

LEGISLATURE OF NEBRASKA
ONE HUNDRED SIXTH LEGISLATURE
FIRST SESSION

LEGISLATIVE BILL 64

Introduced by Groene, 42.

Read first time January 10, 2019

Committee: Government, Military and Veterans Affairs

1 A BILL FOR AN ACT relating to the Licensing of Truth and Deception
2 Examiners Act; to amend sections 81-1901, 81-1902, 81-1903, 81-1904,
3 81-1905, 81-1906, 81-1907, 81-1908, 81-1909, 81-1910, 81-1911,
4 81-1912, 81-1913, 81-1914, 81-1915, 81-1916, 81-1920, 81-1921,
5 81-1923, 81-1924, 81-1925, 81-1926, 81-1928, 81-1930, 81-1932,
6 81-1934, 81-1935, and 81-1936, Reissue Revised Statutes of Nebraska;
7 to change and eliminate provisions relating to licensing, training,
8 and internships; to harmonize provisions; to repeal the original
9 sections; and to outright repeal sections 81-1917, 81-1918, 81-1919,
10 and 81-1922, Reissue Revised Statutes of Nebraska.
11 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 81-1901, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-1901 Sections 81-1901 to 81-1936 and sections 4 to 13 of this act
4 shall be known and may be cited as the Licensing of Truth and Deception
5 Examiners Act.

6 Sec. 2. Section 81-1902, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 81-1902 It is the purpose of the Licensing of Truth and Deception
9 Examiners Act ~~sections 81-1901 to 81-1936~~ to regulate all persons who
10 purport to be able to detect deception or to verify truth of statements
11 through the use of instrumentation, such as lie detectors, polygraphs,
12 deceptographs, psychological stress evaluators, or voice analyzers. The
13 act ~~Sections 81-1901 to 81-1936~~ shall be liberally construed to regulate
14 all such persons using such instruments. No person who purports to be
15 able to detect deception or to verify the truth of statements through
16 instrumentation shall be exempt from the act ~~sections 81-1901 to 81-1936~~
17 because of the terminology which he or she may use to refer to himself or
18 herself, to an instrument used, or to services provided. The act ~~Sections~~
19 ~~81-1901 to 81-1936~~ shall not be interpreted to prohibit the legitimate
20 use of any of the instruments listed in this section for research
21 purposes.

22 Sec. 3. Section 81-1903, Reissue Revised Statutes of Nebraska, is
23 amended to read:

24 81-1903 For the purpose of the Licensing of Truth and Deception
25 Examiners Act ~~sections 81-1901 to 81-1936~~, unless the context otherwise
26 requires, the definitions found in sections 4 to 13 of this act ~~81-1904~~
27 ~~to 81-1913~~ shall be used.

28 Sec. 4. Section 81-1905, Reissue Revised Statutes of Nebraska, is
29 amended to read:

30 ~~81-1905~~ Examinee means ~~shall mean~~ the individual who is being
31 examined, tested, or questioned by an examiner ~~or intern~~ for the purpose

1 of verifying truthfulness or detecting deception.

2 Sec. 5. Section 81-1911, Reissue Revised Statutes of Nebraska, is
3 amended to read:

4 ~~81-1911~~ Examiner means ~~shall mean~~ any polygraph examiner, voice
5 analysis examiner, or any other person, ~~other than an intern,~~ who does
6 any of the following:

7 (1) Purports to verify truthfulness or to detect deception or to
8 provide a diagnostic opinion regarding such truthfulness or deception
9 through instrumentation or the use of a mechanical device;

10 (2) Represents that he or she can or does offer the service of
11 attempting to verify truthfulness or detect deception or providing a
12 diagnostic opinion regarding such truthfulness or deception through
13 instrumentation or the use of a mechanical device; or

14 (3) Uses instrumentation or a mechanical device to measure or record
15 an individual's body responses or psychophysiological activities to
16 enable or assist in the attempted verification of truthfulness or
17 detection of deception or the providing of a diagnostic opinion regarding
18 such truthfulness or deception.

19 Sec. 6. Section 81-1906, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 ~~81-1906~~ Person means ~~shall mean~~ any individual, firm, partnership,
22 limited liability company, association, or corporation.

23 Sec. 7. Section 81-1907, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 ~~81-1907~~ Polygraph means ~~shall mean~~ any mechanical or electronic
26 instrument which uses attached sensors to record psychophysiological
27 responses for the purpose of attempting to determine truth or deception
28 and which records permanently and simultaneously at least three
29 physiological responses. The physiological responses recorded ~~shall~~
30 include, but are not ~~be~~ limited to, respiratory pattern, cardiovascular
31 pattern, and galvanic skin response.

1 Sec. 8. Section 81-1908, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 ~~81-1908~~ Polygraph examiner means ~~shall mean~~ any person, ~~other than~~
4 ~~an intern,~~ who uses an approved polygraph to test or question an examinee
5 for the purpose of attempting to determine truth or deception.

6 Sec. 9. Section 81-1912, Reissue Revised Statutes of Nebraska, is
7 amended to read:

8 ~~81-1912~~ Private examiner means ~~shall mean~~ any examiner who performs
9 or purports to perform the service of attempting to verify truthfulness
10 or detect deception or providing a diagnostic opinion regarding such
11 truthfulness or deception under any circumstances other than as a public
12 examiner.

13 Sec. 10. Section 81-1913, Reissue Revised Statutes of Nebraska, is
14 amended to read:

15 ~~81-1913~~ Public examiner means ~~shall mean~~ an examiner who performs or
16 purports to perform the service of attempting to verify truthfulness or
17 detect deception or providing a diagnostic opinion regarding such
18 truthfulness or deception exclusively in his or her official capacity as
19 a salaried employee of some agency or political subdivision of the state.

20 Sec. 11. Section 81-1904, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 ~~81-1904~~ Secretary means ~~shall mean~~ the Secretary of State for the
23 State of Nebraska.

24 Sec. 12. Section 81-1910, Reissue Revised Statutes of Nebraska, is
25 amended to read:

26 ~~81-1910~~ Voice analysis examiner means ~~shall mean~~ any person, ~~other~~
27 ~~than an intern,~~ who uses an instrument capable of permanently recording
28 on a graph one or more psychophysiological reactions present in the voice
29 of an examinee for the purpose of attempting to determine truth or
30 deception.

31 Sec. 13. Section 81-1909, Reissue Revised Statutes of Nebraska, is

1 amended to read:

2 ~~81-1909~~ Voice A voice stress analyzer means ~~shall mean~~ a mechanical
3 or electronic instrument that analyzes, detects, and measures ~~capable of~~
4 ~~recording the human voice, which detects and measures pitch, amplitude,~~
5 ~~frequency, and other~~ components of the human voice for the purpose of
6 attempting to determine truth or deception, and whose records are
7 permanently and simultaneously recorded.

8 Sec. 14. Section 81-1914, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 81-1914 No person shall, ~~after January 1, 1981,~~ by any means, use or
11 attempt to use any instrument or device for the purpose of attempting to
12 verify truthfulness or detect deception, or reporting or assisting in the
13 reporting of a diagnostic opinion regarding such truthfulness or
14 deception unless such person is duly licensed and holds a valid license
15 under the Licensing of Truth and Deception Examiners Act ~~sections 81-1901~~
16 ~~to 81-1936~~. No person shall falsely represent that he or she is employed
17 by or represents a person licensed under the act ~~sections 81-1901 to~~
18 ~~81-1936~~.

19 Sec. 15. Section 81-1915, Reissue Revised Statutes of Nebraska, is
20 amended to read:

21 81-1915 A person, including a municipal, county, or state employee,
22 who wishes to engage in the use of instrumentation which is designed to
23 attempt to detect truth or deception and any other person desiring to be
24 licensed under the Licensing of Truth and Deception Examiners Act
25 ~~sections 81-1901 to 81-1936~~ shall file an application for a license with
26 the Secretary of State. If the applicant is an individual, the
27 application shall include the applicant's social security number. The
28 Secretary of State shall issue a nontransferable license to each
29 qualified applicant. Such license shall authorize the holder to engage in
30 the use of instrumentation designed to detect truth or deception and each
31 license shall specify the instrument the holder is licensed to operate.

1 Sec. 16. Section 81-1916, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 81-1916 (1) Each applicant for an ~~a truth and deception~~ examiner's
4 license to operate a polygraph or voice stress analyzer ~~instrument~~ shall
5 submit to the Secretary of State a sworn affidavit that the applicant:

6 (a) Is at least nineteen years of age;

7 (b) Is a citizen of the United States ~~and a resident of the State of~~
8 ~~Nebraska~~;

9 (c) Has not been under sentence for the commission of a felony
10 within five years prior to such application, including parole, probation,
11 or actual incarceration, and has never been convicted of a felony ~~or a~~
12 ~~misdemeanor involving moral turpitude~~;

13 ~~(d) Has an academic degree at the baccalaureate level from an~~
14 ~~accredited college or university, has at least four years of~~
15 ~~investigative experience at the federal, state, political subdivision, or~~
16 ~~private licensed investigator level immediately prior to application, or~~
17 ~~has had at least four years experience administering polygraph~~
18 ~~examinations;~~

19 ~~(d) (e)~~ Has satisfactorily completed a ~~minimum of two hundred fifty~~
20 ~~classroom hours of formal~~ course of polygraph or voice stress analyzer
21 instruction ~~instructions~~ from an institution recognized and approved by
22 the secretary ~~and satisfactorily completed not less than one year of~~
23 ~~internship training or its equivalent as approved by the secretary; and~~

24 ~~(e) (f)~~ Has not previously had an examiner's license or its
25 equivalent refused, revoked, or suspended, or otherwise invalidated for
26 any cause which would also represent lawful grounds for revoking or
27 denying the applicant's license under the Licensing of Truth and
28 Deception Examiners Act ~~sections 81-1901 to 81-1936.~~

29 (2) Each applicant shall also:

30 ~~(a) Furnish the secretary with satisfactory proof that he or she has~~
31 ~~had suitable experience in the personal administration of polygraph~~

1 ~~examinations during his or her internship or its equivalent;~~

2 ~~(a) (b)~~ Furnish the secretary with completed fingerprint cards, in
3 duplicate, bearing the applicant's fingerprints and such other
4 identifying information or certification as to the authenticity thereof
5 as the secretary may reasonably require; and

6 ~~(b) Satisfactorily (c)~~ After satisfying all of the other
7 requirements of this section, be required to satisfactorily pass a
8 written examination regarding the polygraph or voice stress analyzer,
9 conducted by the secretary or under his or her supervision, given to
10 determine competency to practice as an examiner.

11 Sec. 17. Section 81-1920, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 81-1920 The secretary shall investigate or cause to be investigated
14 each application for an examiner's ~~examiner or intern's~~ license in order
15 to determine that all information and statements in the application are
16 correct. If the applicant is an individual, the application shall include
17 the applicant's social security number. The secretary shall not issue the
18 license until the investigation is complete. The investigation shall be
19 completed within ninety days after receipt of the application.

20 Sec. 18. Section 81-1921, Reissue Revised Statutes of Nebraska, is
21 amended to read:

22 81-1921 The fee for all initial examiner's licenses shall be fifty
23 dollars. The initial examiner's license shall expire two years on
24 December 31 following its date of issuance. An examiner's license may be
25 renewed within the thirty-day period prior to expiration and shall be
26 valid for an additional two-year period for a fee of twenty-five dollars.
27 Practicing examiners must attend at least one continuing education
28 seminar or workshop relating directly to the field of polygraph or voice
29 stress analyzer technique prior to each subsequent license renewal An
30 examiner's license may be renewed from year to year upon payment of a fee
31 of ~~twenty-five~~ dollars. Additional provisions for licenses may be

1 provided for by rules and regulations adopted and promulgated by the
2 secretary.

3 Sec. 19. Section 81-1923, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 81-1923 A license issued pursuant to the Licensing of Truth and
6 Deception Examiners Act ~~sections 81-1901 to 81-1936~~ shall not be
7 assignable or transferable.

8 Sec. 20. Section 81-1924, Reissue Revised Statutes of Nebraska, is
9 amended to read:

10 81-1924 (1) A license issued under the Licensing of Truth and
11 Deception Examiners Act ~~sections 81-1901 to 81-1936~~ is the property of
12 this the state and shall be considered on loan ~~loaned~~ to the licensee. A
13 license or duplicate license shall be prominently displayed at each place
14 of business of every examiner and the address of the licensee's place of
15 business shall appear on the face of the license. The fee for a duplicate
16 license is ten dollars.

17 (2) If a licensee maintains more than one place of business, the
18 licensee shall obtain a duplicate license from the secretary with the
19 address of the additional business location appearing on the face of the
20 duplicate license. The duplicate license must be prominently displayed at
21 the address indicated on the face of the license. This section is not to
22 be interpreted as prohibiting an ~~a truth and deception~~ examiner from
23 administering examinations at locations other than that prescribed on the
24 license.

25 Sec. 21. Section 81-1925, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 81-1925 The revenue derived from all licenses issued pursuant to the
28 Licensing of Truth and Deception Examiners Act ~~sections 81-1901 to~~
29 ~~81-1936~~ shall be placed in the General Fund.

30 Sec. 22. Section 81-1926, Reissue Revised Statutes of Nebraska, is
31 amended to read:

1 81-1926 Any public examiner license fee shall be paid by the agency
2 or political subdivision employing the examiner ~~or intern~~. Any public
3 examiner whose license indicates the address of the public institution
4 employing the public examiner shall, prior to performing any private
5 examination, obtain a second ~~truth and deception~~ examiner's license. The
6 public examiner shall meet the requirements prescribed in sections
7 81-1916, ~~81-1917~~, and 81-1921 to 81-1924 and shall pay the annual renewal
8 fee prescribed by section 81-1921 when applying for a second license.
9 Failure to obtain a second license when administering polygraph or voice
10 stress analyzer ~~truth and deception~~ examinations as a private examiner
11 shall, except upon a showing of good cause, result in suspension of the
12 first license for a period of three months after a hearing held upon ten
13 days' notice by the secretary or his or her representative. At such
14 hearing the public examiner may present evidence and call witnesses.

15 Sec. 23. Section 81-1928, Reissue Revised Statutes of Nebraska, is
16 amended to read:

17 81-1928 (1) The secretary may deny, suspend, or revoke any license,
18 after a hearing held in accordance with the Administrative Procedure Act,
19 for any one or more of the following grounds:

20 (a) ~~(1)~~ Failure to inform a subject to be examined as to the nature
21 of the examination;

22 (b) ~~(2)~~ Failure to inform a subject to be examined that
23 participation is voluntary;

24 (c) ~~(3)~~ Asking questions during a polygraph or voice stress analyzer
25 examination regarding the examinee's sexual practices, labor union,
26 political or religious affiliations, or marital relationship, except when
27 such questions have a bearing on the areas or issues under examination;

28 (d) ~~(4)~~ Material misstatement in the application for the original
29 license or in the application for any renewal of license under the
30 Licensing of Truth and Deception Examiners Act ~~sections 81-1901 to~~
31 ~~81-1936~~;

1 (e) ~~(5)~~ Willful disregard or violation of the act sections 81-1901
2 ~~to 81-1936~~ or any regulation or rule issued pursuant thereto including,
3 but not limited to, willfully making a false report concerning an
4 examination for polygraph or voice stress examination purposes;

5 (f) ~~(6)~~ Conviction of a professionally-related professionally
6 ~~related~~ felony or any crime involving moral turpitude including, but not
7 limited to, dishonesty, fraud, or unauthorized divulging or selling of
8 information or evidence;

9 (g) ~~(7)~~ Making any willful misrepresentation or false promise or
10 causing to be printed any false or misleading advertisement for the
11 purpose of directly or indirectly obtaining business ~~or interns~~;

12 (h) ~~(8)~~ Having demonstrated incompetency to act as an a polygraph or
13 ~~voice stress~~ examiner;

14 (i) ~~(9)~~ Allowing a license under the act sections 81-1901 to 81-1936
15 to be used by any unlicensed person in violation of the act provisions of
16 ~~sections 81-1901 to 81-1936~~;

17 (j) ~~(10)~~ Willfully aiding or abetting another in the violation of
18 the act sections 81-1901 to 81-1936 or any rule or regulation issued
19 pursuant thereto;

20 (k) ~~(11)~~ Adjudication of mental illness;

21 (l) ~~(12)~~ Failure, within a reasonable time, to provide information
22 requested by the secretary as a result of a formal complaint in writing
23 to the secretary or as a result of substantive information otherwise
24 received by the secretary which would reasonably indicate a violation of
25 the act sections 81-1901 to 81-1936 or any rule or regulation issued
26 pursuant thereto; or

27 (m) ~~(13)~~ Failing to inform the subject of the results of the
28 examination if so required.

29 (2) A license that is suspended shall be suspended for a definite
30 period of time, not to exceed a period of two years. If a license is
31 revoked it shall be revoked for not less than two years except as

1 otherwise provided for in section 81-1921. Any person who has had his or
2 her license revoked for cause may, after a period of two years, reapply
3 to the secretary board for reinstatement.

4 Sec. 24. Section 81-1930, Reissue Revised Statutes of Nebraska, is
5 amended to read:

6 81-1930 Obtaining a license under the Licensing of Truth and
7 Deception Examiners Act ~~sections 81-1901 to 81-1936~~ shall constitute
8 sufficient contact with this state for the exercise of personal
9 jurisdiction over such licensee in any action arising out of the
10 licensee's activity in this state.

11 Sec. 25. Section 81-1932, Reissue Revised Statutes of Nebraska, is
12 amended to read:

13 81-1932 No employer or prospective employer may require as a
14 condition of employment or as a condition for continued employment that a
15 person submit to a polygraph or voice stress analyzer ~~truth and deception~~
16 examination unless such employment involves public law enforcement. This
17 shall not be construed to prohibit such employer from asking an employee
18 or applicant to submit to a polygraph or voice stress analyzer ~~truth and~~
19 ~~deception~~ examination if:

20 (1) No questions are asked during the polygraph or voice stress
21 analyzer ~~truth and deception~~ examination concerning the examinee's sexual
22 practices, labor union, political or religious affiliations, or marital
23 relationships;

24 (2) The examinee is given written and oral notice that the polygraph
25 or voice stress analyzer examination is voluntary and that the examinee
26 may discontinue the examination at any time;

27 (3) The employer or prospective employer has the employee or
28 applicant sign a form stating that the polygraph or voice stress analyzer
29 examination is being taken voluntarily;

30 (4) Questions that are asked prospective employees are job related;

31 (5) Prospective employees are not preselected for a polygraph or

1 ~~voice stress analyzer truth and deception~~ examination in a discriminatory
2 manner;

3 (6) An employee is only requested to submit to a polygraph or voice
4 stress analyzer truth and deception examination if such examination
5 concerns itself with a specific investigation;

6 (7) The results of a polygraph or voice stress analyzer truth and
7 deception examination are not the sole determinant in the termination of
8 employment; and

9 (8) All questions that are asked during a polygraph or voice stress
10 analyzer truth and deception examination and the responses of the
11 examinee are kept on file by the employer for a period of one year.

12 Sec. 26. Section 81-1934, Reissue Revised Statutes of Nebraska, is
13 amended to read:

14 81-1934 The secretary shall adopt and promulgate any rules and
15 regulations and provide such forms as are necessary to carry out the
16 Licensing of Truth and Deception Examiners Act sections 81-1901 to
17 81-1936.

18 Sec. 27. Section 81-1935, Reissue Revised Statutes of Nebraska, is
19 amended to read:

20 81-1935 Except as provided in section 81-1932, any person who
21 violates the Licensing of Truth and Deception Examiners Act ~~provisions of~~
22 ~~sections 81-1901 to 81-1936~~ or who falsely states or represents that he
23 or she is or has been an examiner ~~or intern~~ shall be guilty of a Class II
24 misdemeanor.

25 Sec. 28. Section 81-1936, Reissue Revised Statutes of Nebraska, is
26 amended to read:

27 81-1936 (1) An applicant who is an ~~a truth and deception~~ examiner
28 licensed under laws of another state or territory of the United States
29 may be issued an appropriate license by the secretary without examination
30 if the secretary, in his or her discretion, determines the applicant has
31 produced satisfactory proof that:

1 (a) ~~(1)~~ He or she is at least nineteen years of age;

2 ~~(2)~~ He or she is of good moral character;

3 (b) ~~(3)~~ The requirements for licensing of an a truth and deception
4 examiner in such state or territory of the United States were at the date
5 of the applicant's licensing therein substantially equivalent to the
6 requirements of the Licensing of Truth and Deception Examiners Act
7 sections 81-1901 to 81-1936;

8 (c) ~~(4)~~ The applicant has lawfully engaged in the administration of
9 polygraph and voice stress analyzer truth and deception examinations
10 under the laws of such state or territory for at least six months prior
11 to the application for license;

12 (d) ~~(5)~~ The other state or territory grants similar reciprocity to
13 the license holders of this state;

14 (e) ~~(6)~~ The applicant has complied with section 81-1930; and

15 (f) ~~(7)~~ The applicant has paid the required fee.

16 (2) An applicant who is an examiner from another state or territory
17 of the United States that does not have licensing requirements
18 substantially equivalent to the requirements of the Licensing of Truth
19 and Deception Examiners Act may be issued an examiner's license if the
20 secretary, in his or her discretion, determines the applicant has
21 furnished satisfactory proof that:

22 (a) The applicant has complied with sections 81-1916 and 81-1930;
23 and

24 (b) The applicant has paid the required fee.

25 Sec. 29. Original sections 81-1901, 81-1902, 81-1903, 81-1904,
26 81-1905, 81-1906, 81-1907, 81-1908, 81-1909, 81-1910, 81-1911, 81-1912,
27 81-1913, 81-1914, 81-1915, 81-1916, 81-1920, 81-1921, 81-1923, 81-1924,
28 81-1925, 81-1926, 81-1928, 81-1930, 81-1932, 81-1934, 81-1935, and
29 81-1936, Reissue Revised Statutes of Nebraska, are repealed.

30 Sec. 30. The following sections are outright repealed: Sections
31 81-1917, 81-1918, 81-1919, and 81-1922, Reissue Revised Statutes of

1 Nebraska.