

Stricken language would be deleted from and underlined language would be added to present law.

State of Arkansas
89th General Assembly
Regular Session, 2013

A Bill

HOUSE BILL 1808

By: Representatives Lowery, Linck

For An Act To Be Entitled

AN ACT TO AMEND THE LAW CONCERNING LICENSING OF
POLYGRAPH EXAMINERS; AND FOR OTHER PURPOSES.

Subtitle

TO AMEND THE LAW CONCERNING LICENSING OF
POLYGRAPH EXAMINERS.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:

SECTION 1. Arkansas Code § 17-39-101 is amended to read as follows:
17-39-101. Title.

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

SECTION 2. Arkansas Code § 17-39-102 is amended to read as follows:
17-39-102. Definitions.

As used in this chapter:

(1) "Administrator" means the Administrator of the Arkansas
Board of Private Investigators and Private Security Agencies;

(2) "Board" means the Arkansas Board of Private Investigators
and Private Security Agencies created by § 17-40-201;

(3) "Intern" means a person who holds a valid Polygraph Examiner
Intern license by the board;

~~(2)(4)~~ "Internship" means the study of polygraph examinations
and of the administration of polygraph examinations by a ~~trainee~~ an intern
under the personal supervision and control of a licensed polygraph examiner
~~in accordance with a course of study prescribed by the board at the~~



~~commencement of the internship as authorized by the board;~~

~~(3)~~(5) "Person" means any natural person, firm, association, copartnership, or corporation; and

~~(4)~~(6) "Polygraph examiner" means any person who uses any device or instrument to test or question individuals for the purpose of verifying truth of statements; ~~and~~

~~(5) "Secretary" means that member of the board selected by the board to act as secretary.~~

SECTION 3. Arkansas Code § 17-39-103 is amended to read as follows:

17-39-103. Penalties.

Any person who violates any provision of this chapter or any person who falsely states or represents that he or she has been or is a properly licensed polygraph examiner or ~~trainee~~ intern shall be guilty of a misdemeanor. Upon conviction, that person shall be punished by a fine of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) or by imprisonment in the county jail for a term of not to exceed six (6) months, or both.

SECTION 4. Arkansas Code § 17-39-104 is amended to read as follows:

17-39-104. Injunction.

(a) If any person violates any provisions of this chapter, the ~~Secretary~~ Administrator of the Arkansas Board of Private Investigators and Private Security Agencies, upon direction of a majority of the ~~Arkansas Board of Private Investigators and Private Security Agencies~~ board and in the name of the State of Arkansas, through the Arkansas Attorney General, shall apply in any circuit court of competent jurisdiction for an order enjoining the violation or for an order enforcing compliance with this chapter.

(b) Upon the filing of a verified petition in the court, the court or any judge thereof, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction, without notice or bond, enjoining the continued violation. If it is established that the person has violated or is violating this chapter, the court or any judge thereof may enter a decree perpetually enjoining the violation or enforcing compliance with this chapter.

(c) In case of violation of any order or decree issued under the

provisions of this section, the court or any judge thereof may try and punish the offender for contempt of court.

(d) Proceeding under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

SECTION 5. Arkansas Code § 17-39-105 is amended to read as follows:

17-39-105. Evidence.

Nothing in this chapter shall be construed as permitting the results of ~~truth examinations or~~ polygraph examinations to be introduced or admitted as evidence in a court of criminal law.

SECTION 6. Arkansas Code § 17-39-106 is amended to read as follows:

17-39-106. Board – Powers and duties.

(a) The Arkansas Board of Private Investigators and Private Security Agencies is authorized and empowered to perform and carry out the functions and duties enumerated in this chapter with respect to the licensing of polygraph examiners and to do and perform all other acts incidental and necessary to the proper performance of the functions and duties as prescribed in this chapter.

(b) The board shall issue ~~regulations~~ rules consistent with the provisions of this chapter for the administration and enforcement of this chapter and shall prescribe forms which shall be issued in connection therewith.

(c) An order or a certified copy thereof, over the board seal and purporting to be signed by the board members, shall be prima facie proof that the signatures are the genuine signatures of the board members and that the board members are fully qualified to act.

(d) The position of Administrator of the Arkansas Board of Private Investigators and Private Security Agencies is created. The Director of the Department of Arkansas State Police, or his or her designated representative, shall serve as the administrator. The administrator shall not be a member of the board, shall perform duties prescribed by the board, and shall have no financial or business interests, contingent or otherwise, in any security services contractor or investigating company.

(e) All legal process and all documents required by law to be served upon or filed with the board shall be served or filed with the administrator

at the designated office of the board.

(f) All official records of the board or affidavits by the administrator as to the content of the records shall be prima facie evidence of all matters required to be kept by the board.

SECTION 7. Arkansas Code § 17-39-107 is amended to read as follows:

17-39-107. Disposition of funds.

(a) All fees collected under the provisions of this chapter shall be ~~paid to the Treasurer of State.~~

~~(b) Funds necessary for the enforcement of this chapter and the administration of its provisions shall be appropriated by the General Assembly. However, the funds so appropriated for a biennium shall not exceed the total amount of the fees which it is anticipated will be collected hereunder during that biennium~~ deposited into the State Treasury to the credit of the Department of Arkansas State Police Fund.

(b)(1) All funds received by the Arkansas Board of Private Investigators and Private Security Agencies shall be deposited into the State Treasury as special revenues to the credit of the fund.

(2) Money remaining at the end of the fiscal year shall not revert to any other fund but shall carry over to the next fiscal year.

SECTION 8. Arkansas Code § 17-39-108 is repealed.

~~17-39-108. Registration.~~

~~Each polygraph examiner shall register with the circuit clerk in the county wherein he or she maintains a business address. The circuit clerk of each county shall maintain a list of all polygraph examiners registered in his or her county.~~

SECTION 9. Arkansas Code § 17-39-109 is amended to read as follows:

17-39-109. Instrumentation.

(a) Every polygraph examiner shall use an instrument which records visually, permanently, and simultaneously:

(1) A subject's cardiovascular pattern; ~~and~~

(2) Electrodermal activity; and

~~(2)(3)~~ (3) A subject's respiratory pattern.

(b) Patterns of other physiological changes in addition to those

described in this section may also be recorded.

SECTION 10. Arkansas Code § 17-39-201 is amended to read as follows:
17-39-201. License required.

(a) It shall be unlawful for any person, including a city, county, or state employee, to administer polygraph examinations or attempt to hold himself or herself out as a polygraph examiner without a license approved and issued by the Arkansas Board of Private Investigators and Private Security Agencies.

~~(b) No action or counterclaim shall be maintained by any person in any court in this state with respect to any agreement or service for which a license is required by this chapter, or to recover the agreed price or any compensation under the agreement, or for the services for which a license is required by this chapter without alleging and proving that the person had a valid license at the time of making the agreement or performing the services.~~

SECTION 11. Arkansas Code § 17-39-202 is amended to read as follows:
17-39-202. Qualifications.

(a) A person is qualified to receive a license as an examiner who:

(1) Is at least twenty-one (21) years of age;

(2) ~~Establishes that he or she is a person of honesty, truthfulness, integrity, and moral fitness;~~

~~(3) Has not been convicted of a found guilty of or pleaded guilty or "nolo contendere" to a felony or a misdemeanor involving moral turpitude;~~

~~(4)~~(3) Holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or, in lieu thereof, has five (5) consecutive years of active investigative experience immediately preceding his or her application; and

~~(5)~~(4) Is a graduate of a polygraph examiners course approved by the Arkansas Board of Private Investigators and Private Security Agencies and has satisfactorily completed not less than six (6) months of internship training. ~~Provided, that if the applicant is not a graduate of an approved polygraph examiners course, satisfactory completion of not less than twelve (12) months of internship training may satisfy this subdivision (a)(5); and~~

~~(6) Has passed an examination conducted by the Board or under its supervision to determine his or her competency to obtain a license to practice as an examiner.~~

(b) Prior to the issuance of a license, the applicant must furnish evidence of a surety bond or insurance policy to the board. The surety bond or insurance policy shall be in the sum of ~~one~~ five thousand dollars ~~(\$1,000)~~ (\$5,000). The bond shall be conditioned that the obligor therein will pay to the extent of the face amount of the surety bond or insurance policy all judgments which may be recovered against the licensee by reason of any wrongful or illegal acts committed by him or her in the course of his or her examinations.

SECTION 12. Arkansas Code § 17-39-203 is amended to read as follows:

17-39-203. Original application.

(a) Applications for original licenses shall be made to the ~~Secretary Administrator~~ Administrator of the Arkansas Board of Private Investigators and Private Security Agencies in writing under oath on forms prescribed by the ~~Arkansas Board of Private Investigators and Private Security Agencies~~ board and shall be accompanied by the required fee, which is not refundable.

(b) Any such application shall require the information that in the judgment of the board will enable it to pass on the qualifications of the applicant for a license.

SECTION 13. Arkansas Code § 17-39-204 is amended to read as follows:

17-39-204. ~~Nonresident applicants~~ Agent for service for nonresident interns and licensees.

(a) ~~Each nonresident applicant for an original license or a renewal license~~ In addition to other application requirements a licensee or intern who does not maintain a place of business in Arkansas shall file with the Arkansas Board of Private Investigators and Private Security Agencies an irrevocable consent that:

(1) Actions against the applicant may be filed in any appropriate court of any county or municipality of this state in which the plaintiff resides or in which some part of the transaction occurred out of which the alleged cause of action arose; and

(2) Process on the action may be served on the applicant by

leaving two (2) copies thereof with the ~~Secretary~~ Administrator of the Arkansas Board of Private Investigators and Private Security Agencies.

(b) The consent shall stipulate and agree that the service of process shall be taken and held to be valid and binding for all purposes.

(c) The ~~secretary~~ administrator shall immediately send one (1) copy of the process to the applicant at the address shown on the records of the board by registered or certified mail.

~~(d) Nonresident applicants must satisfy the requirements of § 17-39-202.~~

SECTION 14. Arkansas Code § 17-39-205 is amended to read as follows:
17-39-205. Reciprocity License based on reciprocity.

An applicant who is a polygraph examiner licensed under the laws of another state ~~or territory~~ of the United States may be issued a two-year license ~~without examination~~ by the Arkansas Board of Private Investigators and Private Security Agencies, ~~in its discretion~~, upon payment of a fee of ~~sixty dollars (\$60.00)~~ one hundred and twenty dollars (\$120) and the production of satisfactory proof that the licensee meets the requirements of this section:

- (1) The applicant must meet the requirements of §17-39-202;
- (2) The applicant is at least twenty-one (21) years of age;
- ~~(2) The applicant is of good moral character;~~
- (3) The requirements of §17-39-202 (3) and (4) may be waived by the board for the licensing of polygraph examiners in the particular state or territory of the United States were at the date of the applicant's licensing therein substantially equivalent to the requirements now in force in this state;
- (4) The applicant had lawfully engaged in the administration of polygraph examinations under the laws of that state ~~or territory~~ for at least two (2) years prior to his or her application for a license under this chapter; and
- (5) The other state ~~or territory~~ grants similar reciprocity to license holders of this state; ~~and~~
- ~~(6) The applicant has complied with § 17-39-204.~~

SECTION 15. Arkansas Code § 17-39-206 is amended to read as follows:

17-39-206. Internship license.

(a) Upon approval by the Administrator of the Arkansas Board of Private Investigators and Private Security Agencies, ~~the Secretary administrator of the Arkansas Board of Private Investigators and Private Security Agencies~~ shall issue an internship license to ~~a trainee~~ an intern, provided that he or she applies for the license and pays the required fee within ten (10) days prior to the commencement of his or her internship. The application shall contain such information as may be required by the board.

(b) A person is qualified to receive an intern license if he or she:

(1) Is at least twenty-one (21) years of age;

(2) Has not been found guilty of or pleaded guilty or nolo contendere to any crime of a felony or a misdemeanor involving moral turpitude;

(3) Holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or, in lieu thereof, has five (5) consecutive years of active investigative experience immediately preceding his or her application;

(4) Is a graduate of a polygraph examiners course approved by the board.

(c) An internship license shall be valid for the term of twelve (12) months from the date of issue. It may be ~~extended or~~ renewed for any term not to exceed six (6) months upon good cause shown to the board.

~~(e) A trainee shall not be entitled to hold an internship license after the expiration of the original twelve-month period and six-month extension, if the extension is granted by the Board, until twelve (12) months after the date of expiration of the last internship license held by the trainee.~~

SECTION 16. Arkansas Code § 17-39-207 is amended to read as follows:

17-39-207. Examination - Fees.

~~(a) The fee to be paid by an applicant for an examination to determine his or her fitness to receive a polygraph examiner's license is twenty dollars (\$20.00), which is not to be credited as payment against the license fee.~~

~~(b)~~ The fees to be paid for licenses shall be as follows:

(1) For an original two-year polygraph examiner's license, ~~sixty~~

~~dollars (\$60.00)~~ one hundred twenty dollars (\$120);

(2) For ~~an~~ a one-year or less internship license, thirty dollars (\$30.00);

(3) For the issuance of a duplicate polygraph examiner's license or internship license, ~~ten dollars (\$10.00)~~ fifteen dollars (\$15.00);

(4) For a polygraph examiner's two-year renewal license, ~~twenty-five dollars (\$25.00)~~ fifty dollars (\$50.00);

(5) For the ~~extension or~~ renewal of an internship license past six (6) months, twenty-five dollars (\$25.00); and

(6) ~~For a duplicate internship license, ten dollars (\$10.00)~~ For the issuance of an optional wallet-size polygraph examiner licensee or intern photo identification card, fifteen dollars (\$15.00).

~~(c) The fees required by this chapter may be paid by the governmental agency employing the examiner.~~

SECTION 17. Arkansas Code § 17-39-208 is amended to read as follows:

17-39-208. Display of license and signature.

~~(a) A license or duplicate license~~ or the photo identification card issued by the Arkansas Board of Private Investigators and Private Security Agencies must be prominently displayed at the place of business of the polygraph examiner or at the place of internship.

~~(b) Each license shall be signed by the members of the Arkansas Board of Private Investigators and Private Security Agencies and shall be issued under the seal of the board.~~

SECTION 18. Arkansas Code § 17-39-209 is amended to read as follows:

17-39-209. Notification of address change.

~~(a) Notice in writing shall be given to the Secretary of the Arkansas Board of Private Investigators and Private Security Agencies~~ Administrator of the Arkansas Board of Private Investigators and Private Security Agencies by the licensed examiner of any change of principal business location within thirty (30) days of the time he or she changes the location.

~~(b) A change of business location without notification to the secretary shall automatically suspend the license theretofore issued.~~

SECTION 19. Arkansas Code § 17-39-210 is amended to read as follows:

17-39-210. Expiration and renewal.

(a) Each polygraph examiner's license shall be issued for the term of ~~one (1) year~~ two (2) years and, unless suspended or revoked, shall be renewed ~~annually as~~ with such documentation as may be prescribed by the Arkansas Board of Private Investigators and Private Security Agencies.

(b) A polygraph examiner whose license has expired less than six (6) months may ~~obtain at any time within two (2) years after the expiration thereof a renewal~~ renew the license ~~without examination~~ by making a renewal application ~~therefor and satisfying § 17-39-202(a)(2) and (3),~~ paying the renewal fees and a late fee of twenty dollars (\$20.00).

(c) However, any polygraph examiner whose license has been expired for more than six months shall be deemed permanently expired, and the licensee shall begin the process again as a new applicant.

(d) The calculation of the late fee or expiration time may be waived for a person who demonstrates that while he or she was ~~in the federal service~~ on active duty with the armed forces of the United States, or the National Guard at the time of expiration ~~called into service or training, or in training or education under the supervision of the United States preliminary to induction into the military service~~ may have his or her license renewed without examination if within two (2) years after termination of such service, training, or education, except under conditions other than honorable, he or she furnishes the Board with an affidavit to the effect that he or she has been so engaged and that his or her service, training, or education has been so terminated. ~~Section 17-39-202(a)(2) and (3) must also be satisfied.~~

(e) The requirements, as set out by the board, must be met before renewal, including:

- (1) Payment of all necessary fees; and
- (2) Providing the board with proof of continuing polygraph examiner education of at least fourteen (14) hours received in the most recent two-year period by a training course approved by the board.

SECTION 20. Arkansas Code § 17-39-211 is amended to read as follows:

17-39-211. Refusal, denial, suspension, revocation – Grounds.

The Arkansas Board of Private Investigators and Private Security Agencies ~~may refuse to issue or~~ may deny, suspend, or revoke a license on any

one (1) or more of the following grounds:

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

(2) Failure to inform a subject to be examined that his or her participation in the examination is voluntary;

(3) Any violation of the rules or laws of the board or failure to meet the qualifications for licensure;

~~(3)~~(4) Material misstatement in the any application for ~~original~~ license ~~or in the application for any renewal license~~ under this chapter;

~~(4)~~ Willful disregard or violation of this chapter or of any regulation or rule issued pursuant thereto, including, but not limited to, willfully making a false report concerning an examination for polygraph examination purposes;

~~(5)~~ If the holder of any license has been adjudged guilty of the commission of a felony or a misdemeanor involving moral turpitude;

~~(6)~~(5) Willful Any misrepresentation or false promises or causing to be printed any false or misleading advertisement for the purpose of directly or indirectly obtaining business or ~~trainees~~ interns;

~~(7)~~(6) Demonstration of unworthiness or incompetency to act as a polygraph examiner as defined by this chapter;

~~(8)~~(7) Allowing one's license under this chapter to be used by any unlicensed person in violation of the provisions of this chapter;

~~(9)~~(8) Willfully aiding or abetting another in the violation of this chapter ~~or any regulation~~ or rule issued pursuant to it;

~~(10)~~ When the license holder has been adjudged as an habitual drunkard or mental incompetent as provided in the Probate Code;

~~(11)~~(9) Failure within a reasonable time to provide information requested by the ~~Secretary of the Arkansas Board of Private Investigators and Private Security Agencies~~ Administrator of the Arkansas Board of Private Investigators and Private Security Agencies as the result of a formal complaint to the board, which would indicate a violation of this chapter; or

~~(12)~~(10) Failure to inform the subject of the polygraph examination of the results of the examination if so requested.

SECTION 22. Arkansas Code § 17-39-212 is amended to read as follows:

17-39-212. ~~Employer unaffected by employee violation~~ Background

checks.

~~Any unlawful act or violation of any of the provisions of this chapter on the part of any polygraph examiner or trainee shall not be cause for revocation of the license of any one (1) other polygraph examiner for whom the offending polygraph examiner or trainee may have been employed, unless it shall appear to the satisfaction of the Arkansas Board of Private Investigators and Private Security Agencies that the polygraph examiner-employer has willfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.~~

(a) Each first-time applicant and applicant for license renewal shall be required to apply to the Identification Bureau of the Department of Arkansas State Police for a state and national criminal background check to be conducted by the Identification Bureau of the Department of Arkansas State Police and the Federal Bureau of Investigation.

(b) The check shall conform to applicable federal standards and shall include the taking of fingerprints.

(c) The applicant shall sign a release of information to the Arkansas Board of Private Investigators and Private Security Agencies and shall be responsible for the payment of any fee associated with the criminal background check.

(d) Upon completion of the criminal background check, the Identification Bureau of the Department of Arkansas State Police shall forward to the board all releasable information obtained concerning the applicant.

SECTION 23. Arkansas Code § 17-39-213 is amended to read as follows:

17-39-213. Refusal, denial, suspension, revocation – Proceedings.

(a)(1) When there is cause to ~~refuse~~ deny an application or ~~cause to~~ suspend or revoke the license of any polygraph examiner, the Arkansas Board of Private Investigators and Private Security Agencies not less than thirty (30) days before ~~refusal~~ denial, suspension, or revocation action is taken, shall notify the person in writing, in person, or by certified mail at the last address supplied to the board by the person. This notice shall include notification of the impending ~~refusal~~ denial, suspension, or revocation, the reasons therefor, and of his or her right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to

warrant the ~~refusal~~ denial, suspension, or revocation action proposed to be taken by the board.

~~(2) If, within twenty (20) days after the personal service of notice or notice has been deposited into the United States mail, the person has not made a written request to the Board for this administrative hearing, then the Board is authorized to suspend or revoke the polygraph examiner's license of the person without a hearing.~~

~~(3) Upon receipt by the board of the written request within the twenty-day period as set out in subdivision (a)(2) of this section, an opportunity for an administrative hearing shall be afforded as early as is practicable.~~

~~(4) In no case shall the hearing be held fewer than ten (10) days after written notification thereof, including a copy of the charges, shall have been given the person by personal service or by certified mail sent to the last address supplied to the Board by the applicant or licensee.~~

~~(5)(3) The administrative hearing in those cases shall be before the board.~~

(b)(1) The board shall conduct the administrative hearings, and it is authorized to administer oaths and issue subpoenas for the attendance of witnesses and the production of relevant books, papers, documents, etc.

(2) On the basis of the evidence submitted at the hearing, the ~~board~~ Administrator of the Arkansas Board of Private Investigators and Private Security Agencies shall take whatever action it deems necessary in ~~refusing~~ denying the application or suspending or revoking the license.

(c)(1) Upon the revocation or suspension of any license, the licensee shall immediately surrender the license or licenses to the ~~Secretary administrator of the Arkansas Board of Private Investigators and Private Security Agencies~~ board.

(2) Failure of a licensee to do so shall be a violation of this chapter, and upon conviction the licensee shall be subject to the penalties set forth in § 17-39-103.

(3) At any time after the suspension or revocation of any license, the ~~secretary~~ administrator shall restore it to the former licensee upon the written recommendations of the board.

SECTION 24. Arkansas Code § 17-39-214 is amended to read as follows:

17-39-214. Refusal, suspension, revocation – Appeal.

(a) Any person dissatisfied with the action of the Arkansas Board of Private Investigators and Private Security Agencies in ~~refusing~~ denying, ~~his or her application or~~ suspending, or revoking his or her license, ~~or any other action of the board,~~ may appeal under the Arkansas Administrative Procedures Act. ~~the action of the Board by filing a petition within thirty (30) days thereafter in the circuit court in the county where the person resides or in the Pulaski County Circuit Court.~~

(b) ~~The court is vested with jurisdiction, and it shall be the duty of the court to set the matter for hearing upon ten (10) days' written notice to the Board and the attorney representing the board.~~

(c) ~~The court in which the petition of appeal is filed shall determine whether or not a cancellation or suspension of a license shall be abated until the hearing shall have been consummated with final judgment thereon or whether any other action of the board should be suspended pending hearing. The court shall enter its order accordingly. The order shall be operative when served upon the board. The court shall provide the attorney representing the Board with a copy of the petition and order.~~

(d)(b) ~~The board shall be represented in such appeals by the prosecuting attorney of the county or the Attorney General, or any of their~~ his or her assistants.

(e) ~~The board shall initially determine all facts, but the court upon appeal shall set aside the determination of the board if the board's determination:~~

(1) ~~Is not based upon substantial evidence upon the entire record;~~

(2) ~~Is arbitrary or capricious;~~

(3) ~~Is in violation of statutory requirements; or~~

(4) ~~Was made without affording to the licensee or applicant due process of law.~~

SECTION 25. Arkansas Code Title 17, Chapter 39, Subchapter 2, is amended to add an additional section to read as follows:

17-39-215. Rules.

The Arkansas Board of Private Investigators and Private Security Agencies may promulgate rules to permit the efficient administration of this

subchapter.