

# WEST VIRGINIA LEGISLATURE

## 2020 REGULAR SESSION

**Introduced**

### **House Bill 4867**

**FISCAL  
NOTE**

BY DELEGATES CAPITO, NELSON, ROBINSON, BYRD,

PUSHKIN, SKAFF AND ROWE

[Introduced February 11, 2020; Referred to the

Committee on the Judiciary]

1 A BILL to amend and reenact §21-5-5c of the Code of West Virginia, 1931, as amended, relating  
 2 to psychophysiological detection of deception examinations by law-enforcement officers;  
 3 authorizing law-enforcement officers with a Class II license to conduct examinations of  
 4 employees of other law-enforcement agencies; and requiring certain legislative rules  
 5 pertaining to psychophysiological detection of deception examinations to include a  
 6 provision requiring video recording of the examinations.

*Be it enacted by the Legislature of West Virginia:*

**ARTICLE 5. WAGE PAYMENT AND COLLECTION.**

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

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

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

7 (1) Is at least 21 years of age;

8 (2) Is a citizen of the United States;

9 (3) Has not been convicted of a misdemeanor involving moral turpitude or a felony;

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

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

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

15 (7) Has met any other qualifications of education or training established by the

16 Commissioner of Labor in his or her sole discretion which qualifications are to be at least as  
17 stringent as those recommended by the American Polygraph Association.

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

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

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

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

35 (e) The Commissioner of Labor shall charge an annual fee to be established by legislative  
36 rule. All fees paid pursuant to this section shall be paid to the Commissioner of Labor and  
37 deposited in an appropriated special revenue account hereby created in the State Treasury to be  
38 known as the Psychophysiological Examiners Fund and expended for the implementation and  
39 enforcement of this section. Through June 30, 2019, amounts collected which are found from time  
40 to time to exceed funds needed for the purposes set forth in this section may be utilized by the  
41 commissioner as needed to meet the division's funding obligations: *Provided*, That beginning July

42 1, 2019, amounts collected may not be utilized by the commissioner as needed to meet the  
43 division's funding obligations. In addition to any other information required, an application for a  
44 license shall include the applicant's Social Security number.

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

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

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

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

58 (4) The conditions under which a psychophysiological detection of deception, lie detector,  
59 or similar examination may be administered: *Provided*, That the rules shall require a continuous  
60 video recording of the examination with any stops or pauses explained on the recording;

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

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

65 (7) Any other purpose to carry out the requirements of §21-5-5a, §21-5-5b, §21-5-5c, and  
66 §21-5-5d of this code.

NOTE: The purpose of this bill is to require video recorded polygraph examinations.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.