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CHAPTER 53.

 POLYGRAPH EXAMINERS ACT

**SECTION 40‑53‑10.** Short title.

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

HISTORY: 1962 Code Section 56‑1543.51; 1972 (57) 2724.

**SECTION 40‑53‑20.** Declaration of purpose; construction.

 It is the purpose of this chapter to regulate all persons who purport to be able to detect deception or to verify truth of statements through the use of instrumentation such as lie detectors, polygraphs, deceptographs, and similar or related devices and instruments without regard to the nomenclature applied thereto. This chapter shall be liberally construed to apply to all such persons and instruments.

HISTORY: 1962 Code Section 56‑1543.52; 1972 (57) 2724.

 In this chapter, unless the context requires a different meaning:

 (1) "Internship" means the study of polygraph examinations and of the administration of polygraph examinations by a trainee under the personal supervision and control of a polygraph examiner in accordance with a course of study prescribed by the South Carolina Law Enforcement Division at the commencement of internship;

 (2) "Person" means any natural person, firm, association, copartnership, or corporation;

 (3) "Polygraph examiner" means any person who purports to be able to detect deception or verify truth of statements through instrumentation or the use of a mechanical device;

 (4) "The Division" means the South Carolina Law Enforcement Division;

 (5) "Active Investigative Experience" means experience as a detective or an investigator where the act of interrogation or debriefing is practiced on a case‑by‑case basis.

HISTORY: 1962 Code Section 56‑1543.53; 1972 (57) 2724; 1985 Act No. 99 Section 2.

**SECTION 40‑53‑40.** Minimum requirements for instruments.

 Any instrument used to test or question individuals for the purpose of detecting deception or verifying truth of statements shall record visually, permanently and simultaneously: (1) the subject's cardiovascular pattern and (2) respiratory pattern. Patterns of other physiological changes in addition to (1) and (2) may also be recorded. The use of any instrument or device to detect deception or to verify truth of statements which does not meet these minimum instrumentation requirements is hereby prohibited and the operation or use of such equipment shall be subject to penalties and may be enjoined in the manner hereinafter provided.

HISTORY: 1962 Code Section 56‑1543.54; 1972 (57) 2724.

 (a) The Division shall issue regulations not inconsistent 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.

 (b) All fees collected under the provisions of this chapter shall be paid to the Treasurer of the State of South Carolina.

HISTORY: 1962 Code Section 56‑1543.55; 1972 (57) 2724.

**SECTION 40‑53‑60.** License required.

 It shall be unlawful for any person, including a city, county or State employee, to administer polygraph or other examinations utilizing instrumentation for the purpose of detecting deception or verifying truth of statements or to attempt to hold himself out as a polygraph examiner or to refer to himself by any other title which would indicate or which is intended to indicate or calculated to mislead members of the public into believing that he is qualified to apply instrumentation to detect deception or to verify truth of statements without first securing a license as herein provided.

HISTORY: 1962 Code Section 56‑1543.56; 1972 (57) 2724.

**SECTION 40‑53‑70.** Qualifications of licensees.

 A person is qualified to receive a license as an examiner if he:

 (1) is at least twenty‑one years of age;

 (2) is a citizen of the United States;

 (3) establishes that he is a person of honesty, truthfulness, integrity, and moral fitness;

 (4) has not been convicted of a felony or a misdemeanor involving moral turpitude;

 (5) holds a baccalaureate degree from a college or university accredited by the American Association of Collegiate Registrars and Admissions Officers or is a graduate of an accredited high school and has five consecutive years of active investigative experience immediately preceding his application;

 (6) is a graduate of a polygraph examiners' course approved by the division and satisfactorily has completed not less than six months of internship training. However, if the applicant is not a graduate of an approved polygraph examiners' course, satisfactory completion of not less than twelve months of internship training may satisfy this item;

 (7) has passed an examination conducted by the division or under its supervision to determine his competency to obtain a license to practice as an examiner;

 (8) before the issuance of a license, furnishes to the division evidence of a surety bond, insurance policy, or other surety acceptable to the division. The surety bond, insurance policy, or other surety acceptable to the division must be five thousand dollars and conditioned that the obligor will pay to the extent of the face amount of the surety bond, insurance policy, or other surety acceptable to the division judgments which may be recovered against the licensee by reason of wrongful or illegal acts committed by him in the course of his examinations. To retain licensure a surety bond, insurance policy, or other surety acceptable to the division must be maintained, and a change in coverage must be reported to the division within thirty days.

HISTORY: 1962 Code Section 56‑1543.57; 1972 (57) 2724; 1991 Act No. 152, Section 1.

 On July 7, 1972, any person who is actually engaged in the occupation, business, or profession of a polygraph examiner and who is using for that purpose the instrumentation prescribed in Section 40‑53‑30 shall, upon application within ninety days after July 7, 1972 and payment of the required license fee, be issued a polygraph examiner's license which shall be effective no longer than one year from date of issuance, provided, however, that the Division may require such applicant to submit satisfactory proof that he is so engaged. The applicant must also satisfy the requirements of Section 40‑53‑70(a), (d) and (h).

HISTORY: 1962 Code Section 56‑1543.58; 1972 (57) 2724.

**SECTION 40‑53‑90.** Application for license.

 Applications for original licenses shall be made to the Division in writing under oath on forms prescribed by the Division and shall be accompanied by the required fee, which is not refundable. Any such application shall require such information as in the judgment of the Division will enable it to pass on the qualifications of the applicant for a license.

HISTORY: 1962 Code Section 56‑1543.59; 1972 (57) 2724.

**SECTION 40‑53‑100.** Nonresident applicants.

 (a) Each nonresident applicant for an original license or a renewal license shall file with the Division an irrevocable consent that actions against such applicant may be filed in any appropriate court of any county 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 that process on any such action may be served on the applicant by leaving two copies thereof with the Division. Such consent shall stipulate and agree that such service shall be valid and binding for all purposes. The Division shall send one copy of the process to the applicant at the address shown on the records of the applicant by registered or certified mail.

 (b) Nonresident applicants must satisfy the requirements of Section 40‑51‑70.

HISTORY: 1962 Code Section 56‑1543.60; 1972 (57) 2724.

**SECTION 40‑53‑110.** Licensing of person licensed under laws of another state or territory.

 An applicant who is a polygraph examiner licensed under the laws of another state or territory of the United States may be issued a license without examination by the Division, in its discretion, upon payment of a fee of fifty dollars and the production of satisfactory proof that:

 (a) He is at least twenty‑one years of age;

 (b) He is a citizen of the United States;

 (c) He is of good moral character;

 (d) The requirements for licensing of polygraph examiner in such 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;

 (e) The applicant had lawfully engaged in the administration of polygraph examinations under the laws of such state or territory for at least two years prior to his application for license hereunder;

 (f) Such other state or territory grants similar reciprocity to license holders of this State; and

 (g) He has complied with Section 40‑53‑100.

HISTORY: 1962 Code Section 56‑1543.61; 1972 (57) 2724.

**SECTION 40‑53‑120.** Internship license.

 (a) Upon approval by the Division, it shall issue an internship license to a trainee provided he applies for such license and pays the required fee within ten days prior to the commencement of his internship. The application shall contain such information as may be required by the Division.

 (b) An internship license shall be valid for the term of twelve months from the date of issue. Such license may be extended or renewed for any term not to exceed six months upon good cause shown to the Division.

 (c) A trainee shall not be entitled to hold an internship license after the expiration of the original twelve‑month period and a six‑month extension until twelve months after the date of expiration of the last internship license held by such trainee.

HISTORY: 1962 Code Section 56‑1543.62; 1972 (57) 2724.

**SECTION 40‑53‑130.** Fees.

 Fees for an original polygraph examiner's license, internship license, duplicate license, and fees for renewal and extension of the licenses must be set by the Division by regulation.

HISTORY: 1962 Code Section 56‑1543.63; 1972 (57) 2724; 1985 Act No. 99 Section 3.

**SECTION 40‑53‑140.** Display of license.

 A license or duplicate license must be prominently displayed at the place of business of the polygraph examiner or at the place of internship. Each license shall be signed by the Chief of the Division and shall be issued under the seal of the Division.

HISTORY: 1962 Code Section 56‑1543.64; 1972 (57) 2724.

**SECTION 40‑53‑150.** Licensee required to give notice of change of business location.

 Notice in writing shall be given to the Division by the licensed examiner of any change of principal business location within thirty days of the time he changes the location. A change of business location without notification to the Division shall automatically suspend the license theretofore issued.

HISTORY: 1962 Code Section 56‑1543.65; 1972 (57) 2724.

**SECTION 40‑53‑160.** Renewal of license.

 A polygraph examiner's license must be issued for one year and, unless suspended or revoked, must be renewed annually as prescribed by the division upon evidence of a current surety bond, insurance policy, or other surety acceptable to the division of five thousand dollars. A polygraph examiner whose license has expired within two years after its expiration may obtain a renewal license without examination by making a renewal application and satisfying Section 40‑53‑70(2), (3), and (4). However, a polygraph examiner whose license expired while he was in the federal service on active duty with the armed forces of the United States, or the National Guard 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 license renewed without examination if within two years after termination of service, training, or education, except under a condition other than honorable, he furnishes the division with an affidavit to the effect that he has been so engaged, and that his service, training, or education has been terminated. He also shall comply with Section 40‑53‑70(2), (3) and (4).

HISTORY: 1962 Code Section 56‑1543.66; 1972 (57) 2724; 1991 Act No. 152, Section 2.

**SECTION 40‑53‑170.** Allegation and proof of valid license required in action or counterclaim relating to agreement or service for which license is required.

 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 without alleging and proving that such person had a valid license at the time of making such agreement or performing such services.

HISTORY: 1962 Code Section 56‑1543.67; 1972 (57) 2724.

**SECTION 40‑53‑180.** Grounds for refusal to issue, suspension, or revocation of license.

 The Division may refuse to issue or may suspend or revoke a license on any one or more of the following grounds:

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

 (b) Failing to inform a subject to be examined that his participation in the examination is voluntary;

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

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

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

 (f) Making any wilful 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;

 (g) Having demonstrated unworthiness or incompetency to act as a polygraph examiner as defined by this chapter;

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

 (i) Wilfully aiding or abetting another in the violation of this chapter or any regulation or rule issued pursuant thereto;

 (j) Where the license holder has been adjudged as a habitual drunkard or mentally incompetent as provided for in the 1976 Code;

 (k) Failing, within a reasonable time, to provide information requested by the Division as the result of a formal complaint to the Division which would indicate a violation of this chapter; or

 (l) Failing to inform the subject of the results of the examination if so requested.

HISTORY: 1962 Code Section 56‑1543.68; 1972 (57) 2724.

**SECTION 40‑53‑190.** Liability of licensee for acts of other polygraph examiner or trainee.

 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 other polygraph examiners by whom the offending examiner or trainee may have been employed, unless it shall appear to the satisfaction of the Division that the polygraph examiner‑employer has wilfully or negligently aided or abetted the illegal actions or activities of the offending polygraph examiner or trainee.

HISTORY: 1962 Code Section 56‑1543.69; 1972 (57) 2724.

**SECTION 40‑53‑210.** Notice of impending refusal to issue, suspension, or revocation of license; hearing.

 (a) When there is a cause to refuse an application or to suspend or revoke the license of any polygraph examiner, the Division shall, not less than thirty days before refusal, suspension, or revocation action is taken, notify such person by certified mail at the last address supplied to the Division by such person of such impending refusal, suspension, or revocation, the reasons therefor, and of his right to an administrative hearing for the purpose of determining whether or not the evidence is sufficient to warrant the refusal, suspension, or revocation action proposed to be taken by the Division.

 If within twenty days after such notice has been deposited in the United States mail such person has not made a written request to the Division for an administrative hearing, the Division is authorized to suspend or revoke the polygraph examiner's license without a hearing. Upon receipt by the Division of a written request of such person within the twenty‑day period as set out above, an opportunity for an administrative hearing shall be afforded as early as is practicable. In no case shall the hearing be held less than ten days after written notification thereof, including a copy of the charges, shall have been given the person by certified mail sent to the last address supplied to the Division by the applicant or licensee. The administrative hearing in such cases shall be before the Division Chief.

 (b) The Division 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 and documents. On the basis of the evidence submitted at the hearing, the Division shall take whatever action it deems necessary in refusing the application or suspending or revoking the license.

HISTORY: 1962 Code Section 56‑1543.71; 1972 (57) 2724.

**SECTION 40‑53‑220.** Appeal.

 Any person dissatisfied with the action of the Division in refusing his application or suspending or revoking his license or any other action of the Division may appeal by filing a petition within thirty days thereafter in the circuit court in the county where the person resides, and the court shall set the matter for hearing upon ten days' written notice to the Division. 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 Division should be suspended pending hearing and enter its order accordingly. The court shall provide the attorney representing the Division with a copy of the petition and order. The Division shall be represented in such appeals by the Attorney General or his designated assistants.

HISTORY: 1962 Code Section 56‑1543.72; 1972 (57) 2724.

**SECTION 40‑53‑230.** Surrender of license upon revocation or suspension.

 Upon the revocation or suspension of any license, the licensee shall forthwith surrender his license to the Division, and failure of a licensee to do so shall be a violation of this chapter and upon conviction shall subject such licensee to the penalties hereinafter set forth.

HISTORY: 1962 Code Section 56‑1543.73; 1972 (57) 2724.

**SECTION 40‑53‑240.** Injunctions.

 If any person violates any provisions of this chapter, the Division may, in the name of the State of South Carolina, through the Attorney General, apply in any circuit court of competent jurisdiction for an order enjoining such violation or for an order enforcing compliance with this chapter. Upon the filing of a verified petition in the court, the court, if satisfied by affidavit or otherwise that the person has violated this chapter, may issue a temporary injunction without notice or bond enjoining such continued violation and if it is established that the person has violated or is violating this chapter, the court may enter a decree perpetually enjoining the violation or enforcing compliance with this chapter. Proceedings under this section shall be in addition to, and not in lieu of, all other remedies and penalties provided by this chapter.

HISTORY: 1962 Code Section 56‑1543.74; 1972 (57) 2724.

**SECTION 40‑53‑250.** Penalties.

 Any person who violates any provision of this chapter or any person who falsely states or represents that he has been or is a polygraph examiner or trainee or that he is qualified to apply instrumentation to the detection of deception or verification of truth of statements shall be deemed guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars or by imprisonment in the county jail for a term of not to exceed six months, or both.

HISTORY: 1962 Code Section 56‑1543.75; 1972 (57) 2724.