

The Code of Alabama 1975



Chapter 25 POLYGRAPH EXAMINERS.

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Section 34-25-1

Short title.

This chapter shall be known and may be cited as the Polygraph Examiners Act.

(Acts 1971, No. 2056, p. 3307, §1.)

Section 34-25-2

Definitions.

For the purposes of this chapter, the following terms shall have the following respective meanings ascribed by this section:

- (1) BOARD. The Polygraph Examiners Board.
- (2) CHAIRMAN. That member of the Polygraph Examiners Board selected by the board to act as chairman.
- (3) INTERNSHIP. The study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the board at the commencement of such internship.
- (4) PERSON. Any natural person, firm, association, copartnership or corporation.
- (5) POLYGRAPH EXAMINER. Any person who uses instrumentation described herein to test or question individuals for the purpose of detecting deception or verifying truth of statements, or any person who holds himself out to be a lie detector operator or examiner, or any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device.

(Acts 1971, No. 2056, p. 3307, §2; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-3

Instrumentation.

(a) Every polygraph examiner shall use an instrument which, as a minimum, records visually, permanently and simultaneously:

- (1) A subject's cardiovascular pattern;

(2) A subject's respiratory pattern; and

(3) A subject's galvanic skin response.

(b) Patterns of other physiological changes in addition to subdivisions (1), (2) and (3) of subsection (a) may also be recorded.

(c) The use of any instrument or device to detect or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited.

(Acts 1971, No. 2056, p. 3307, §3; Acts 1983, No. 83-647, p. 1009, §1.)

Section 34-25-4

Polygraph Examiners Board generally.

(a) There is established a Polygraph Examiners Board consisting of five voting members who are citizens of the United States and residents of the state for at least two years prior to appointment, all of whom shall have been engaged for a period of four consecutive years in their profession as polygraph examiners prior to appointment to the board and engaged at the time of appointment as an active polygraph examiner. No board members may be employed by the same person or agency. Three of the board members shall be qualified polygraph examiners of a governmental law enforcement agency, and two of the board members shall be qualified polygraph examiners and Alabama residents in the commercial field. Two advisory consultants shall be appointed to assist the board members. The board members and advisory consultants shall be appointed by the Governor of the State of Alabama for a term of four years. Any vacancy in an unexpired term shall be filled by appointment of the Governor, with the advice and consent of the Senate, for the unexpired term. In appointing members to the board, the Governor shall select those persons whose appointments, to the extent possible, ensure that the membership of the board is inclusive and reflects the racial, gender, urban/rural, and economic diversity of the state. On April 11, 1989, all terms of current board members and advisory consultants shall expire. The Governor shall appoint new board members and advisory consultants in accordance with this chapter. Immediately after the effective date of the amendatory act adding two additional members to the board, the board shall notify the Governor of the vacancies on the board and the Governor shall immediately appoint qualified persons to fill those vacancies in accordance with this chapter.

(b) The board may fix the number of its full-time employees, who shall be employed pursuant to the Merit System. The board engage temporary services for the investigation of applications or to investigate complaints filed against examiners. The board shall fix the compensation for any temporary employees. Temporary employees of the board are not covered under the Retirement Systems of Alabama. Any current full-time employee of the board shall be transferred to the Department of Public Safety on April 11, 1989. All benefits, including retirement, of any current full-time employee of the board who is transferred to the Department of Public Safety in accordance with this chapter, shall be

retroactive back to the original date of employment upon payment of necessary contributions as required by the Employees' Retirement System.

(c) On or after April 11, 1989, and within 30 days of the appointments by the Governor, this new board shall meet and elect a chair from among the members of the board. The board shall meet at three-month intervals, or at any other time as necessary.

(d) The vote of a majority of the board members is sufficient for passage of any business or proposal which comes before the board.

(e) All documents, records, functions, and responsibilities currently housed at the Board of Polygraph Examiners' Office shall be transferred to the Department of Public Safety in a section to be determined by the Director of the Department of Public Safety and under the supervision of the Department of Public Safety in conjunction with the board.

(Acts 1971, No. 2056, p. 3307, §4; Acts 1981, No. 81-222, p. 293, §4; Acts 1989, No. 89-269, p. 416, §3; Act 2003-61, §3.)

Section 34-25-5

Administration and enforcement of chapter; deposits and expenditures; per diem and travel expenses for board members; purchasing; board exempt from sales tax.

(a) The board shall issue regulations and forms consistent with this chapter for the administration and enforcement of this chapter.

(b) An order or a certified copy thereof, over board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members and that the board members are fully qualified to act.

(c) On April 11, 1989, all moneys and appropriations credited to the Board of Polygraph Examiners under the provisions of Article 4 of Chapter 4, Title 41, shall be transferred by the State Treasurer to the charge and custody of the Board of Polygraph Examiners of the Alabama Department of Public Safety; and the board shall administer the fund as provided by law. The fund is hereby officially known as the Board of Polygraph Examiners Fund.

All fees collected under this chapter shall be paid to the Board of Polygraph Examiners Fund for the purpose of administering and enforcing this chapter and shall be deposited in the fund.

Warrants shall be issued by the Department of Finance, Office of the State Comptroller, for board expenses and operation provided that no funds shall be withdrawn except as budgeted and allotted according to Article 4 of Chapter 4 of Title 41 and only in the amounts as stipulated in the general appropriations bill.

(d) Board members and advisory consultants shall be paid one hundred dollars ($100) per day plus mileage for attendance at regular or special board meetings, only for the actual days of meeting. The board may approve the payment for a board member when authorized by the board to perform certain other duties of the board when not in formal, regular, or special session.

(e) Employees shall be paid the same mileage expenses and travel allowance as provided for regular state employees.

(f) The board may determine all resources necessary for the operation of the board. Purchasing shall be in accordance with the state bid law.

(g) The board shall be exempt from payment of state sales tax.

(Acts 1971, No. 2056, p. 3307, §5; Acts 1981, No. 81-222, p. 293, §4; Acts 1983, No. 83-647, p. 1009, §1; Acts 1989, No. 89-269, p. 416, §3; Acts 1995, No. 95-278, p. 500, §3.)

Section 34-25-6

Admissibility of results as evidence.

Nothing in this chapter shall be construed as permitting the results of truth examinations or polygraph examinations to be introduced or admitted as evidence in a court of law.

(Acts 1971, No. 2056, p. 3307, §26.)

Section 34-25-7

Injunctions; contempt of court.

If any person violates any provisions of this chapter, the board shall, upon direction of a majority of the board, in the name of the State of Alabama, apply in any circuit court of competent jurisdiction for an order enjoining such violation or an order enforcing compliance with this chapter. Upon the filing of a verified petition in the court, the court, or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction, without notice or bond, enjoining such continued violation; and, if it is established that the person has violated or is violating this chapter, the court, or any judge thereof, may enter a judgment perpetually enjoining the violation or enforcing compliance with this chapter. In case of violation of any order or judgment issued under the provisions of this section, the court, or any judge thereof, may try and punish the offender for contempt of court. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

(Acts 1971, No. 2056, p. 3307, §24; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-8

Penalties.

Any person who violates any provision of this chapter or any person who falsely states or represents that he has been or is a polygraph examiner or trainee shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00 or by imprisonment in the county jail for a term not to exceed six months, or both.

(Acts 1971, No. 2056, p. 3307, §25.)

Section 34-25-20

Required; unauthorized practice.

(a) It shall be unlawful for any person, including a city, county or state employee, to administer polygraph examinations or attempt to hold himself out as a polygraph examiner without a license approved by the board and issued by the board.

(b) It shall be unlawful for any person, including city, county or state employees, to administer polygraph examinations utilizing any device or instrumentation which does not comply with Section 34-25-3.

(Acts 1971, No. 2056, p. 3307, §6; Acts 1981, No. 81-222, p. 293, §4.)

Section 34-25-21

Qualifications of examiner; bond.

(a) A person is qualified to receive a license as an examiner:

(1) Who is at least 21 years of age;

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

(3) Who establishes that he is a person of honesty, truthfulness, integrity and moral fitness;

(4) Who has not been convicted of a felony or a misdemeanor involving moral turpitude;

(5) Who holds a baccalaureate degree from a regionally accredited college or university, and/or recognized by the board or, in lieu thereof, has five consecutive years of active investigative experience immediately preceding his application;

(6) Who is a graduate of a polygraph examiners' course approved by the board and has satisfactorily completed not less than six months of internship training; and

(7) Who, when required by this chapter, passed an examination conducted by the board, or under its supervision, to determine his competency to obtain a license to practice as an examiner.

(b) Prior to the issuance of a license, the applicant must furnish to the board evidence of a surety bond or insurance policy in an amount to be determined by the board. Said surety bond or insurance policy shall be on the condition that the obligor therein will pay to the extent of the face amount of such surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him in the course of his examinations.

(Acts 1971, No. 2056, p. 3307, §7; Acts 1981, No. 81-222, p. 293, §4; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-22

Applications for original license.

Applications for original license shall be made to the board in writing under oath on forms prescribed by the board and shall be accompanied by the required fee, which is not refundable. Any such application shall require such information as in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

(Acts 1971, No. 2056, p. 3307, §9; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-23

Nonresident applicants.

(a) Each nonresident applicant for an original license or a renewal license shall file with the board an irrevocable consent that actions against said applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose and that process on any such action may be served on the applicant by leaving two copies thereof with the board. Such consent shall stipulate and agree that such service of process shall be taken and held to be valid and binding for all purposes. The board shall send forthwith one copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

(b) Nonresident applicants must satisfy the requirements of Section 34-25-21.

(Acts 1971, No. 2056, p. 3307, §10; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-24

Applicant with out-of-state license.

An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the board, in its discretion, upon payment of the appropriate fees as provided in Section 34-25-26 and the production of satisfactory proof that:

- (1) He is at least 21 years of age;
- (2) He is a citizen of the United States;
- (3) He is of good moral character;
- (4) The requirements for the licensing of polygraph examiners in such particular state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state;
- (5) The applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two years prior to the application for license hereunder;
- (6) Such other state or territory grants similar reciprocity to license holders of this state; and
- (7) He has complied with Section 34-25-23.

(Acts 1971, No. 2056, p. 3307, §11; Acts 1981, No. 81-222, p. 293, §4; Acts 1987, No. 87-159, p. 219, §3; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-25

Internship license.

(a) Upon approval by the board, the board shall issue an internship license to a trainee provided he applies for such license and pays the required fee within 10 days prior to the commencement of his internship. The application shall contain such information as may be required by the board.

(b) An internship license shall be valid for the term of six months from the date of issue. Such license may be extended or renewed for any term not to exceed six months upon good cause shown to the board.

(c) A trainee shall not be entitled to hold an internship license after the expiration of the original six-month period and six-month extension, if such extension is granted by the board, until 12 months after the date of expiration of the last internship license held by said trainee.

(Acts 1971, No. 2056, p. 3307, §12; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-26

Examination and license fees.

The fee requirements of this chapter shall apply to all polygraph examiners, including those employed by governmental agencies, and to those who engage in polygraph examinations on any commercial basis. The fees to be paid, effective October 1, 1991, are as follows:

- (1) By an applicant for an examination to determine his fitness to receive a polygraph examiner's license is \$150.00, which is not to be credited as payment against the license fee and is not refundable;
- (2) For the issuance of an original polygraph examiner's license the fee is \$100.00;
- (3) For the issuance of an internship license the fee is \$100.00;
- (4) For the issuance of a duplicate polygraph examiner's license the fee is \$20.00;
- (5) For the issuance of a polygraph examiner's renewal license the fee is \$100.00;
- (6) For the extension or renewal of an internship license the fee is \$100.00; and
- (7) For the issuance of a duplicate internship license the fee is \$20.00.

(Acts 1983, No. 83-647, p. 1009, §1; Acts 1991, No. 91-164, p. 219, §3.)

Section 34-25-27

Display of license; signature thereon.

A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the board members and shall be issued under the seal of the board.

(Acts 1971, No. 2056, p. 3307, §14.)

Section 34-25-28

Change of business address.

Notice in writing shall be given to the board by the licensed examiner of any change of principal business location within 30 days of the time he changes the location. A change of business location without notification to the board shall automatically suspend the license therefor issued.

(Acts 1971, No. 2056, p. 3307, §15; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-29

Termination and renewal of examiner's license.

(a)(1) Each polygraph examiner's license shall be issued for the term of one year and shall, unless suspended or revoked, be renewed annually as prescribed by the board. A polygraph examiner whose license has expired may at any time within two months after the expiration obtain a renewal license, without examination or late penalty fee, by submitting a renewal application to the board and satisfying subdivisions (2), (3), and (4) of subsection (a) of Section 34-25-21. A polygraph examiner whose license has expired, and who does not apply for renewal within two months following expiration, may at any time within three to six months after the expiration obtain a renewal license, without examination, by paying a late penalty fee as prescribed by the board, submitting a renewal application to the board, and satisfying subdivisions (2), (3), and (4) of subsection (a) of Section 34-25-21.

(2) However, any polygraph examiner whose license expired while he or she was in the federal service on active duty with the Armed Forces of the United States, or the National Guard called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service, may have his or her license renewed, without examination or late penalty fee, if within six months after termination of such service, training, or education, except under conditions other than honorable, he or she furnishes the board with an affidavit to the effect that he or she has been so engaged and that his or her service, training, or other education has been terminated. Subdivisions (2), (3), and (4) of subsection (a) of Section 34-25-21 shall also be satisfied.

(b) The board shall adopt a program of continuing education for its licensees not later than October 1, 1993, and after that date no licensee shall have his or her active license renewed unless, in addition to any other requirements of this chapter, the minimum continuing annual education requirements are met. It is further provided that this continuing education program may not include testing or examination of the licensees in any manner.

(Acts 1971, No. 2056, p. 3307, §16; Acts 1981, No. 81-222, p. 293, §4; Acts 1983, No. 83-647, p. 1009, §1; Acts 1991, No. 91-164, p. 219, §3; Act 2003-61, §3.)

Section 34-25-30

License required to maintain action.

No action or counterclaim shall be maintained by any person in any court in this state with respect to any agreement or service for which a license is required by this chapter or to recover such services for which a license is required by this chapter without alleging

and proving that such person had a valid license at the time of making such agreement or performing such services.

(Acts 1971, No. 2056, p. 3307, §17.)

Section 34-25-32

Refusal, suspension, reprimand, probation or revocation — Grounds.

The board may refuse to issue a license, may issue oral or written reprimands to an examiner, may place an examiner on probation, or may suspend or revoke a license on any one or more of the following grounds:

- (1) Failing to inform a subject to be examined that his participation in the examination is voluntary;
- (2) Failing to inform a subject to be examined as to the nature of the examination;
- (3) Failing to inform the subject of the results of the examination if so requested;
- (4) Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;
- (5) Willfully aiding or abetting another in the violation of this chapter or any regulation or rule issued pursuant thereto;
- (6) Having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this chapter;
- (7) Making any willful misrepresentation or false promises or causing to be permitted any false or misleading advertisement for the purpose of directly obtaining business or trainees;
- (8) Allowing one's license under this chapter to be used by any unlicensed person in violation of the provisions of this chapter;
- (9) If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;
- (10) Where the license holder has been adjudged a habitual drunkard or mentally incompetent as provided in the probate code;
- (11) Material misstatement in the application for original license or in the application of any renewal license under this chapter; or

(12) Failing, within a reasonable time, to provide information requested by the board as the result of a formal complaint to the board which indicates a violation of this chapter.

(Acts 1971, No. 2056, p. 3307, §18; Acts 1989, No. 89-269, p. 416, §3.)

Section 34-25-33

Refusal, suspension, reprimand, probation or revocation — Violation by one examiner or trainee not to affect employer.

Any unlawful act or violation of any of the provisions of this chapter on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any other polygraph examiner for whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the board that the polygraph examiner-employer has willfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

(Acts 1971, No. 2056, p. 3307, §19.)

Section 34-25-34

Refusal, suspension, reprimand, probation or revocation — Hearing.

(a) Where there is cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the board shall, not less than 30 days before refusal, suspension or revocation action is taken, notify such person in writing, in person or by registered or certified mail at the last address supplied to the board by such person, of such impending refusal, suspension or revocation, the reasons therefor and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension or revocation action proposed to be taken by the board. If, within 20 days after the personal service of such notice or such notice has been deposited in the United States mail, such person has not made a written request to the board for this administrative hearing, the board is authorized to suspend or revoke the polygraph examiner's license of such person without a hearing. Upon receipt by the board of such written request of such person within 20 days as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than 10 days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by registered or certified mail sent to the last address supplied to the board by the applicant or licensee. The administrative hearing in such cases shall be before the board.

(b) The board shall conduct the administrative hearing and it is authorized to administer oaths and issue subpoenas for attendance of witnesses and the production of relevant books, papers, documents, etc. On the basis of the evidence submitted at the hearing, the board shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

(Acts 1971, No. 2056, p. 3307, §21.)

Section 34-25-35

Refusal, suspension, reprimand, probation or revocation — Judicial review.

Any person dissatisfied with the action of the board in refusing his application or suspending or revoking his license, or any other action of the board, may appeal the action of the board by filing a petition within 30 days thereafter in the circuit court in the county where the person resides or in the Circuit Court of Montgomery County, Alabama, and the court is vested with jurisdiction and it shall be the duty of the court to set the matter for hearing upon 10 days' written notice to the board and the attorney representing the board. The court in which the petition of appeal is filed shall determine whether or not a cancellation or suspension of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the board should be suspended pending hearing, and enter its order accordingly, which shall be operative when served upon the board, and the court shall provide the attorney representing the board with a copy of the petition and order. The board shall be represented in such appeals by the district attorney of the county or the Attorney General, or any of their assistants. The board shall initially determine all facts, but the court upon appeal shall set aside the determination of the board if the board's determination:

- (1) Is not based upon substantial evidence upon the entire record;
- (2) Is arbitrary or capricious;
- (3) Is in violation of statutory requirement; or
- (4) Was made without affording the licensee or applicant due process of law.

(Acts 1971, No. 2056, p. 3307, §22.)

Section 34-25-36

Refusal, suspension, reprimand, probation or revocation — Surrender of license.

Upon the revocation or suspension of any license, the licensee shall forthwith surrender the license or licenses to the board; failure of a licensee to do so shall be a violation of this chapter and, upon conviction, shall be subject to the penalties set forth in this chapter. At any time after the suspension or revocation of any license, the board shall restore it to the former licensee upon the written recommendations of the board.

(Acts 1971, No. 2056, p. 3307, §23; Acts 1989, No. 89-269, p. 416, §3.)