

Use in hiring limited

New polygraph law takes effect March 30

By MIKE SCANLON

They are mysterious and misunderstood, and what they are most often used for will soon be illegal.

They are lie detectors — polygraphs to the professionals. Beginning March 30, employers can no longer reject applicants who meet other job qualifications but who refuse to take a polygraph. And applicants who agree to take the test but "fail" the polygraph cannot be rejected because of the test results.

People already on the payroll have the same protections, and the provisions also apply to the use of "psychological stress evaluations," or voice analysis.

The law makes no change in police use of polygraphs. State Rep. Dennis Hertel, D-Detroit, prime sponsor of the law, says it will head off polygraph examination of "people's private lives."

The American Civil Liberties Union (ACLU) lobbied throughout the '70s for tougher controls on polygraphs in job interviews, and a spokesman for the Michigan chapter said the group views the new law as protection of privacy.

"We think it's an invasion of privacy, very basically, to require that applicants for employment submit to this kind of thing," said ACLU spokesman David Pearl, citing what he called past examinations that extended "far beyond the scope of the need for employment information — violations of the prohibitions against asking people about their political beliefs, their attitudes toward unionization and their family life."

POLYGRAPH EXAMINERS say the restrictions are needlessly broad. Smaller examining firms or independent examiners, some of whom rely on job-related testing for up to 80 percent of their business, could be forced out of the trade, say examiners. Fees for pre-employment testing locally cost about \$50, with other kinds of polygraph testing costing more.

Examiners also believe pre-employment honesty checks will be conducted one way or another. They believe restrictions on polygraphs will encourage employers to rely on other screening procedures that could prove even more objectionable to civil libertarians, especially intensive background investigations.

"If we have a good deal of money

disappear, believe me, we have other methods that we can use," said Robert Feist. "This is going to be worse than any polygraph examination. Worse."

FEIST is Michigan regional security manager for Naums', a New York-based group of catalogue wholesale stores with eight Michigan outlets. Naums' is among companies which lobbied actively against passage last year of the new law.

"I don't think it's the kind of approach that should have been taken," said Frank Horvath, Ph.D., chairman of the state board of forensic polygraph examiners. "I think they should have looked at the matter in greater depth."

"I don't think anyone is really sure what this bill says. It'll probably be decided by the courts," Horvath added. Horvath said he was most concerned about a section of the law which extends protection to current employees. As phrased, the law prohibits employers from asking if workers would be willing to take polygraph tests. Some police officers worry privately that the section may lead to official police action and arrests when companies would have launched informal, internal investigations before the new measure became law.

Pearl said he was not troubled by the prospect of increased arrests. "If a crime has been committed, you're supposed to call in the police," he said.

Feist said he was most concerned with a section of the law which prevents companies from taking "any action" based on a polygraph examiner's opinion.

THE POLYGRAPH machine does not detect lies.

It measures galvanic skin response, blood pressure and pulse, and breathing at two points on the torso. Because it relies on physical reactions, polygraph examinations are not usually considered trustworthy when performed on people whose physical condition is in flux, like recent surgery patients and women past the fourth month of pregnancy.

The measurement is made in the form of four parallel lines printed on paper. Most people would see the lines as meaningless squiggles, but examiners draw opinions from them based on the tested person's truthfulness or "deceptiveness" — the jargon of the trade for lies.

THE MORE HIGHLY skilled the examiner, the more likely his opinions are to be correct.

"Polygraphs have 70 to 95 percent reliability," said Horvath. "The difference depends on the examiner."

Feist, who estimated he has performed 600 to 1,000 examinations for Naums', rejected the idea that polygraph examinations will be useless for pre-employment screening if the examiners' opinions cannot be legally considered by employers.

"At least if we hire a thief, we know we're hiring a thief," he said.

"I think (the law) is unreasonable, unwarranted and does not strike a fair balance between the interests of employer and employee," said Lynn Marcy, adding "I believe there's a public interest that outweighs either of the two special interests."

Marcy runs Marcy Associates, a Dearborn-based firm many examiners consider the state's most prestigious private polygraph company. The firm

also teaches polygraph examining, mainly to law enforcement officers.

Marcy said his greatest concern with the law is that he believes it conflicts with federal regulations concerning employment qualifications for some high-risk jobs, like interstate truck drivers or guards at nuclear power plants.

And despite his warnings of intrusion by other kinds of investigation tools, Feist himself is clearly sorry to see polygraphs become what he considers an endangered species.

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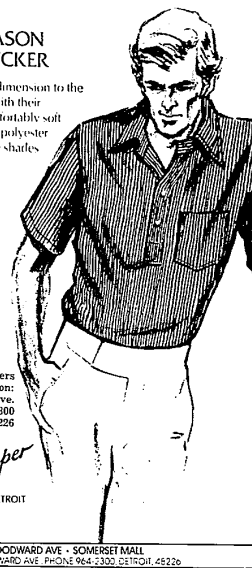
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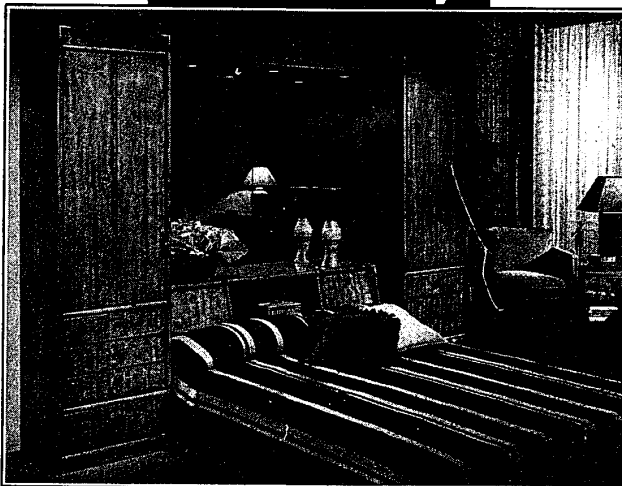


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