of the Board is precluded by law from voting on "technical" matters. Therefore, it is our opinion that while the Board may lawfully meet and take action on non-technical matters with its current three members, the Board cannot take action on technical matters due to lack of quorum.

Very truly yours,

  
ROBERT T. STEPHAN  
Attorney General of Kansas

  
Rita L. Noll  
Assistant Attorney General

RTS:JLM:RLN:jm

#7

MEETING OF THE KANSAS BOARD OF POLYGRAPHISTS  
October 16, 1987

PUBLIC HEARING ON PROPOSED RULES AND REGULATIONS

PROPOSED MINUTES

The Kansas Board of Polygraphists held a Public Hearing on proposed rules and regulations on October 16, 1987, in the auditorium of the Kansas Bureau of Investigation, 1620 SW Tyler, Topeka, Kansas. Prior notice of the meeting was published in the Kansas Register. The meeting was continued at 1:30 p.m. in the conference room of the Attorney General's office, 301 W. 10th, Topeka, Kansas. Members of the public were informed at the morning meeting of the time and place of the continued meeting.

Board members present were Gary Davis, Carla Stovall, Steve Starr, and Ray Macey. Rita Noll, Assistant Attorney General, provided legal counsel for the Board. Seventeen individuals attended the morning meeting and fourteen attended the afternoon session.

The minutes of the September 24, 1987, Board meeting were approved.

The Board heard public comment on proposed rules and regulations and made the following changes:

112-5-3 -- revised to allow credit for examinations conducted prior to January 1, 1988;

112-6-1 -- "required by the board to take examinations" added to second line after the word license;

112-6-2 -- first sentence changed to: Each applicant for a polygraphist license required by the board to take the examinations shall pass a practical examination to qualify for licensure;

112-7-4 -- deadline for renewal applications and fees changed from November 1 to December 1.

Board members responded to a roll call as follows:

Gary Davis voted to approve the most recent version of all proposed regulations.

Ray Macey voted to approve the most recent version of all proposed regulations.

Steve Starr voted to approve the most recent version of all proposed regulations with the exception of 112-3-1.

NOT LEGAL  
DORIS  
MEMBER X



TOPEKA

HOUSE OF REPRESENTATIVES

January 27, 1989

214  
5161  
#8  
GKCIA  
CAY

*Edith King*  
2/1/89

Mr. Gary F. Davis  
Chairman, Kansas Board  
of Polygraphists  
1427 W. Douglas  
Wichita, Kansas 67213

Dear Gary:

*Bruce*  
Help! I am getting confused. Did you just say with your last communication that there should not be a Board of Polygraphists?

If this is the feeling of the Kansas Association, then I am not going to waste any more of the revisor's, researcher's, mine and your time on a lengthy bill. I will simply submit a bill to abolish the board in spite of the fact that we will all have egg on our face.

If regulation is needed for the modification of the Private Detective Act or a creation of the Board of investigators to regulate both investigators and polygraph examiners, then it will have to come from the AG's office or from other sources. This has been discussed in the past and no one (including those involved in the profession) seemed willing to work on this endeavor.

I do not want to get involved in this legislation. I have spent a considerable amount of time, energy and effort on behalf of the polygraph profession. It is time for someone else more familiar or in tune with both the private detective act and the polygraph profession to take over.

I have asked the Government Organization Committee to introduce a bill. It was my thought that the desire of the profession was to proceed with the draft with some modifications as presented to me by several individuals. I have not turned in the draft to anyone. If I do not hear from the Board or members of your profession, then perhaps the best way to proceed is to have the Revisor's draft a bill to amend the current statutes and delete the board entirely. Something has to be done to correct the faulty legislation that we passed last year. . . and I feel responsible.

If this letter sounds harsh, just know that I am very frustrated in trying to do what I thought everyone wanted done. . . now I do not know what everyone wants.

Sincerely,

*Nancy Brown*  
Nancy Brown

*C.C. F. . .*

9/12

DATE: Tuesday 11-10-87

- TOPEKA CAPITAL-JOURNAL
- WICHITA EAGLE-BEACON
- KANSAS CITY STAR
- KANSAS CITY TIMES
- EMPORIA GAZETTE

- GARDEN CITY TELEGRAM
- HAYS DAILY NEWS
- HUTCHINSON NEWS
- LAWRENCE JOURNAL WORLD
- LEAVENWORTH TIMES

- MANHATTAN MERCURY
- PARSONS SUN
- PITTSBURG MORNING SUN
- SALINA JOURNAL

## Few qualify for polygraph board

The Associated Press

TOPEKA — The Kansas Board of Polygraphists, created by the Legislature in the last session to license people who give lie-detector tests, has run into trouble.

"We've discovered a few problems with the bill," said Neil Woerman, chief of staff for Kansas Attorney General Bob Stephan. "The most crippling of problems is board membership."

The board must have five members — two private polygraphists, two law-enforcement polygraphists and a member at-large. The polygraphists all must have administered 500 lie-detector tests in the last five years.

Woerman said Monday that the attorney general's office has been able to find only one law-enforcement officer who meets the requirement of having administered 500 tests in the last five years — and that person retired from the Kansas Bureau of Investigation last spring.

Other officers have given enough lie-detector tests to qualify, Woerman said, but only because they have been moonlighting as private polygraphists, which could violate state

law.

The attorney general issued an opinion last month saying private polygraphists in Kansas must be licensed private investigators, and state law prohibits police officers from also working as private detectives.

"The attorney general has no intention of considering for membership on the board people who have met the 500-test requirement by moonlighting," Woerman said. "So what we're left with, after beating the bushes for months, is no one."

The board was created because the Legislature thought the state should regulate polygraph tests.

Three persons have been appointed to the board already — two private polygraphists, Steve Starr of Topeka and Gary Davis of Wichita. Crawford County Attorney Carla Stovall of Pittsburg has been appointed as the at-large member, but she cannot vote on technical matters. That means the board cannot get a quorum.

"It was like putting together a puzzle, but a puzzle with a couple pieces missing," Woerman said.

MACSF

# 9/13

STATE LAW PROHIBITS POLICE OFFICERS FROM CONDUCTING TESTS OR ACTING AS PRIVATE DETECTIVES

# Qualifications stall lie detector licensing

By the Associated Press

The Kansas Board of Polygraphists, created by the Legislature during its last session to license people who administer lie detector tests, has run into a snafu.

Call it the case of the missing board members.

"We've discovered a few problems with the bill," said Neil Woerman, chief of staff for Kansas Attorney General Robert T. Stephan. "The most crippling of problems is board membership."

The board must have five members — two private polygraphists, two law-enforcement polygraphists, all of whom must have administered 500 lie-detector tests in the last five years, and a member at-large. The at-large member cannot vote on "technical matters," including issuing licenses to polygraphists.

The board was created because the Legislature believed that polygraphy tests should be regulated by the state.

Woerman said Monday the attorney general's office has been able to locate only one law-enforcement officer who meets the statutory requirement of administering 500 tests in the past five years — and that person retired from the Kansas Bureau of Investigation last spring.

Other officers have given enough lie-detector tests to qualify for board membership, Woerman said, but only because they have been moonlighting as private polygraphists.

That could be in violation of state law.

The attorney general issued an opinion last month saying that private polygraphists in Kansas must be licensed private investigators, and state law prohibits police officers from also working as private detectives.

"The attorney general has no intention of considering for membership on the board people who have met the 500-test requirement by moonlighting," Woerman said. "So what we're left with, after beating the bushes for months, is no one."

Three people have been appointed to the board already — two private polygraphists, Steve Starr, Topeka, and Gary Davis, Wichita. Crawford County Attorney Carla Stovall, Pittsburg, has been appointed as the at-large member, but cannot vote on technical matters. That means the board cannot get a quorum.

"It was like putting together a puzzle, but a puzzle with a couple pieces missing," Woerman said.

# 12

## MEMORANDUM

September 29, 1988

TO: Representative Nancy Brown

FROM: Mary K. Galligan, Kansas Legislative Research Department

RE: Polygraphy Laws

As you requested, I have reviewed the Employee Polygraph Protection Act of 1988 (HR 1212) recently signed into law by the President. In short, the federal law regulates polygraph testing and prohibits lie-detector tests altogether in many instances. There are virtually no provisions in the federal law for licensure or standards for training polygraphists. The law leaves to the states the licensing of polygraphists and requires that polygraphists who conduct tests under the provisions of this law be licensed by the state. The following paragraphs summarize the federal law.

The law is to be implemented by the U.S. Secretary of Labor who is required to prepare and distribute a notice summarizing the provisions of the act which must be posted by employers in a conspicuous place. Failure to post the required notice could result in \$100-a-day fines of employers. Rules and regulations needed to carry out the provisions of the polygraphy ban are to be issued by the Secretary within 90 days of enactment of the law. The Secretary has authority to issue subpoenas for the purpose of any hearing or investigation in connection with the act's provisions. The Secretary is also authorized to cooperate with regional, state, and local agencies and provide technical assistance to employers, labor unions, and employment agencies to facilitate implementation of the act.

The Secretary may also bring a court action against any employer who violates the act. An employer could be fined up to \$10,000 for willful violation of the act. Private civil actions against employers who violate the act may also be brought and an employer who violates the act is liable for legal or equitable relief.

The law bans the use of lie-detectors, defined to include polygraphs, deceptographs, voice-stress analyzers, psychological-stress evaluators, and similar tests, for most private-sector job applicants and workers. Employers are prohibited from directly or indirectly requiring, requesting, suggesting, or causing an employee or prospective employee to take a lie-detector test.

Most personnel actions based on the results of lie-detector tests are also prohibited. Employers cannot discharge, discipline, discriminate against, or deny employment or promotion to any employee or job applicant who refuses to take a lie-detector test, or who has filed a complaint or started a lawsuit against the employer for violating the law prohibiting such tests.

Federal, state, and local governments may use polygraphs. Also exempt from the ban on polygraph use are consultants and private employers who contract with government intelligence agencies, the Defense Department, the FBI, the Department of Energy (in connection with atomic-energy defense activities), employers who provide security services, and companies that manufacture,

9/12

included in the state law and it appears that they might result in a slight adjustment to the definition of polygraph examination. [K.S.A. 75-740(f)]

Should violation of the federal law be listed as a reason for action against a state license at K.S.A. 75-746 or does subsection (b)(2) of that statute adequately cover those situations? Violations of the federal act do not appear to be criminal offenses. If an employer were fined under Sec. 6(a), or enjoined under Sec. 6(b), would there be grounds for action against the participating polygraphist's license under state law?

\*The amendments suggested by the Attorney General's Office last year also included a number of policy changes that do not appear to have anything to do with "technical clean-up". I have highlighted those sections on the attached copy of the amendments, but do not know why they were proposed.

10

2nd Part  
Page 1

Polygraph  
Board

AN ACT concerning polygraphists; providing for the licensure and regulation thereof; establishing the Kansas board of polygraphists, amending K.S.A. 1987 Supp. 75-740, 75-741, 75-742 and 75-744 through 75-748..

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

Section 1. K.S.A. 1987 Supp. 75-740 is hereby amended to read as follows: 75-750. As used in this act:

(a) "Board" means the Kansas board of polygraphists.

(b) "Intern" means a person licensed by the board to conduct polygraph examinations as a trainee.

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

(d) "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) "Polygraphists" means a person licensed by the board to conduct polygraph examinations.



Sec. 4. K.S.A. 1987 Supp. 75-744 is hereby amended to read as follows: 75-744. (a) On and after January 1, ~~1988~~ 1989, no person shall represent such person's self as a polygraphist, polygraph operator or polygraph examiner in connection with such person's name, or conduct or offer to conduct polygraph examinations for remuneration, monetary or otherwise, unless licensed as provided in this act. An individual licensed as a polygraphist under this Act does not need a license as a private investigator to conduct polygraph examinations. Nothing in the Act shall be construed to prevent the use or administration of polygraph examinations by law enforcement officials of another state or of the federal government in connection with their official duties.

(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) Before a polygraphist shall begin a polygraph examination, the polygraphist shall receive a dated statement, signed in the polygraphist's presence, by the person to whom 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.

9/18

engaged in conducting polygraph examinations in this state for at least one year immediately preceding the effective date of this act; has personally conducted at least 250 polygraph examinations and has \* completed training as approved by the board. Any person who has been engaged in the occupation, business or profession of polygraph examination one year prior to the effective date of this Act, shall, upon application, be issued a polygraphist license. Application must be made within sixty (60) days of the effective date of this Act. Applicants must satisfy requirements of Sec. 6 (c) and (d)(1).

(j) A polygraph 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 is in performance of such examiner's official duties; provided that such polygraph examiner must be properly licensed. Application, background investigation, licensing and examination fees for applicants employed by municipal, county or state agencies shall be paid by the applicant's employer so long as the applicant's work as a polygraphist is restricted to the performance of official duties. Licenses paid for by municipal, county or state funds shall be labeled in such a manner as to distinguish the license from a private polygraphist's license.

(k) A polygraphist employed by a municipal, county or state agency is not prohibited by this act from conducting polygraph examinations outside the performance of official duties. However, if such examiner does administer polygraph examinations other than in the performance of official duties, the examiner must obtain a license as a private polygraphist and pay the appropriate fees.

*CALLER  
copy*

January 26, 1989

Ms. Nancy Brown  
Kansas House of Representatives  
Capitol Building  
Topeka, Kansas 66611

REF: Polygraph Licensing

*WFD  
WFD  
called?*

Dear Nancy:

I've just completed a telephonic survey of polygraph examiners within the State of Kansas. Based upon the survey it appears less than six private examiners exist within the State of Kansas. This sharp reduction in examiners is due to the passage of the Employee Polygraph Protection Act by Congress. Because of the reduction in the number of examiners it is highly unlikely a polygraph licensing board could be funded. The proposed licensing act use applied indicates the exemption of law enforcement examiners from licensing fees. The entire cost of the board must be carried by fewer than six private examiners. Based upon this information it is probably not cost effective to maintain a Kansas Board of Polygraphists. An appropriate response to regulatory authority may be the need for modification of the Private Detective Act and/or creation of a Board of Investigators to regulate both private investigators and polygraph examiners.

Should you require any assistance (of) need additional information please feel free to contact me. We appreciate your interest in our profession.

Sincerely,

*Gary F. Davis*  
GARY F. DAVIS  
Chairman  
Kansas Board of Polygraphists

GFD/kb

cc: Kansas Board of Polygraphists

12

\* 0045 necessary for the administration of this act. All rules and regula-  
 \* 0046 tions of the board adopted before May 1, 1989, are hereby  
 \* 0047 declared null and of no force and effect.

0048 (c) The board shall cause a record to be kept of all its  
 0049 proceedings and shall preserve all complaints and all affidavits  
 0050 and other verified documents.

0051 Section 1 Sec. 2. K.S.A. 1987 Supp. 75-744 is hereby  
 0052 amended to read as follows: 75-744. (a) On and after ~~January 1,~~  
 0053 ~~1988~~ July 1, 1989, no person shall represent such person's self as  
 0054 a polygraphist, polygraph operator or polygraph examiner in  
 0055 connection with such person's name, or conduct or offer to  
 0056 conduct polygraph examinations for remuneration, monetary or  
 0057 otherwise, unless licensed as provided in this act.

0058 (b) Any polygraph used by a polygraphist must be capable of  
 0059 simultaneously measuring and permanently recording at least:

- 0060 (1) Cardiovascular reactions;
- 0061 (2) respiration; and
- 0062 (3) electrodermal response.

0063 (c) Before a polygraphist shall begin a polygraph examina-  
 0064 tion, the polygraphist shall receive a dated statement, signed in  
 0065 the polygraphist's presence, by the person to whom the exami-  
 0066 nation is to be given, verifying that:

- 0067 (1) The person knows that taking the examination is a volun-  
 0068 tary act on such person's part;
- 0069 (2) the person is aware of the option to decline to take the  
 0070 examination; and
- 0071 (3) the person consents to disclosing the results of the exam-  
 0072 ination and to whom the results shall be given.

0073 (d) No polygraphist shall ask any questions during any poly-  
 0074 graph examination concerning:

- 0075 (1) Sexual behavior, unless such behavior is at issue or the  
 0076 examination is being conducted in the course of a criminal  
 0077 investigation or civil litigation;
- 0078 (2) the political or religious beliefs of the person being given  
 0079 the examination, unless these beliefs are at issue; and
- 0080 (3) beliefs, affiliation or lawful activities regarding unions or  
 0081 labor organizations, unless these beliefs are of issue.

#13

*Mudrick*

Session of 1988

### SENATE BILL No. 479

By Joint Committee on Administrative Rules and Regulations

1-12

0017 AN ACT relating to polygraphists; exempting them from licen-  
0018 sure as a private investigator; amending K.S.A. 75-7b03 and  
0019 repealing the existing section.

0020 *Be it enacted by the Legislature of the State of Kansas:*

\* 0021 Section 1. K.S.A. 75-7b03 is hereby amended to read as fol-  
0022 lows: 75-7b03. The following persons shall not be deemed to be  
0023 engaging in detective business:

0024 (a) A person employed exclusively and regularly by one  
0025 employer in connection only with the affairs of such employer  
0026 and where there exists an employer-employee relationship;

0027 (b) any officer or employee of the United States, or of this  
0028 state or a political subdivision thereof while engaged in the  
0029 performance of the officer's or employee's official duties;

0030 (c) a person engaged exclusively in the business of obtaining  
0031 and furnishing information as to the financial rating of persons;

0032 (d) a charitable philanthropic society or association duly in-  
0033 corporated under the laws of this state which is organized and  
0034 maintained for the public good and not for private profit;

0035 (e) an attorney performing duties as an attorney;

0036 (f) a licensed collection agency or an employee thereof while  
0037 acting within the scope of employment, while making an inves-  
0038 tigation incidental to the business of the agency, including an  
0039 investigation of the location of a debtor or a debtor's property  
0040 where the contract with an assignor creditor is for the collection  
0041 of claims owed or due or asserted to be owed or due or the  
0042 equivalent thereof;

0043 (g) admitted insurers, agents and insurance brokers licensed  
0044 by the state, performing duties in connection with insurance  
0045 transacted by them;

*9/22*

0046 (h) the legal owner of personal property which has been sold  
0047 under a conditional sales agreement or a mortgagee under the  
0048 terms of a chattel mortgage in connection with the recovery of  
0049 such personal property;

0050 (i) any bank subject to the jurisdiction of the state bank  
0051 commissioner of the state of Kansas or the comptroller of cur-  
0052 rency of the United States;

0053 (j) a person engaged solely in the business of securing infor-  
0054 mation about persons or property from public records;

0055 (k) an insurance adjuster which, for the purpose of this act,  
0056 means any person who, for any consideration whatsoever, adjusts  
0057 or otherwise participates in the disposal of any claim under or in  
0058 connection with a policy of insurance or engages in soliciting  
0059 insurance adjustment business; or

0060 (l) a private patrol operator; or

\* 0061 (m) *a polygraphist and polygraphist intern licensed by the*  
0062 *state, performing duties in connection with polygraph exami-*  
0063 *nations.*

\* 0064 Sec. 2. K.S.A. 75-7b03 is hereby repealed.

0065 Sec. 3. This act shall take effect and be in force from and  
0066 after its publication in the Kansas register.

IS THIS LAW IN EFFECT? SB 479

#14

SESSION OF 1987

SUPPLEMENTAL NOTE ON HOUSE BILL NO. 2223

As Amended by Senate Committee on  
Governmental Organization

Brief of Bill\*

H.B. 2223, as amended, would establish the Kansas Board of Polygraphists and provide for the regulation of polygraphy. (Polygraphy is the use of a mechanical or electronic instrument to test or question people to determine the truthfulness of their responses.)

The bill would establish the five-member Kansas Board of Polygraphists appointed by the Attorney General. The Board would be composed of four polygraphists and one public member. No two members could reside in the same Congressional district.

Beginning January 1, 1988, a person would have to be licensed by the Kansas Board of Polygraphists in order to conduct polygraph examinations for remuneration or to represent himself or herself as a polygraphist, polygraph operator, or polygraph examiner. The requirements for licensure include:

1. a baccalaureate degree; or
2. completion of two years of study at the collegiate level with at least two years experience as an investigator or two years' supervised internship.

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\* Bill briefs are prepared by the Legislative Research Department and do not express legislative intent.

2

Each applicant for licensure must satisfactorily complete a polygraphy training course of at least 250 hours of instruction, serve a supervised internship, have conducted at least 100 polygraph examinations, and pass a written and practical examination.

Should  
be STRIKE  
WAIVED \*

The education, training, internship, and examination requirements could be waived by the Board if an applicant has conducted polygraph examinations in Kansas for at least one year, has conducted at least 250 polygraph examinations, and has had training or experience that is substantially equivalent to the requirements imposed by H.B. 2223, as amended.

Background

Conferees appearing in support of H.B. 2223 included the Director of the Kansas Bureau of Investigation (KBI), representatives of the Topeka Police Department and the Topeka Fire Department, representatives of private companies and businesses that use the services of polygraphists, and representatives of the Greater Kansas City Polygraph Association. Support for the concept embodied in H.B. 2223 was also expressed by the Attorney General and conveyed to the Committee by the Director of the KBI.

\*

House Committee amendments were added primarily to address concerns raised by conferees or to make technical and clarifying changes. The Senate Committee deleted the requirement that Board members be confirmed by the Senate.





March 28, 1989

RE: Kansas Polygraph Licensing Act

Good afternoon committee members. My name is Jeff Gitlin. I am presently a private detective and a polygraph examiner practicing in Overland Park, Kansas. I am certain that others who speak today will reiterate many of the points that I would like to state today. With this in mind, I will try to be brief, and to the point.

I. Section 4, subsection (d), numbers 1,2,3,4

The Kansas law would indicate that these specific issues could be addressed in a polygraph test "if such...are at issue". The federal law states that examinees "may not be asked any questions concerning" these issues. The areas of importance are highlighted in yellow on the copies which accompany my remarks. As I stated before the previous committee, our Kansas law would seem to be in error on this topic. I would think that this should be corrected.

II. Section 3, subsection (d), number 3

The elimination of lines 123 (partial), 124, 125, 126, 127, and 128 would allow the "public member" to vote on matters regarding technical knowledge. Since the idea of having a "public member" on the board would seem to be that this person have no technical knowledge, this elimination is inappropriate. It is my opinion that I would not feel comfortable with a "public member" making decisions in areas unfamiliar to that person. Particularly when those decisions could affect the livelihood of people in my industry.

III. Section 5, subsection (i)

This section deals with grandfathering. I feel that line 281 should be changed to read "shall waive" instead of "may waive". I am supported in this opinion by both the Kansas Polygraph Association, as well as the Greater Kansas City Polygraph Association. I have attached a letter which was sent to the Kansas Board of Polygraphists on April 15th regarding the position of the Greater Kansas City Association. The reason for this inclusion is because one of the committee members previously asked me "Why didn't you people indicate your position on this matter?". Enough said.

There are numerous other issues that I feel need to be addressed. However, in the interest of time, I will allow others to explore these issues.

Once again, I thank you all for the opportunity to speak this afternoon.

Jeff Gitlin  
Alcops, Incorporated  
6400 Glenwood Suite #320  
Overland Park, Kansas 66202

polygraph test, as described in §§ 801.20 and 801.21 of this part.

(c) Any polygraph examination shall consist of one or more pretest phases, actual testing phases, and post-test phases.

\* (1) *Pretest phase.* The pretest phase consists of the questioning and other preparation of the prospective examinee before the actual use of the polygraph instrument.

(i) During the initial pretest phase, the examinee must be:

\* (A) Provided with written notice, in a language understood by the examinee, as to when and where the examination will take place and that the examinee has the right to consult with counsel or an employee representative before each phase of the test. Such notice shall be furnished to the examinee at least forty-eight hours, excluding weekend days and holidays, before the time of the examination. The purpose of this requirement is to provide a sufficient opportunity prior to the examination for the examinee to consult with counsel or an employee representative. While an employee has the right to obtain and consult with legal counsel before each phase of the test, the attorney or representative may be excluded from the room where the examination is administered during the actual testing phase.

(B) Informed orally and in writing of the nature and characteristics of the polygraph instrument and examination, including an explanation of the physical operation of the polygraph instrument and the procedure used during the examination.

(C) Provided with a written notice, in a language understood by the examinee, which shall be read to and signed by the examinee. The notice may be in any format (a suggested format is set forth in Appendix A to this part), but must contain at least the following information:

(1)(i) Whether or not the polygraph examination area contains a two-way mirror, a camera, or other device through which the examinee may be observed;

(ii) Whether or not any other device, such as those used in conversation or recording will be used during the examination;

(iii) That both the examinee and the employer have the right, with the other's knowledge, to record electronically the entire examination;

(2)(i) That the examinee has the right to terminate the test at any time;

(ii) That the examinee has the right, and will be given the opportunity, to review all questions to be asked during the test;

U (iii) That the examinee may not be asked questions in a manner which degrades, or needlessly intrudes;

V (iv) That the examinee may not be asked any questions concerning religious beliefs or opinions; beliefs regarding racial matters; political beliefs or affiliations; matters relating to sexual behavior; beliefs, affiliations, opinions, or lawful activities regarding unions or labor organizations;

(v) That the test may not be conducted if there is sufficient written evidence by a physician that the examinee is suffering from a medical or psychological condition or undergoing treatment that might cause abnormal responses during the examination;

(3)(i) That the test is not and cannot be required as a condition of employment;

(ii) That the employer may not discharge, dismiss, discipline, deny employment or promotion, or otherwise discriminate against the examinee based on the analysis of a polygraph test, or based on the examinee's refusal to take such a test, without additional evidence which would support such action;

(iii)(A) In connection with an ongoing investigation, that the additional evidence required for the employer to take adverse action against the examinee, including termination, may be evidence that the examinee had access to the property that is the subject of the investigation, together with evidence supporting the employer's reasonable suspicion that the examinee was involved in the incident or activity under investigation;

(B) That any statement made by the examinee before or during the test may serve as additional supporting evidence for an adverse employment action, as described in paragraph (c)(1)(i)(C)(3)(ii) of this section, and that any admission of criminal conduct by the examinee may be transmitted to an appropriate government law enforcement agency;

(4) That information acquired from a polygraph test may be disclosed by the examiner or by the employer only:

(i) To the examinee or any other person specifically designated in writing by the examinee to receive such information;

(ii) To the employer that requested the test;

(iii) To a court, governmental agency, arbitrator, or mediator that obtains a court order;

(iv) To a U.S. Department of Labor official when specifically designated in writing by the examinee to receive such information;

(v) By the employer, to an appropriate governmental agency without a court

order where, and only insofar as, the information disclosed is an admission of criminal conduct;

(5) That if any of the examinee's rights or protections under the law are violated, the examinee has the right to file a complaint with the Wage and Hour Division of the U.S. Department of Labor, or to take action in court against the employer. Employers who violate this law are liable to the affected examinee, who may recover such legal or equitable relief as may be appropriate, including employment, reinstatement, and promotion, payment of lost wages and benefits, and reasonable costs, including attorney's fees. The Secretary of Labor may also bring action to restrain violations of the Act, or may assess civil money penalties against the employer.

(6) That the employee's rights under the Act may not be waived, either voluntarily or involuntarily, by contract or otherwise, except as part of a written settlement to a pending action or complaint under the Act, agreed to and signed by the parties.

(ii) During the initial or any subsequent pretest phases, the examinee must be given the opportunity, prior to the actual testing phase, to review all questions in writing that the examiner will ask during each testing phase.

(2) *Actual testing phase.* The actual testing phase refers to that time during which the examiner administers the examination by using a polygraph instrument with respect to the examinee and then analyzes the charts derived from the test. Throughout the actual testing phase, the examiner shall not ask any question that was not presented in writing for review prior to the test. In the case of an ongoing investigation, the examiner shall ensure that all relevant questions pertain to the investigation.

(3) *Post-test phase.* The post-test phase refers to any questioning or other communication with the examinee following the use of the polygraph instrument, including review of the results of the test with the examinee. Before any adverse employment action, the employer must:

(i) Further interview the examinee on the basis of the test results; and

(ii) Give to the examinee a written copy of any opinions or conclusions rendered in response to the test, as well as the questions asked during the test, with the corresponding charted responses.

(4) No testing period shall be less than ninety minutes in length. Such "test period" begins at the time that the examiner begins informing the examinee

19 of a member, of any profession licensed or regulated under this act;  
20 and (3) a person who does not have and never has had a material;  
21 financial interest in either the providing of the professional services  
22 regulated under this act; or an activity or organization directly related  
23 to any profession licensed or regulated under this act. ~~The duties~~  
24 ~~of the public member shall not include the determination of~~  
25 ~~the technical requirements to be met for licensure or whether~~  
26 ~~any person meets such technical requirements or of the tech-~~  
27 ~~nical competence or technical judgment of a licensee or a can-~~  
28 ~~didate for licensure.~~

29 (e) Each member of the board appointed to serve a full term  
30 shall be appointed for a term of three years and shall serve until a  
31 successor is appointed and qualified, except of the first members of  
32 the board, one shall be appointed for a term of one year, two for  
33 terms of two years and two for terms of three years, *as designated*  
34 *by the attorney general.* Any member appointed to fill a vacancy  
35 shall be appointed for the unexpired term and shall serve until a  
36 successor is appointed and qualified.

37 (f) No two members shall reside in the same ~~congressional~~ *ju-*  
38 *dicial* district at the time of their appointment.

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

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

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

47 Sec. 4. K.S.A. 1988 Supp. 75-744 is hereby amended to read as  
48 follows: 75-744. (a) On and after January 1, ~~1988~~ 1990, no person  
49 shall represent such person's self as a polygraphist, polygraph op-  
50 erator or polygraph examiner in connection with such person's name,  
51 or conduct or offer to conduct polygraph examinations for remu-  
52 neration, monetary or otherwise, unless licensed as provided in this  
53 act.

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

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

159 (c) Before a polygraphist ~~shall begin~~ *begins* a polygraph ex-  
160 amination, the polygraphist shall receive a dated statement, signed  
161 in the polygraphist's presence, by the person to whom the exami-  
162 nation is to be given, verifying that:

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

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

167 (3) the person consents to disclosing the results of the exami-  
168 nation and to whom the results shall be given.

169 (d) No polygraphist shall ask any questions during any polygraph  
170 examination concerning:

171 (1) Sexual behavior, unless such behavior is at issue or the ex-  
172 amination is being conducted in the course of a criminal investigation  
173 or civil litigation;

174 (2) the political or religious beliefs or affiliations of the person  
175 being given the examination, unless these beliefs such beliefs or  
176 affiliations are at issue; and

177 (3) beliefs, ~~affiliation~~ *affiliations, opinions* or lawful activities  
178 regarding unions or labor organizations, unless these beliefs are of  
179 issue such beliefs, affiliations, opinions or activities are at issue; or

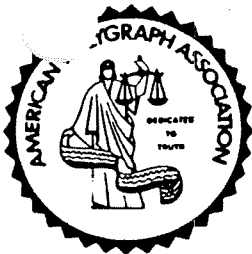
180 (4) *beliefs or opinions regarding racial matters,* unless such be-  
181 liefs or opinions are at issue.

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

188 (f) All polygraph examinations shall be conducted under such  
189 testing conditions as are established by rules and regulations of the  
190 board.

191 (g) All polygraph charts; information or question sheets, or  
192 agreements to submit to a polygraph examination; polygraph e.

Attach 10  
-3



# 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

April 15, 1988

Kansas Board of Polygraphists  
Attn: Mr. Steve Starr, President  
(Benchmark Security Corp.)  
P. O. Box 4483  
Topeka, KS 66604

## OFFICERS

### PRESIDENT

Bruce Howell  
Court Square Building  
110 South Cherry  
Suite B  
Olathe, KS 66061  
(913) 782-3134

### VICE PRESIDENT

Paul Vial  
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(913) 829-3900

### SECRETARY/TREASURER

Gary Cowden  
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## BOARD OF GOVERNORS

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### MISSOURI REPRESENTATIVE

Bill Freeman  
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Suite 402  
Kansas City, MO 64108  
(816) 234-5163

### KANSAS REPRESENTATIVE

Jeff Herrman  
Olathe Police Dept.  
P. O. Box 768  
Olathe, KS 66061  
(913) 782-4500

Dear Mr. Starr:

It has come to my attention that a letter I sent to the attention of Mary Beth Mudrick was apparently never received, or never brought to the attention of the Kansas Board of Polygraphists. Therefore, I am again writing to apprise the Board of that information.

During the January 14, 1988, meeting of the Greater Kansas City Polygraph Association, a discussion arose regarding what should be required in a "Grandfather Clause" in a polygraph licensing law. A poll was taken of the thirteen (13) members in attendance, approximately 40% of the general membership. A majority of those members attending the meeting indicated support of an "Open Grandfather Clause".

I would like to request that, in the future, all official correspondence involving the Greater Kansas City Polygraph Association be sent to this address, or to one of the Association officers.

Sincerely,

GREATER KANSAS CITY POLYGRAPH ASSOCIATION

*Bruce Howell*

Bruce Howell  
President

BH/gc

cc: G.K.C.P.A. Officers  
G.K.C.P.A. Board of Governors

My name is Lee Gitlin. I have been a licensed private investigator and practicing polygraph examiner since 1985. In my career, I have conducted some 3000 polygraph examinations of all types (specific, periodic, and pre-employment). There are three general areas of concern that I wish to address. These three areas are: the board, definitions prescribed by the law, and legislative workability.

(1) THE BOARD

- (A) Lines 105-107 set forth the qualifications for board members. Private examiners are required to conduct 500 examinations to meet the standard. Yet, those in law enforcement need only complete 250 tests. This results in a reduced standard for the law enforcement board members. The test requirement, no matter what the number, should be equivalent for both private and law enforcement examiners.
- (B) Lines 121-126 have been omitted. The aforementioned lines precluded the non-technical member of the board from voting on technical issues. The removal of this language indicates two things: first, that the non-technical member can vote on technical matters; second, that if two technical members plus the non-technical member were present, this would constitute a legal quorum. Thus, given a scenario analogous to last year, the Starr-Davis-Stovall board's activities would have been legal. Corollary issue: are the duties carried out by the above board (eg: rules and regulations) to be recognized.
- (C) Lines 235-236 grant the board the power to "recognize" accredited colleges and universities. What qualifies any board member to determine whether or not a college or university should be recognized? Don't we already have existing standards for measuring such things?

(2) DEFINITIONS

- (A) Lines 59-60 specifically state that a polygraph examiner is not a private detective. I must disagree. While not all detectives are examiners, all examiners should be considered detectives. Polygraph is simply an investigative "means to an end." It is use to "solve" cases. Polygraph involves gathering information, interrogation, etc. The reason that this clause is included is due to the pressure from law enforcement examiners who wish to "moonlight" as private examiners. The potential for abuse is great. In our own community, we have seen it. A commercial entity phones the local police department for assistance on a loss. The department recommends a private service, which, not coincidentally, is run by a law enforcement officer. This is a clear example of unfair competition. It also presents an ethical dilemma. If a law enforcement officer,

acting as a private examiner, determines that a crime has been committed, he is duty-bound to report it, regardless of the predisposition of the client. Moreover, Attorney's General Stephen and Miller both concurred in defining polygraph examiners as private detectives.

- (B) Lines 239-240 provide that an intern must serve under a licensed examiner. Prior to the law, a private detective who conducted polygraph examinations was a licensed examiner. Thus, any testing conducted under such an individual must be considered under this provision.
- (C) Line 277 allows the board to waive requirements given satisfactory evidence. What constitutes satisfactory evidence? Is there a legal definition?

### (3) LEGISLATIVE WORKABILITY

- (A) Lines 256-258, and lines 267-268 address the issue of internship duration. The law requires that an intern serve until he has completed 100 tests. Under most cases, this poses no problem. However, consider the dilemma faced by a law-enforcement officer in some remote town in western Kansas. It might literally take years to complete the internship, as the work load would not be commensurate with the requirement.
- (B) Line 275 gives the board authority to grandfather examiners, by saying "may" waive. This presents a real distress. For example, should a prospective licensee present satisfactory evidence (whatever that is), he or she could still be refused. The word should be "shall" not "may". Grandfathering is favored by 95% of all examiners. Why is it not considered more weightily?
- (C) Lines 167-179 proscribe certain questions from being asked by the examiner. These areas (religion, race, etc) are to be avoided "unless such beliefs or opinions are at issue". The federal legislation bans polygraph examinations absent a specific economic loss or injury. Questions of race, religion, etc do not constitute economic loss or injury and therefore are forbidden by said federal law. Yet, such questions are permissible under the proposed Kansas law. The conflict is evident.