

**WEST VIRGINIA CODE
CHAPTER 21
LABOR**

**ARTICLE 5, SECTIONS 5A, 5B, 5C AND 5D
POLYGRAPH REQUIREMENTS**

§21-5-5a. Definitions.

As used in sections five-b, five-c and five-d of this article, unless the context clearly requires otherwise:

(1) "Employer" means any individual, person, corporation, department, board, bureau, agency, commission, division, office, company, firm, partnership, council or committee of the state government; public benefit corporation, public authority or political subdivision of the state; or other business entity, which employs or seeks to employ an individual or individuals. All provisions of sections five-b, five-c and five-d of this article pertaining to employers shall apply in equal force and effect to their agents and representatives.

(2) "Employee" means an individual employed by an employer.

(3) "Psychophysiological detection of deception instrument" means an instrument used for the detection of deception which records permanently and simultaneously a person's cardiovascular and respiratory patterns and galvanic skin response: *Provided*, That the instrument may record other physiological changes pertinent to the detection of deception.

(4) "Prospective employee" means an individual seeking or being sought for employment with an employer.

(5) "Psychophysiological detection of deception" means an examination which records permanently and simultaneously a person's cardiovascular and respiratory patterns and galvanic skin response.

§21-5-5b. Employer limitations on use of detection of deception devices or instruments; exceptions.

No employer may require or request either directly or indirectly, that any employee or prospective employee of the employer submit to a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness, and no employer may knowingly allow the results of any examination administered outside this state to be utilized for the purpose of determining whether to employ a prospective employee or to continue the employment of an employee in this state: *Provided*, That the provisions of this section shall not apply to employees or prospective employees who would have direct access to the manufacture, storage, distribution or sale of any controlled substance listed in schedule I, II, III, IV or V of section eight hundred twelve of title twenty-one of the United States code: *Provided, however*, That the provisions of this section shall not apply to law-enforcement agencies or to military forces of the state as defined by section one, article one, chapter fifteen of the code: *Provided further*, That the results of any examination shall be used solely for the purpose of determining whether to employ or to continue to employ any person exempted hereunder and for no other purpose.

§21-5-5c. License required for psychophysiological detection of deception examiners; qualifications; promulgation of rules governing administration of psychophysiological detection of deception examinations.

(a) No person, firm, or corporation shall administer a psychophysiological detection of deception examination, lie detector or other similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without holding a current valid license to do so as issued by the Commissioner of Labor. No examination shall be administered by a licensed corporation except by an officer or employee thereof who is also licensed.

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

(1) Is at least 21 years of age;

(2) Is a citizen of the United States;

(3) Has not been convicted of a felony: *Provided*, That the commissioner shall apply §21-1-6 of this code to determine if the prior criminal conviction bears a rational nexus to the license being sought;

(4) Has not been released or discharged with other than honorable conditions from any of the armed services of the United States or that of any other nation;

(5) Has passed an examination conducted by the Commissioner of Labor or under his or her supervision to determine his or her competency to obtain a license to practice as an examiner;

(6) Has satisfactorily completed not less than six months of internship training; and

(7) Has met any other qualifications of education or training established by the Commissioner of Labor in his or her sole discretion which qualifications are to be at least as stringent as those recommended by the American Polygraph Association.

(c) The Commissioner of Labor may designate and administer any test he or she considers appropriate to those persons applying for a license to administer psychophysiological detection of deception, lie detector or similar examination. The test shall be designed to ensure that the applicant is thoroughly familiar with the code of ethics of the American Polygraph Association and has been trained in accordance with association rules. The test must also include a rigorous examination of the applicant's knowledge of and familiarity with all aspects of operating psychophysiological detection of deception equipment and administering psychophysiological detection of deception examinations.

(d) The license to administer psychophysiological detection of deception, lie detector or similar examinations to any person shall be issued for a period of one year. It may be reissued from year to year. The licenses to be issued are:

(1) "Class I license" which authorizes an individual to administer psychophysiological detection of deception examinations for all purposes which are permissible under the provisions of this article and other applicable laws and rules.

(2) "Class II license" which authorizes an individual who is a full-time employee of a law-enforcement agency to administer psychophysiological detection of deception examinations to its employees or prospective employees only.

(e) The Commissioner of Labor shall charge an annual fee to be established by legislative rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and deposited in an appropriated special revenue account hereby created in the State Treasury to be known as the Psychophysiological Examiners Fund and expended for the implementation and enforcement of this section. Through June 30, 2019, amounts collected which are found from time to time to exceed funds needed for the purposes set forth in this section may be utilized by the commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the division's funding obligations. In addition to any other information required, an application for a license shall include the applicant's Social Security Number.

(f) The Commissioner of Labor shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code governing the administration of psychophysiological detection of deception, lie detector or similar examination to any person: *Provided*, That all applicable rules in effect on the effective date of §21-5-5a, §21-5-5b, §21-5-5c and §21-5-5d of this code will remain in effect until amended, withdrawn, revoked, repealed or replaced. The legislative rules shall include:

(1) The type and amount of training or schooling necessary for a person before which he or she may be licensed to administer or interpret a psychophysiological detection of deception, lie detector or similar examination;

(2) Testing requirements including the designation of the test to be administered to persons applying for licensure;

(3) Standards of accuracy which shall be met by machines or other devices to be used in psychophysiological detection of deception, lie detector, or similar examination;

(4) The conditions under which a psychophysiological detection of deception, lie detector, or similar examination may be administered;

(5) Fees for licenses, renewals of licenses, and other services provided by the commissioner;

(6) Any other qualifications or requirements, including continuing education, established by the commissioner for the issuance or renewal of licenses; and

(7) Any other purpose to carry out the requirements of §21-5-5a, §21-5-5b, §21-5-5c and §21-5-5d of this code.

§21-5-5d. Penalties; cause of action.

(a) It shall be a misdemeanor to administer or interpret a psychophysiological detection of deception, lie detector or similar examination utilizing mechanical or electronic measures of physiological reactions to evaluate truthfulness without having received a valid and current license to do so as issued by the Commissioner of Labor or in violation of any rule or regulation promulgated by the commissioner under

section five-c of this article. Any person convicted of violating section five-c shall be fined not more than five hundred dollars.

(b) Any person who violates section five-b of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than five hundred dollars.

(c) Any employee or prospective employee has a right to sue an employer or prospective employer for a violation of the provisions of section five-b of this article. If successful, the employee or prospective employee shall recover threefold the damages sustained by him or her, together with reasonable attorneys' fees, filing fees and reasonable costs of the action. Reasonable costs of the action may include, but shall not be limited to, the expenses of discovery and document reproduction. Damages may include, but shall not be limited to, back pay for the period during which the employee did not work or was denied a job.