POLYGRAPH PROTECTION ACT OF 1981

Act 44 of 1982

AN ACT to prohibit employers and employment agencies from requiring polygraph examinations of employees and applicants for employment; to prohibit employers and employment agencies from discriminating against employees and applicants for employment because they refuse or decline to take a polygraph examination; to provide that an employer or employment agency shall not take any action against an employee because of an alleged or actual opinion that an employee did not tell the truth during a polygraph examination; to regulate the use of polygraph examinations by employers and employment agencies; to regulate the administration of polygraph examinations to employees and applicants for employment; and to provide remedies and penalties for violations of this act.

History: 1982, Act 44, Eff. Mar. 30, 1983

The People of the State of Michigan enact:

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37.201 Short title.

Sec. 1.

This act shall be known and may be cited as the "polygraph protection act of 1981".

History: 1982, Act 44, Eff. Mar. 30, 1983

37.202 Definitions.

Sec. 2.

As used in this act:

(a) "Employee" means an individual who works for another person for compensation.

(b) "Employer" means a person who employs 1 or more persons or who accepts applications for employment, including an agent of an employer.

(c) "Employment agency" means a person regularly undertaking with or without compensation to procure, refer, recruit, or place for an employer or person the opportunity to work for an employer, and includes an agent of that person.

(d) "Examiner" means any person who does any of the following:

(i) Purports to detect deception, verify truthfulness, or provide a diagnostic opinion of either of these through instrumentation or the use of a mechanical device.

(ii) Represents that he or she can or does offer the service of detecting deception, verifying truthfulness, or providing a diagnostic opinion of either of these through instrumentation or the use of a mechanical device.

(iii) Uses instrumentation or a mechanical device to measure or record an individual's bodily responses or psychophysiological activities to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these.

(e) "Person" means an individual, firm, partnership, association, corporation, or other legal entity, this state or an agency of this state, or the federal government or an agency of the federal government.

(f) "Polygraph examination" means a psychological stress evaluator examination or any other procedure which involves the use of instrumentation or a mechanical device to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these; including a lie detector test, psychological stress evaluator examination, or similar test.

(g) "Psychological stress evaluator" means any mechanical device or instrument which purports to determine the truth or falsity of statements made by an employee or applicant for employment on the basis of vocal fluctuations or vocal stress.

(h) "Psychological stress evaluator examination" means any of the following:

(i) The questioning or interviewing of an employee or applicant for employment for the purpose of subjecting the statements of the employee or applicant for employment to analysis by a psychological stress evaluator.

(ii) The recording of statements made by an employee or applicant for employment for the purpose of subjecting those statements to analysis by a psychological stress evaluator.

(iii) The analysis of statements made by an employee or applicant for employment for the purpose of determining the truth or falsity of the statements by the use of a psychological stress evaluator.

History: 1982, Act 44, Eff. Mar. 30, 1983

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37.203 Employer or employment agency; prohibited conduct; voluntary request for examination by employee; requirements and prohibitions.

Sec. 3.

(1) Except as provided in this section, an employer or employment agency shall not as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, do any of the following:

(a) Request or require that an employee or applicant for employment take or submit to a polygraph examination.

(b) Administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment.

(c) Require that an employee or applicant for employment give an express or implied waiver of a practice prohibited by this act or section 19 of Act No. 295 of the Public Acts of 1972, as amended, being section 338.1719 of the Michigan Compiled Laws.

(2) This section does not prohibit an employee or applicant for employment from voluntarily requesting a polygraph examination.

(3) If an employee or applicant requests a polygraph examination, this section does not prohibit an employer or employment agency from administering a polygraph examination as provided in subsection (7).

(4) An employee or applicant for employment who voluntarily requests a polygraph examination shall receive from the employer or employment agency a copy of this section and section 19 of Act No. 295 of the Public Acts of 1972, as amended, before the employee or applicant for employment voluntarily takes the polygraph examination.

(5) An employer shall not refuse to hire an applicant for employment because the applicant refuses or declines a polygraph examination.

(6) If an employee or applicant for employment voluntarily requests a polygraph examination, an employer or employment agency shall not use or employ the services of an intern or an examiner who is not licensed under Act No. 295 of the Public Acts of 1972, as amended, being sections 338.1701 to 338.1729 of the Michigan Compiled Laws, for the

detection of deception, verification of truthfulness, or measuring or recording the presence or absence of stress in the vocal response of the employee or applicant for employment.

(7) If an employee or applicant for employment voluntarily requests a polygraph examination, the examiner shall:

(a) Not ask questions that are prohibited under section 19(j) of Act No. 295 of the Public Acts of 1972, as amended.

(b) Inform the employee or applicant for employment of all specific question areas to be explored before their actual exploration during the examination.

(c) Inform the employee or applicant for employment of all of the following:

(i) The employee or applicant for employment has the right to accept or refuse the examination.

(ii) The employee or applicant for employment has the right to halt an examination in progress at any time.

(iii) The employee or applicant for employment is not required to answer any questions or give any information.

(iv) Any information the employee or applicant for employment volunteers could be used against the employee or applicant for employment, or made available to the employer, unless otherwise specified and agreed to in writing by the employee or applicant for employment.

(d) Provide the employee or applicant for employment with a copy of the examination results and all reports or analyses done by the examiner which are shared with the employer.

History: 1982, Act 44, Eff. Mar. 30, 1983

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37.204 Employer or employment agency; prohibited action against employee or applicant.

Sec. 4.

An employer or employment agency shall not take any action against an employee or applicant for employment based upon an alleged or actual opinion that the employee or applicant for employment did not tell the truth during a polygraph examination.

History: 1982, Act 44, Eff. Mar. 30, 1983

37.205 Confidentiality.

Sec. 5.

An employer or employment agency shall not share with any other person information which communicates the results or analysis of an employee's or applicant's polygraph examination or the fact that an employee or applicant for employment refused to submit to a polygraph examination.

History: 1982, Act 44, Eff. Mar. 30, 1983

37.206 Information obtained from employee or applicant during examination; inadmissibility in criminal proceeding.

Sec. 6.

Any information obtained from an employee or applicant for employment during a polygraph examination shall not be admissible in a criminal proceeding.

History: 1982, Act 44, Eff. Mar. 30, 1983

37.207 Action for injunctive relief or damages; damages for injury or loss; attorney's fees; damages for discharge in violation of act.

Sec. 7.

(1) A person alleging a violation of this act may bring an action for injunctive relief or damages, or both.

(2) For purposes of this act, damages include damages for injury or loss caused by each violation of this act and reasonable attorney's fees.

(3) If an employee is discharged in violation of this act, damages for which the employer is liable under this section shall include double the wages lost.

History: 1982, Act 44, Eff. Mar. 30, 1983

37.208 Violation; penalty.

Sec. 8.

A person who violates this act is guilty of a misdemeanor, punishable by a fine of not more than $1,000.00, or by imprisonment for not more than 90 days, or both.

History: 1982, Act 44, Eff. Mar. 30, 1983

37.209 Conditional effective date.

Sec. 9.

This act shall not take effect unless the following House Bills of the 81st Legislature are enacted into law:

(a) House Bill No. 4403.

(b) House Bill No. 4404.

History: 1982, Act 44, Eff. Mar. 30, 1983

Compiler's Notes: House Bill No. 4403, referred to in this section, was approved by the Governor on March 17, 1982, and became P.A. 1982, No. 46, Eff. Mar. 30, 1983.House Bill No. 4404, also referred to in this section, was approved by the Governor on March 17, 1982, and became P.A. 1982, No. 45, Eff. Mar. 30, 1983.

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