Georgia State University Law Review

Volume 1
Issue 2 *Spring 1985*

Article 33

5-15-2012

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Georgia State University Law Review

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Recommended Citation
Georgia State University Law Review (1984) "PROFESSIONS AND BUSINESS Polygraph Examiners: Regulate," *Georgia State University Law Review*: Vol. 1: Iss. 2, Article 33.
Available at: http://digitalarchive.gsu.edu/gsulr/vol1/iss2/33

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PROFESSIONS AND BUSINESS

Polygraph Examiners: Regulate

CODE SECTIONS:	O.C.G.A. §§ 43-36-1 — 43-36-22 (amended) and 51-1-37 (amended)
BILL NUMBER:	SB 19
ACT NUMBER:	625
SUMMARY:	The Act establishes procedures for polygraph examiners and provides examinees with certain rights including a cause of action against the examiner.

History

The 1985 Georgia Legislature passed SB 19 amending the prior version of the Georgia Polygraph Examiners Act.[1] The Act has two major sections. It repeals the previous section dealing with polygraph examiners and enacts in its place a new, more comprehensive section dealing with the licensing and business practices of examiners. The Act also adds a new section to Title 51 which provides for a tort action for damages when a polygraph examination is not given in accordance with the Act.[2]

The Georgia Legislature passed the first act regulating polygraph examiners in this state in 1968.[3] The original act, entitled "Georgia Polygraph Examiners Act," created the Board of Polygraph Examiners, provided that no person could administer a polygraph examination without being licensed under the Act and established minimum qualifications for licensed examiners. The qualifications included a bachelor's degree, completion of a six week polygraph examiners' course and a six month internship under the supervision of a qualified examiner in the state.[4]

The Georgia Polygraph Examiners Act was amended in 1971 to clarify the requirement that the examiners employed by a municipal, county, state or federal agency must be properly licensed under the Act; to provide that experience with a state, federal or municipal agency may be accepted by the Board in lieu of the internship; and to clarify that license fees under the Act are in addition to application fees.[5]

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1. O.C.G.A. §§ 43-36-1 — 43-36-16 (1984).
2. O.C.G.A. § 51-1-37(a)(2) (Supp. 1985).
3. 1968 Ga. Laws 1217.
4. *Id.* at 1221-22.
5. 1971 Ga. Laws 651.

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The Act was amended again in 1980[6] to add an additional member to the Board of Polygraph Examiners. The additional member was appointed by the Governor from the public at large and had no connection with the polygraph profession. The Act was amended in 1982[7] to extend the termination date of the Act to July 1, 1987. Other than these relatively minor changes, the Act was not substantially changed from its enactment in 1968 to the present.

During the 1984 General Assembly, Senator Donn Peevy (D-Gwinnett) introduced a bill to ban the use of polygraphs by private employers. It died in Committee.[8] After the 1984 session, Senator Peevy chaired a Senate Study Committee to look into the issue by holding hearings at the Capitol during 1984.[9] Individuals testified that they had been unjustly fired after failing a polygraph test. The Committee also heard testimony from Dr. L. J. Peacock, professor of psychology at the University of Georgia, that polygraphs are not accurate,[10] and the past chairman of the Board of Polygraph Examiners testified that he would not be willing to take a polygraph test if he knew his job were on the line.[11]

On August 28, 1984, the *Atlanta Journal* expressed its editorial support for strengthening the reputation of polygraph examiners.[12] The editorial stated, "[t]he law should protect employees from embarrassing or non-germane questions. Sexual preference is simply none of an employer's business. Ditto for political affiliation and personal habits. If the polygraphs are to be used, and we think they should be, the state holds a responsibility to set limits on their use."[13] The *Atlanta Constitution* also ran an editorial in favor of polygraph regulation on November 7, 1984, noting that:

> A special Senate committee will submit a bill to the next session of the General Assembly that would allow the state to regulate polygraph examinations for the first time. It is needed. An estimated 12,500 to 25,000 polygraph tests are given each week in Georgia . . . . Far too often, the result has been that an employee . . . may have his reputation and future in the job market erroneously damaged because some polygraph operator — like a witch doctor trying to divine the truth by scattering

6. 1980 Ga. Laws 57.
7. 1982 Ga. Laws 1582.
8. SB 439, 1984 Ga. Gen. Assem. § 1.
9. *See generally* Atlanta Const., Aug. 23, 1984, § A, at 34, col. 3; Atlanta J., Aug. 28, 1984, § A, at 18, col. 1; Atlanta J.-Const., Sept. 3, 1984, § D, at 10, col. 1; Atlanta Const., Sept. 7, 1984, § A, at 21, col. 5.
10. *See* Peevy, *Evidence Indicates Polygraphs Deceptive as 'Lie Detectors'*, Atlanta J.-Const., Oct. 7, 1984, § E, at 6, col. 1.
11. *Polygraph Board's Ex-Chief Uneasy with Being Tested*, Atlanta J.-Const., Sept. 8, 1984, § B, at 5, col. 1.
12. *Reform the Polygraphs*, Atlanta J., Aug. 28, 1984, § A, at 18, col. 1.
13. *Id.*

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> animal bones — found something questionable in his chart. The committee's bill would go a long way toward correcting these problems.[14]

SB 19

Under prior law the Board of Polygraph Examiners consisted of seven members, six of whom were required to be polygraph examiners, the seventh member was appointed from the public at large with no connection to the polygraph industry.[15] Under the new law only four of the seven members are to be licensed polygraph examiners.[16] One member must be "a representative of the area of private-sector employment."[17] Another member is to be a "representative of the scientific community who has some knowledge of polygraphs or polygraph examinations."[18] New provisions in the Act also provide that no two members may have the same employer and no member may serve more than two consecutive full terms on the Board.[19] Members, who must be residents of the State, are appointed by the Governor to four-year terms.[20]

To qualify for a license, a person must be at least twenty-one years old, a citizen of the United States, of good moral character with no felony or misdemeanor convictions and possess a bachelor's degree. The person must have completed a six-week training course at an approved polygraph training school, a six-month internship under a licensed examiner and an examination conducted by the Board.[21] The new law raises the qualification for polygraph examiners slightly by requiring at least two years of college and two years' experience as a detective as a substitute for a bachelor's degree.[22] Under prior law applicants with misdemeanor or felony convictions were barred from the profession; however, the new law does not contain this restriction.

Prior law contained no rules, requirements or restrictions pertaining to the actual administration of a polygraph examination by a licensed examiner. The new law contains procedures for conducting the test in O.C.G.A. § 43-36-13(c). It also establishes requirements for the report made by the polygraph examiner to the person requesting the test in O.C.G.A. § 43-36-13(c). O.C.G.A. § 43-36-13(e) sets forth testing conditions for administra-

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14. *Polygraph Tests Need Regulating*, Atlanta Const., Nov. 7, 1984, § A, at 12, col. 1.
15. O.C.G.A. § 43-36-3 (1984).
16. O.C.G.A. § 43-36-4(b) (Supp. 1985).
17. O.C.G.A. § 43-36-4(c) (Supp. 1985).
18. O.C.G.A. § 43-36-4(d) (Supp. 1985).
19. O.C.G.A. § 43-36-4(f) (Supp. 1985).
20. O.C.G.A. § 43-36-4 (Supp. 1985).
21. O.C.G.A. § 43-36-6 (1984) (Five years' experience as an investigator or detective with a governmental agency may be substituted for the bachelor's degree.)
22. O.C.G.A. § 43-36-6(a)(4) (Supp. 1985).

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tion of the exam. O.C.G.A. § 43-36-12 contains provisions for disclosure of results to the examinee.

Prior to the examination, polygraph examiners must disclose in writing to the examinee all questions to be asked during the examination, review the questions with the examinee and obtain the examinee's written permission to ask questions.[23] Before the examination the examinee must also sign a written notice that he is consenting voluntarily to the examination and that no questions may be asked concerning religious or political beliefs, racial matters, union affiliations or sexual preferences. The required notice also informs the examinee that upon written request he is entitled to a copy of the examiner's report and that he can file a complaint with the Board of Polygraph Examiners.[24]

During the examination, the polygraph examiner must ask between seven and fifteen questions at least ten seconds apart, the results of which are recorded on an adequately marked chart. Specific details concerning the administration of the examination and the recording of the results are set out in the new provisions.[25] An examinee has the right to tape record his examination regarding matters directly connected to employment.[26] The report of the polygraph exam is to be written and is to contain only conclusions and opinions based on chart analysis and relevant admissions of the examinee.[27] The report may only be disclosed to the examinee or any other person designated in writing by the examinee, the person requesting the examination or pursuant to a court order.[28] The rights and procedures provided for in the new law are not affected by any contract or waiver executed by an examinee.[29]

The second section may be the most significant part of the Act from the point of view of polygraph examinees and those who represent them for it provides a cause of action against a polygraph examiner if the test is given in a negligent manner or is not "*administered in conformity with the provisions of Chapter 36 of Title 43.*"[30] Damages include actual damages, attorney's fees, filing fees and reasonable costs of the action.[31] To provide a corpus for these damages, each polygraph examiner must carry $25,000 in professional liability insurance, or post a $10,000 bond or provide the Board a net worth statement showing a net worth of more than $50,000.[32] The Senate Study Committeee drafted a proposed bill which also contained a cause of action against an employer if employment was

23. O.C.G.A. § 43-36-13(e) (Supp. 1985).
24. O.C.G.A. § 43-36-15(a)(1) (Supp. 1985).
25. O.C.G.A. § 43-36-12 (Supp. 1985).
26. O.C.G.A. § 43-36-15(a)(3)(F) (Supp. 1985).
27. O.C.G.A. § 43-36-13(c) (Supp. 1985).
28. O.C.G.A. § 43-36-15(a)(4) (Supp. 1985).
29. O.C.G.A. § 43-36-15(b) (Supp. 1985).
30. O.C.G.A. § 51-1-37(a)(2) (Supp. 1985) (emphasis added).
31. O.C.G.A. § 51-1-37(b) (Supp. 1985).
32. O.C.G.A. § 43-36-17 (Supp. 1985).

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denied or terminated solely on the basis of a polygraph examination.[33] This cause of action does not appear in the Act as passed by the Legislature.

33. Senate Study Committee on Polygraph Operations, Report, at § 2.

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