

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 SENATE BILL 2256

By: Russell

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5
6 AS INTRODUCED

7 An Act relating to professions and occupations;
8 amending 59 O.S. 2001, Sections 1452 and 1453, which
9 relate to polygraphs; authorizing use of computer
10 voice stress analysis; making language gender
11 neutral; adding definition of computer voice stress
12 analysis; amending 59 O.S. 2001, Section 1455, as
13 last amended by Section 1, Chapter 23, O.S.L. 2005
14 (59 O.S. Supp. 2009, Section 1455), which relates to
15 the Polygraph Examiners Board; modifying requirements
16 of the Board; amending 59 O.S. 2001, Sections 1458,
17 1462, 1464, 1465, 1467, 1468, 1469, 1470, and 1474,
18 which relate to polygraph examiners; establishing
19 qualifications for computer voice stress analysis
20 examiners; modifying reciprocity qualifications;
21 defining license type subject to fee; modifying
22 license to be displayed; modifying license for
23 renewal; allowing certain license to be suspended or
24 revoked; adding applicable examiner; authorizing use
of computer voice stress analysis results;
designating persons to perform computer voice stress
analysis; repealing 59 O.S. 2001, Section 1454, which
relates to minimum instrumentation requirements for
examiners; providing for codification; and providing
an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. AMENDATORY 59 O.S. 2001, Section 1452, is
amended to read as follows:

1 Section 1452. It is the purpose of ~~this act~~ the Polygraph
2 Examiners Act to regulate all persons who purport to be able to
3 detect deception or to verify truth of statements through the use of
4 instrumentation or analysis (as lie detectors, polygraphs,
5 deceptographs, computer voice stress analysis, and/or similar or
6 related devices and instruments without regard to the nomenclature
7 applied thereto) and this act shall be liberally construed to
8 regulate all such persons and instruments. No person who purports
9 to be able to detect deception or to verify truth of statements
10 through instrumentation or analysis shall be held exempt from the
11 provisions of this act because of the terminology which he or she
12 may use to refer to ~~himself~~ themselves, to his or her instrument, or
13 to his or her services.

14 SECTION 2. AMENDATORY 59 O.S. 2001, Section 1453, is
15 amended to read as follows:

16 Section 1453. ~~In~~ As used in the Polygraph Examiners Act, ~~unless~~
17 ~~the context requires a different definition,;~~

18 1. "Board" means the Polygraph Examiners Board₇;

19 2. "Secretary" means that member of the Polygraph Examiners
20 Board selected by the Board to act as secretary₇;

21 3. "Internship" means the study of polygraph examination and of
22 the administration of polygraph examinations by a trainee under the
23 personal supervision and control of a polygraph examiner in
24

1 accordance with a course of study prescribed by the Board at the
2 commencement of such internship~~;~~;

3 4. "Person" means any natural person, firm, association,
4 copartnership or corporation~~;~~;

5 5. "Polygraph or Computer Voice Stress Analysis examiner" means
6 any person who purports to be able to detect deception or verify
7 truth of statements through instrumentation ~~or~~, the use of a
8 mechanical device, ~~and~~ or computer analysis;

9 6. "Council" means the Council on Law Enforcement Education and
10 Training; and

11 7. "Computer Voice Stress Analysis" (CVSA) means the process of
12 analyzing small frequency modulations in the human voice and using
13 computer processes to graphically display a person's voice patterns
14 to determine deception or validate statements.

15 SECTION 3. AMENDATORY 59 O.S. 2001, Section 1455, as
16 last amended by Section 1, Chapter 23, O.S.L. 2005 (59 O.S. Supp.
17 2009, Section 1455), is amended to read as follows:

18 Section 1455. A. There is hereby re-created, to continue until
19 July 1, 2011, in accordance with the provisions of the Oklahoma
20 Sunset Law, the Polygraph Examiners Board.

21 B. 1. The persons serving on the Board on June 30, 1988, shall
22 continue to serve the full terms for which they were originally
23 appointed until their successors have been duly appointed and
24 approved with the advice and consent of the Senate. All future

1 Boards shall continue the staggered terms of office established for
2 the Polygraph Examiners Board prior to July 1, 1988.

3 2. Any actions taken by any state agency on behalf of the
4 Polygraph Examiners Board or in an attempt to enforce the provisions
5 of the Polygraph Examiners Act shall be subject to review by the
6 Board. Any such acts may be rescinded or modified as deemed
7 appropriate by the Board, provided that such action shall not affect
8 any accrued right, or penalty incurred, or proceeding begun between
9 July 1, 1988, and October 12, 1988.

10 3. All funds collected after June 30, 1988, equipment, files,
11 fixtures, furniture, and supplies of the Board which were
12 transferred to the Department of Central Services or State Treasury
13 pursuant to Section 3909 of Title 74 of the Oklahoma Statutes shall
14 be returned to the care and custody of the Board.

15 4. All orders, determinations, rules, regulations, permits,
16 certificates, licenses, contracts, rates, and privileges which have
17 been issued, made, granted, or allowed by the Board and are in
18 effect on June 30, 1988, shall continue in effect according to their
19 terms until further action is taken by the Board or as modified by
20 law.

21 C. The Board shall consist of five (5) members who shall be
22 citizens of the United States and residents of the state for at
23 least two (2) years prior to appointment, all of whom shall have
24 been engaged for a period of two (2) consecutive years as polygraph

1 examiners or computer voice stress analysis examiners prior to
2 appointment to the Board, and at the time of appointment active
3 polygraph examiners or computer voice stress analysis examiners. No
4 two Board members may be employed by the same person or agency. No
5 more than two members may be appointed from one congressional
6 district. However, when congressional districts are redrawn, each
7 member appointed prior to July 1 of the year in which such
8 modification becomes effective shall complete the current term of
9 office and appointments made after July 1 of the year in which such
10 modification becomes effective shall be based on the redrawn
11 districts. No appointments may be made after July 1 of the year in
12 which such modification becomes effective if such appointment would
13 result in more than two members serving from the same modified
14 district. At least two members must be qualified examiners of a
15 governmental law enforcement agency and at least two members must be
16 qualified polygraph examiners or computer voice stress analysis
17 examiners in the commercial field. The members shall be appointed
18 by the Governor of the State of Oklahoma, with the advice and
19 consent of the Senate, for terms of six (6) years. Any vacancy in
20 an unexpired term shall be filled by appointment of the Governor,
21 with the advice and consent of the Senate, for the unexpired term.
22 Except as authorized by the Polygraph Examiners Act, members of the
23 Board shall be paid no fee, expense reimbursement, wage or other
24 compensation for their services.

1 D. The vote of a majority of the Board members is sufficient
2 for passage of any business or proposal which comes before the
3 Board. The Board shall elect a chair, vice-chair, and secretary
4 from among its members.

5 SECTION 4. AMENDATORY 59 O.S. 2001, Section 1458, is
6 amended to read as follows:

7 Section 1458. A. The following shall be considered as minimum
8 evidence satisfactory to the Board that the applicant is qualified
9 for registration as a polygraph examiner or computer voice stress
10 analysis examiner:

11 1. Attainment of at least twenty-one (21) years of age;
12 2. Citizenship of the United States;
13 3. Be a person of honesty, truthfulness, integrity, and moral
14 fitness;

15 4. Never have been convicted of a felony or a misdemeanor
16 involving moral turpitude; and

17 5. a. hold a baccalaureate degree from a college or
18 university accredited by the American Association of
19 Collegiate Registrars and Admissions Officers, or, in
20 lieu thereof, be a graduate of an accredited high
21 school and have five (5) consecutive years of active
22 investigative experience of a character satisfactory
23 to the Board,

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- 1 b. be a graduate of a polygraph examiners course approved
2 by the Board and have satisfactorily completed not
3 less than six (6) months of internship training, ~~and~~
4 c. be a graduate of a computer voice stress analysis
5 course approved by the Board and have satisfactorily
6 completed not less than six (6) months of internship
7 training, and
8 d. have passed an examination conducted by and to the
9 satisfaction of the Board, or under its supervision,
10 to determine his or her competency to obtain a license
11 to practice as an examiner.

12 B. Beginning July 1, 1996, employees of the Oklahoma State
13 Bureau of Investigation (OSBI) who are employed on that date by the
14 OSBI as polygraphers shall become licensed pursuant to the Polygraph
15 Examiners Act without undergoing the testing and training
16 requirements provided for in subparagraphs b, ~~and c~~ and d of
17 paragraph 5 of subsection A of this section. Any person who is
18 employed as a polygrapher for the OSBI after July 1, 1996, shall be
19 required to meet the testing and training requirements prior to
20 licensure.

21 SECTION 5. AMENDATORY 59 O.S. 2001, Section 1462, is
22 amended to read as follows:

23 Section 1462. An applicant who is a polygraph examiner or
24 computer voice stress analysis examiner licensed under the laws of

1 another state or territory of the United States may be issued a
2 license without examination by the Board, in its discretion, upon
3 payment of a fee of One Hundred Dollars (\$100.00) and the production
4 of satisfactory proof that:

5 1. ~~He~~ The applicant is at least twenty-one (21) years of age;

6 2. ~~He~~ The applicant is a citizen of the United States;

7 3. ~~He~~ The applicant is of good moral character;

8 4. The requirements for the licensing of polygraph examiner or
9 computer voice stress analysis examiner in such particular state or
10 territory of the United States were at the date of the applicant's
11 licensing therein substantially equivalent to the requirements now
12 in force in this state;

13 5. The applicant had lawfully engaged in the administration of
14 polygraph examinations under the laws of such state or territory for
15 at least two (2) years prior to his or her application for license
16 hereunder;

17 6. Such other state or territory grants similar reciprocity to
18 license holders of this state; and

19 7. ~~He~~ The applicant has complied with Section 1461 of this
20 title.

21 SECTION 6. AMENDATORY 59 O.S. 2001, Section 1464, is
22 amended to read as follows:

23 Section 1464. A. The fee to be paid by the applicant for an
24 initial examination to determine if the applicant is qualified to

1 receive a polygraph ~~examiner's~~ examiner or computer voice stress
2 analysis examiner's license is Fifty Dollars (\$50.00), which is not
3 to be credited as payment against the license fee. The fee for
4 subsequent examinations shall be the same as for the initial
5 examination.

6 B. The fee to be paid for an initial polygraph ~~examiner's~~
7 examiner or computer voice stress analysis examiner's license is One
8 Hundred Dollars (\$100.00).

9 C. The fee to be paid for an internship license is One Hundred
10 Dollars (\$100.00).

11 D. The fee to be paid for the issuance of a duplicate polygraph
12 ~~examiner's~~ examiner or computer voice stress analysis examiner's
13 license is Twenty Dollars (\$20.00).

14 E. The fee to be paid for a polygraph ~~examiner's~~ examiner or
15 computer voice stress analysis examiner's renewal license is One
16 Hundred Dollars (\$100.00).

17 F. The fee to be paid for the extension or renewal of an
18 internship license is Fifty Dollars (\$50.00).

19 G. The fee to be paid for a duplicate internship license is
20 Twenty Dollars (\$20.00).

21 SECTION 7. AMENDATORY 59 O.S. 2001, Section 1465, is
22 amended to read as follows:

23 Section 1465. A license or duplicate license must be
24 prominently displayed at the place of business of the polygraph

1 examiner, computer voice stress analysis examiner, or at the place
2 of internship. Each license shall be signed by the Board members
3 and shall be issued under the seal of the Board.

4 SECTION 8. AMENDATORY 59 O.S. 2001, Section 1467, is
5 amended to read as follows:

6 Section 1467. Each polygraph ~~examiner's~~ examiner or computer
7 voice stress analysis examiner's license shall be issued for the
8 term of one (1) year and shall, unless suspended or revoked, be
9 renewed annually as prescribed by the Board. A polygraph examiner
10 or computer voice stress analysis examiner whose license has expired
11 may at any time within two (2) years after the expiration thereof
12 obtain a renewal license without examination by making a renewal
13 application therefor and satisfying ~~Section 8, subsections~~
14 paragraphs 2, 3 and 4 of subsection A of Section 1458 of this title.
15 However, any polygraph examiner or computer voice stress analysis
16 examiner whose license expired while he or she was in the federal
17 service on active duty with the armed forces of the United States,
18 or the national guard called into service or training, or in
19 training or education under the supervision of the United States
20 preliminary to induction into the military service, may have his or
21 her license renewed without examination if within two (2) years
22 after termination of such service, training or education except
23 under conditions other than honorable, he or she furnishes the Board
24 with an affidavit to the effect that he or she has been so engaged

1 and that his or her service, training or education has been so
2 terminated. ~~Section 8, subsections~~ Paragraphs 2, 3 and 4 of ~~this~~
3 ~~act~~ subsection A of Section 1458 of this title must also be
4 satisfied.

5 SECTION 9. AMENDATORY 59 O.S. 2001, Section 1468, is
6 amended to read as follows:

7 Section 1468. The Board may refuse to issue or may suspend or
8 revoke a license on any one or more of the following grounds:

9 1. For failing to inform a subject to be examined as to the
10 nature of the examination;

11 2. For failing to inform a subject to be examined that his or
12 her participation in the examination is voluntary, unless the
13 subject is an employee of a governmental body which has a policy or
14 rules and regulations requiring mandatory polygraph examinations as
15 a part of internal investigations;

16 3. Material misstatement in the application for original
17 license or in the application for any renewal license under ~~this act~~
18 the Polygraph Examiners Act;

19 4. Willful disregard or violation of this act or any regulation
20 or rule issued pursuant thereto, including, but not limited to,
21 willfully making a false report concerning an examination for
22 polygraph examination purposes;

23 5. If the holder of any license has been adjudged guilty of the
24 commission of a felony or misdemeanor involving moral turpitude;

1 6. Making any willful misrepresentation or false promises or
2 causing to be printed any false or misleading advertisement for the
3 purpose of directly or indirectly obtaining business or trainees;

4 7. Having demonstrated unworthiness or incompetency to act as a
5 polygraph examiner or computer voice stress analysis examiner as
6 defined by this act;

7 8. Allowing one's license under this act to be used by any
8 unlicensed person in violation of the provisions of this act;

9 9. Willfully aiding or abetting another in the violation of
10 this act or any regulation or rule issued pursuant thereto;

11 10. If the license holder has been adjudged an habitual
12 drunkard or mentally incompetent as provided in the Probate Code;

13 11. Failing, within a reasonable time, to provide information
14 requested by the secretary as the result of a formal complaint to
15 the Board which would indicate a violation of this act; or

16 12. Failing to inform the subject of the results of the
17 examination if so requested.

18 SECTION 10. AMENDATORY 59 O.S. 2001, Section 1469, is
19 amended to read as follows:

20 Section 1469. Any unlawful act or violation of any of the
21 provisions of ~~this act~~ the Polygraph Examiners Act on the part of
22 any polygraph examiner, computer voice stress analysis examiner, or
23 trainee shall not be cause for revocation of the license of any
24 other polygraph examiner or computer voice stress analysis examiner

1 for whom the offending examiner or trainee may have been employed,
2 unless it shall appear to the satisfaction of the Board that the
3 ~~polygraph~~ examiner-employer has willfully or negligently aided or
4 abetted the illegal actions or activities of the offending polygraph
5 examiner, computer voice stress analysis examiner, or trainee.

6 SECTION 11. AMENDATORY 59 O.S. 2001, Section 1470, is
7 amended to read as follows:

8 Section 1470. When there is a cause to refuse an application or
9 to suspend or revoke the license of any polygraph examiner or
10 computer voice stress analysis examiner, the Council shall, not
11 less than thirty (30) days before refusal, suspension or revocation
12 action is taken, notify such person in writing, in person or by
13 certified mail at the last address supplied to the Council by such
14 person, of such impending refusal, suspension or revocation, the
15 reasons therefor and of his or her right to an administrative
16 hearing for the purpose of determining whether or not the evidence
17 is sufficient to warrant the refusal, suspension or revocation
18 action proposed to be taken by the Board. If, within twenty (20)
19 days after the personal service of such notice or such notice has
20 been deposited in the United States mail, such person has not made a
21 written request to the Board for this administrative hearing, the
22 Board is authorized to suspend or revoke the polygraph ~~examiner's~~
23 examiner or computer voice stress analysis examiner's license ~~of~~
24 ~~such person~~ without a hearing. Upon receipt by the Council of such

1 written request of such person within the twenty-day period as set
2 out above, an opportunity for an administrative hearing shall be
3 afforded as early as is practicable. In no case shall the hearing
4 be held less than ten (10) days after written notification thereof,
5 accompanied by a copy of the charges, shall have been given the
6 person by personal service or by certified mail sent to the last
7 address supplied to the Council by the applicant or licensee. The
8 administrative hearing in such cases shall be before the Board.

9 SECTION 12. AMENDATORY 59 O.S. 2001, Section 1474, is
10 amended to read as follows:

11 Section 1474. A. Any person who violates any provision of ~~this~~
12 ~~act~~ the Polygraph Examiners Act or any person who falsely states or
13 represents that he or she has been or is a polygraph examiner,
14 computer voice stress analysis examiner, or trainee or that he or
15 she is qualified to apply instrumentation or analysis to the
16 detection of deception or verification of truth of statements shall
17 be guilty of a misdemeanor and upon conviction thereof shall be
18 punished by a fine of not less than One Hundred Dollars (\$100.00)
19 nor more than Five Thousand Dollars (\$5,000.00) or by imprisonment
20 in the county jail for a term of not to exceed six (6) months, or
21 both such fine and imprisonment.

22 B. 1. In addition to the penalties authorized by this section,
23 any person who has been determined by the Board to have violated any
24 provision of the Polygraph Examiners Act or any rule, regulation, or

1 order issued pursuant thereto may also be liable for a penalty
2 assessed by the Board of not more than Five Thousand Dollars
3 (\$5,000.00) for any related series of violations.

4 2. The amount of the penalty shall be assessed by the Board
5 pursuant to the provisions of paragraph 1 of this subsection, after
6 notice and hearing pursuant to Sections 310 through 326 of Title 75
7 of the Oklahoma Statutes. In determining the amount of the penalty,
8 the Board shall include but not be limited to consideration of the
9 nature, circumstances, and gravity of the violation and, with
10 respect to the person found to have committed the violation, the
11 degree of culpability, the effect on ability of the person to
12 continue to do business, and any show of good faith in attempting to
13 achieve compliance with state laws.

14 3. Any person aggrieved by a final order or other final
15 determination of the Board may petition for a judicial review for
16 rehearing, reopening or reconsideration of the matter as provided
17 for in Title 75 of the Oklahoma Statutes. If an appeal is not made
18 by the person to whom such an order is directed within thirty (30)
19 days after notice has been sent to the parties, the order of the
20 Board shall become final and binding on all parties and shall be
21 docketed with the district court in the county of the residence of
22 the violator, or the district court in the county in which the
23 violation occurred. The order shall be enforced in the same manner
24 as an order of the district court.

1 C. Except as otherwise expressly provided by law, any notice,
2 order or other instrument issued by or pursuant to authority of the
3 Board may be served on any person affected thereby personally, by
4 publication, or by mailing a copy of the notice, order, or other
5 instrument by certified mail, return receipt requested, directed to
6 the person affected at his or her last-known post office address as
7 shown by the files or records of the Council. Proof of service
8 shall be made as in the case of service of a summons or by
9 publication in a civil action or may be made by the affidavit of the
10 person who did the mailing. Such proof of service shall be filed in
11 the office of the Council.

12 Every certificate or affidavit of service made and filed as
13 provided for in this section shall be prima facie evidence of the
14 facts therein stated. A certified copy thereof shall have like
15 force and effect.

16 D. Any penalty assessed under the provisions of this section
17 shall constitute a lien upon all the property of said violator
18 within this state except the homestead of the violator. Before any
19 such penalty becomes a lien upon such property as against third
20 persons, a copy of the order of the Board assessing the penalty
21 shall be filed in the office of the county clerk of the county
22 wherein the property is located. The copy of the order shall be
23 filed and may be enforced as provided by the provisions of Section
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1 143.1 and Sections 171 through 178 of Title 42 of the Oklahoma
2 Statutes.

3 E. Any penalties collected by the Board pursuant to this
4 section shall be deposited in the State Treasury to the credit of
5 the Polygraph Examiners Fund.

6 SECTION 13. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 1477 of Title 59, unless there
8 is created a duplication in numbering, reads as follows:

9 A. The results from computer voice stress analysis shall be
10 utilized in all instances where polygraph examinations are valid.

11 B. Any person who is a graduate of the computer voice stress
12 analysis course pursuant to Section 1458 of Title 59 of the Oklahoma
13 Statutes and is licensed by the Polygraph Examiner's Board pursuant
14 to Section 1457 of Title 59 of the Oklahoma Statutes shall be able
15 to perform computer voice stress analysis in this state.

16 SECTION 14. REPEALER 59 O.S. 2001, Section 1454, is
17 hereby repealed.

18 SECTION 15. This act shall become effective November 1, 2010.

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