

PLEASE NOTE: Legislative Information **cannot** perform research, provide legal advice, or interpret Maine law. For legal assistance, please contact a qualified attorney.

An Act To Update the Polygraph Examiner Licensing Laws

Be it enacted by the People of the State of Maine as follows:

Sec. 1. 5 MRSA §12004-A, sub-§50 is enacted to read:

50.

Polygraph Examiners Board

Not Authorized

32 MRSA §7371

Sec. 2. 22 MRSA §3477, sub-§1, ¶A, as amended by PL 2011, c. 291, §2 and c. 657, Pt. W, §5, is further amended to read:

A. While acting in a professional capacity:

- (1) An allopathic or osteopathic physician;
- (2) A medical resident or intern;
- (3) A medical examiner;
- (4) A physician's assistant;
- (5) A dentist, dental hygienist or dental assistant;
- (6) A chiropractor;
- (7) A podiatrist;
- (8) A registered or licensed practical nurse;
- (9) A certified nursing assistant;
- (10) A social worker;
- (11) A psychologist;

- (12) A pharmacist;
- (13) A physical therapist;
- (14) A speech therapist;
- (15) An occupational therapist;
- (16) A mental health professional;
- (17) A law enforcement official, corrections officer or other person holding a certification from the Maine Criminal Justice Academy;
- (18) Emergency room personnel;
- (19) An ambulance attendant;
- (20) An emergency medical technician or other licensed medical service provider;
- (21) Unlicensed assistive personnel;
- (22) A humane agent employed by the Department of Agriculture, Conservation and Forestry;
- (23) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;
- (24) A sexual assault counselor;
- (25) A family or domestic violence victim advocate;
- (26) A naturopathic doctor;
- (27) A respiratory therapist;

(28) A court-appointed guardian or conservator; ~~or~~

(29) A chair of a professional licensing board that has jurisdiction over mandated reporters; or

(30) A polygraph examiner;

Sec. 3. 22 MRSA §4011-A, sub-§1, ¶A, as amended by PL 2009, c. 211, Pt. B, §18 and PL 2011, c. 657, Pt. W, §5, is further amended to read:

A. When acting in a professional capacity:

(1) An allopathic or osteopathic physician, resident or intern;

(2) An emergency medical services person;

(3) A medical examiner;

(4) A physician's assistant;

(5) A dentist;

(6) A dental hygienist;

(7) A dental assistant;

(8) A chiropractor;

(9) A podiatrist;

(10) A registered or licensed practical nurse;

(11) A teacher;

(12) A guidance counselor;

(13) A school official;

- (14) A youth camp administrator or counselor;
- (15) A social worker;
- (16) A court-appointed special advocate or guardian ad litem for the child;
- (17) A homemaker;
- (18) A home health aide;
- (19) A medical or social service worker;
- (20) A psychologist;
- (21) Child care personnel;
- (22) A mental health professional;
- (23) A law enforcement official;
- (24) A state or municipal fire inspector;
- (25) A municipal code enforcement official;
- (26) A commercial film and photographic print processor;
- (27) A clergy member acquiring the information as a result of clerical professional work except for information received during confidential communications;
- (28) A chair of a professional licensing board that has jurisdiction over mandated reporters;
- (29) A humane agent employed by the Department of Agriculture, Conservation and Forestry;
- (30) A sexual assault counselor;

(31) A family or domestic violence victim advocate; ~~and~~

(32) A school bus driver or school bus attendant; and

(33) A polygraph examiner;

Sec. 4. 32 MRSA c. 85, as amended, is repealed.

Sec. 5. 32 MRSA c. 86 is enacted to read:

CHAPTER 86
POLYGRAPH EXAMINERS ACT
SUBCHAPTER 1
GENERAL PROVISIONS

§ 7351. Short title

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

§ 7352. Definitions

As used in this chapter, unless the context otherwise indicates, the following terms have the following meanings.

1. Board. "Board" means the Polygraph Examiners Board established under Title 5, section 12004-A, subsection 50.

2. Commissioner. "Commissioner" means the Commissioner of Public Safety.

3. Department. "Department" means the Department of Public Safety.

4. Instrument. "Instrument" means a device used to test a subject to directly or indirectly detect deception or verify the truth of a statement by, at a minimum, recording visually, permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal patterns.

5. Intern. "Intern" means a person who holds a polygraph examiner intern license under this chapter.

6. Polygraph examiner. "Polygraph examiner" means a person licensed under this chapter to use an instrument.

7. Polygraph examiner internship. "Polygraph examiner internship" means a course of study of polygraph examinations and of the administration of polygraph examinations by an intern under the supervision and control of a polygraph examiner.

§ 7353. License required to maintain action or counterclaim

A person may not maintain an action or counterclaim against another person in a court in this State with respect to an agreement for or the performance of a service for which a license is required by this chapter, including the recovery of any compensation under the agreement or for the service, unless the person alleges and proves that the other person was licensed at the time of making the agreement or performing the service.

§ 7354. General criminal penalty

1. General violation. A person commits a Class E crime if the person:

A. Intentionally violates this chapter other than section 7363; or

B. Falsely represents that the person:

(1) Has been or is a polygraph examiner or intern; or

(2) Is qualified to use an instrument.

2. Violation of confidentiality. A person commits a Class D crime if the person intentionally violates section 7363.

SUBCHAPTER 2

POLYGRAPH EXAMINATION ADMINISTRATION GENERALLY

§ 7361. Polygraph examiner's duties and responsibilities generally

1. Duties and responsibilities. A polygraph examiner or an intern shall:

A. Abide by the provisions of this chapter and rules adopted pursuant to this chapter;

B. Ensure that confidential information protected under section 7363 is disclosed only as authorized by that section;

C. Inform a subject to be examined of the nature of the examination;

D. Inform the subject of an examination of the examination results on request at the completion of the examination; and

E. Provide within a reasonable time information requested by the board as the result of a formal complaint to the board alleging a violation of this chapter.

2. Prohibitions. A polygraph examiner or an intern may not:

- A. Aid or abet another to violate this chapter or a rule adopted under this chapter;
- B. Allow the person's license issued under this chapter to be used by an unlicensed person in violation of this chapter;
- C. Make a material misstatement in an application for the issuance or renewal of a license;
- D. Make a misrepresentation or false promise or cause the printing of a false or misleading advertisement to directly or indirectly obtain business;
- E. Conduct an examination without the informed consent of the subject of the examination;
- F. Administer a polygraph examination to a minor without the written consent of a parent of the minor or the minor's legal guardian;
- G. Make a false report concerning an examination for polygraph examination purposes; and
- H. Commit a criminal offense, including, but not limited to, an offense that directly relates to the duties and responsibilities of a polygraph examiner.

3. Mandatory reporting. A polygraph examiner shall:

- A. Inform each subject of an examination, prior to the commencement of any part of a polygraph examination, that any information disclosed by the subject of an examination to the polygraph examiner that requires that a report be made to the Department of Health and Human Services pursuant to Title 22, section 3477 or 4011-A will be reported to that department; and
- B. Report any information that must be reported to the Department of Health and Human Services pursuant to Title 22, section 3477 or 4011-A if a subject of an examination discloses any information to the polygraph examiner that requires that such a report be made.

4. Disciplinary action. A person who fails to comply with this section is subject to disciplinary action pursuant to section 7388.

§ 7362. Minimum polygraph instrument requirements

1. Minimum instrument requirements. An instrument must record visually, permanently and simultaneously a subject's cardiovascular, respiratory and electrodermal patterns. An instrument used by a polygraph examiner may also record patterns of other physiological changes.

2. Other devices prohibited. The use of any device by a polygraph examiner for the purpose of directly or indirectly detecting deception or verifying truth of statements that does not meet the minimum instrument requirements set forth in subsection 1 is prohibited.

§ 7363. Confidentiality of polygraph examination results and related records

1. Disclosure prohibited. A polygraph examiner, intern or employee of a polygraph examiner may not disclose information acquired from a polygraph examination to another person other than:

- A. The subject of the examination;
- B. Any other person specifically designated in writing by the subject of the examination;
- C. A member or agent of a governmental agency that licenses a polygraph examiner or supervises or controls a polygraph examiner's activities;
- D. Another polygraph examiner in private, professional consultation; or
- E. The Department of Health and Human Services pursuant to Title 22, section 3477 or 4011-A, to the extent required.

2. Further disclosure prohibited. A polygraph examiner or other person to whom information acquired from a polygraph examination is disclosed under subsection 1, paragraph D may not further disclose the information, except as otherwise authorized by this section or required by Title 22, section 3477 or 4011-A.

3. Examination records. Notwithstanding any other provision of law, the pre-test, in-test and post-test records associated with the administration of a polygraph examination, including, but not limited to, video and audio recordings, graphs and examination results, are confidential for the purposes of Title 1, chapter 13 and are not subject to compulsory legal process or otherwise discoverable or admissible in evidence in any civil action in any state or federal court unless the confidentiality is expressly waived, in writing, by the subject of the examination.

4. Records in custody of board. Records in the custody of the board are confidential if those records contain:

- A. Personal medical information of an applicant or licensee under this chapter; or
- B. Personally identifying information of a minor to whom a polygraph examination has been administered.

§ 7364. Information included in contract for services and waiver of liability

If a written contract for a polygraph examiner's services or a waiver of liability is signed by the subject of a polygraph examination, the contract and waiver must inform the subject of the procedures for filing a complaint with the board against the polygraph examiner and contain the name, mailing address and telephone number of the board.

SUBCHAPTER 3

POLYGRAPH EXAMINERS BOARD

§ 7371. Polygraph Examiners Board

1. Members. The Polygraph Examiners Board consists of 5 members appointed by the Governor, as follows:

A. Two licensed polygraph examiner members who are polygraph examiners for a state, county or municipal law enforcement agency;

B. Two licensed polygraph examiner members who are polygraph examiners in a commercial field; and

C. One member who represents the public.

2. Residency. A member of the board must have been a resident of this State for at least 2 years immediately preceding the date of appointment.

3. Active engagement. Except for the member of the board who represents the public, a member of the board must be actively engaged as a polygraph examiner on the date of appointment to the board.

4. Employment. No 2 board members may be employed by the same employer.

5. Meetings. The board shall meet as needed, but at least twice annually.

6. Terms. Board members serve 3-year terms.

7. Vacancies. If a vacancy occurs on the board, the Governor shall appoint a successor to fill the unexpired term.

8. Chair. The board shall select from among its members a chair to serve for a 2-year term.

9. Staff. The department shall provide staffing necessary to administer the work of the board.

A. Staff of the department provided pursuant to this subsection are authorized to review and approve applications for licensure or renewal in accordance with criteria established in statute or in rules adopted by the board.

B. Licensing decisions made by staff under paragraph A may be appealed to the board.

§ 7372. Board authority; powers and duties

1. General authority. In addition to the authority otherwise conferred to the board, unless expressly prohibited by this chapter or otherwise modified or conditioned under this chapter, the board may take one or more actions under Title 10, section 8003, subsection 5, paragraphs A-1 to F and Title 10, section 8003, subsection 5-A, paragraphs A to G.

2. Rules. The board may adopt rules necessary to administer this chapter, including, but not limited to, standards and procedures for the issuance, revocation and suspension of licenses of polygraph examiners and interns, continuing education requirements and the investigation of written charges and complaints filed with the board. Rules adopted pursuant to this subsection are routine technical rules as defined in Title 5, chapter 375, subchapter 2-A.

SUBCHAPTER 4

LICENSURE

§ 7381. License application

1. Application. An application for a polygraph examiner license or polygraph examiner intern license must:

A. Be complete and made to the board, in the manner and including the information prescribed by the board; and

B. Be accompanied by the required nonrefundable fee. A fee for any license under this chapter may be charged only in an amount reasonably calculated by the department to cover the aggregate costs of the administration of this chapter by the department and the board.

2. Term of polygraph examiner license. A polygraph examiner license is issued for a 2-year term and may be renewed.

3. Term of polygraph examiner intern license. A polygraph examiner intern license expires on the first anniversary of the date of issuance and may be renewed once. After the expiration of the original term of a polygraph examiner intern license and renewal of that license granted by the board, an intern may not hold another polygraph examiner intern license before the first anniversary of the date the intern's previous polygraph examiner intern license expired.

4. Sole authority. Except as provided in section 7371, subsection 9, paragraph A, the board has sole authority to issue a license under this chapter.

§ 7382. Qualifications for license

1. Qualifications. A person is qualified for a polygraph examiner license if the person:

A. Has not been convicted of a crime for which a license may be denied under Title 5, chapter 341;

B. Either:

(1) Holds a baccalaureate degree from a college or university accredited by an organization recognized by the board; or

(2) Has at least 5 years of active investigative experience with an investigative service of the United States as a sworn member of a branch of the United States Armed Forces, a federal investigative agency or a law enforcement agency immediately preceding the date of application;

C. Is a graduate of a board-approved polygraph examiner course and has satisfactorily completed at least 6 months of a polygraph examiner internship; and

D. Has passed an examination approved by the board to determine the person's competency for a license.

2. Examination. The board shall provide for an examination for licensure under this chapter to be administered as needed, but at least at 3-month intervals.

§ 7383. Nonresident applicant for license

1. Consent to action. In addition to meeting all other requirements for a license, an applicant for the issuance or renewal of a polygraph examiner license who is not a resident of this State must file with the board an irrevocable consent to have:

A. An action against the applicant filed in a court in a county or municipality of the state in which:

(1) The plaintiff resides; or

(2) A part of the transaction out of which the alleged cause of action arose occurred; and

B. Process in the action under paragraph A served on the applicant by leaving 2 copies of the process with the board. Service of process in the manner described under this paragraph is binding for all purposes.

2. Copy to applicant. The board shall immediately send by registered or certified mail a copy of the process under subsection 1, paragraph B to the applicant at the address shown on board records.

§ 7384. Applicant with out-of-state license

The board may grant a license to an applicant who holds a valid license from another state that has license requirements substantially equivalent to or more stringent than those of this State.

§ 7385. Continuing education

A polygraph examiner shall participate in continuing education programs as required by rules of the board.

§ 7386. License holder information

A polygraph examiner or intern shall notify the board in writing of a change in the polygraph examiner's or intern's principal business location or residential location not later than the 30th day after the date the change is made.

§ 7387. Display of license

A polygraph examiner or intern shall prominently display the polygraph examiner's or intern's license or a copy of the license at the polygraph examiner's or intern's place of business or place of internship, as appropriate.

§ 7388. License denial and disciplinary action

1. Disciplinary action. The board may take action under subsection 2 against an applicant or license holder who violates any of the provisions of section 7361, subsection 1 or 2 or who is determined by a licensed, qualified medical doctor to be medically incapacitated or otherwise unable to conduct polygraph examinations.

2. Forms of discipline. If the board determines that action against an applicant or license holder is allowed under subsection 1, the board may impose the forms of discipline described in Title 10, section 8003, subsection 5-A, paragraph B.

3. Jurisdiction; payment of penalties. The board's jurisdiction to suspend or revoke a polygraph examiner license is concurrent with that of the District Court. Civil penalties must be paid to the Treasurer of State.

4. Hearing required in certain actions. A nonconsensual disciplinary action taken under authority of this chapter other than denial or nonrenewal of a license may be imposed only after a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 and is subject to judicial review exclusively in the Superior Court in accordance with Title 5, chapter 375, subchapter 7.

5. Appeal. A nonconsensual revocation of a polygraph examiner license taken under authority of this chapter, upon appeal within the time frames provided in Title 5, section 11002, subsection 3, is subject to de novo judicial review exclusively in District Court.

6. Hearing upon request. The board shall hold a hearing conforming to the requirements of Title 5, chapter 375, subchapter 4 at the written request of any person who is denied an initial or renewal license without a hearing for any reason other than failure to pay a fee, if the request for hearing is received by the board within 30 days of the applicant's receipt of written notice of the denial of the application, the reasons for the denial and the applicant's right to request a hearing.

7. Subpoena. The board may subpoena witnesses, records and documents in any adjudicatory hearing it conducts.

8. Costs of record production in appeals. In the event of appeal to Superior Court from any form of discipline imposed pursuant to this chapter, including denial or nonrenewal of a license, the board may assess the applicant making the appeal for the costs of transcribing and reproducing the administrative record.

§ 7389. Surrender of license

A licensee whose license is suspended or revoked by the board shall immediately surrender the license to the board.

Sec. 6. Polygraph Examiners Board; staggered terms. Notwithstanding the Maine Revised Statutes, Title 32, section 7371, subsection 6, of the initial members appointed to the Polygraph Examiners Board, the Governor shall appoint 2 members for terms of 3 years, 2 members for terms of 2 years and one member for a term of one year.

Sec. 7. Effective date. This Act takes effect April 1, 2014.

SUMMARY

This bill repeals and replaces the existing polygraph examiner licensing statutes effective April 1, 2014.