

/\* Here is the full text of The Employee Protection Polygraph Protection Act, part one. \*/

28 U.S.C. 2001

Section 2001. Definitions- As used in this Act:

(1) COMMERCE- The term "commerce" has the meaning provided by section 3(b) of the Fair Labor Standards Act of 1938.

/\* Virtually anyone in business will be involved in commerce. This definition is contained in the full text of the Fair Labor Standards (Minimum Wage) tutorial, together with comments. \*/

(2) EMPLOYER- The term "employer" includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) LIE DETECTOR- The term "lie detector" includes a polygraph, a deceptoragraphy, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical or electrical) that is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(4) POLYGRAPH. The term "polygraph" means an instrument that-

(A) records continuously, visually, permanently, and simultaneously changes in cardiovascular, respiratory, and electrodermal patterns as minimum instrumentation standards; and

(B) is used, or the results of which are used, for the purpose of rendering a diagnostic opinion regarding the honesty or dishonesty of an individual.

(5) SECRETARY. The term "Secretary" means the Secretary of Labor.

Section 2002. Prohibitions on lie detector use

/\* This section states the general rule, that there is a prohibition against use of lie detector tests as a pre-employment requirement, or during employment. The exceptions follow in later sections. \*/

Except as provided in sections 2006 and 2007, it shall be unlawful for any employer engaging in or affecting interstate commerce or in the production of goods for commerce--

(1) directly or indirectly, to require, suggest or cause any employee or prospective employee to take or submit to any lie detector test;

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective

employee;

(3) to discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against--

(A) any employee or prospective employee who refuses, declines or fails to take or submit to any lie detector test, or

(4) to discharge, discipline, discriminate against in any manner, or deny employment or promotion to, or threaten to take any such action against any employee or prospective employee because--

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act,

(B) such employee or prospective employee has testified or is about to testify in any such proceeding, or

(C) of the exercise by such employee or prospective employee or another person, of any right afforded by this Act.

#### Section 2003. Notice of protection

The Secretary shall prepare, have printed, and distribute a notice setting forth excerpts from, or summaries of, the pertinent provisions of this Act. Each employer shall post and maintain such notice in conspicuous places on its premises where notices to employees and applicants to employment are customarily posted.

#### Section 2004. Authority of the Secretary

(a) In General. The Secretary shall--

(1) issue such rules and regulation as may be necessary or appropriate to carry out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) Subpoena authority. For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act.

#### Section 2205. Enforcement provisions

/\* Should an employer fail to follow the act they may be fined by the Department of Labor, or, more importantly an employee who was adversely affected can sue the employer to gain back whatever it was that they lost. \*/

(a) Civil Penalties

(1) In general. Subject to paragraph (2), any employer who violates any provision of this Act may be assessed a civil penalty of not more than \$ 10,000.

(2) Determination of amount. In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) Collection. Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act with respect to civil penalties assessed under subsection (a) of such section.

(b) Injunctive actions by the Secretary. The Secretary may bring an action under this section to restrain violations of this Act. The Solicitor of Labor may appear for and represent the Secretary in any litigation brought under this Act. In any action brought under this section, the district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act, including such legal or equitable relief as may be appropriate, including but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

(c) Private civil actions.

(1) Liability. An employer who violates this Act shall be liable to the employee or prospective employee affected by such violation. Such employer shall be liable for such legal or equitable relief as may be appropriate, including, but not limited to, employment, reinstatement, promotion, and the payment of lost wages and benefits.

/\* The act provides in private civil enforcement cases that the court can grant you (basically) what you lost. Note that the Court can force an employer to take someone back. I'm not sure that I would want to work for an employer who I had sued under this Act. \*/

(2) Court. An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by an employee or prospective employee for or on behalf of such employee, prospective employee, and other employees or prospective employees similarly situated. No such action may be commenced more than 3 years after the date of the alleged

violation.

(3) Costs. The court, in its discretion, may allow the prevailing party (other than the United States) reasonable costs, including attorney's fees.

/\* The winning party gets its attorney's fees. Normally attorney's fees will not be assessed against the employee unless the suit was in bad faith. \*/.

(d) Waiver of rights prohibited. The rights and procedures provided by this Act may not be waived by contract or otherwise, unless such waiver is part of a written settlement agreement agreed to and signed by the parties to the pending action or complaint under this Act.

## Section 2006. Exemptions

/\* The exemptions to the general rules of no polygraph testing are contained in this section. The most important are: all governments, certain government contractors and security personnel.\*/

(a) No application to governmental employers. This Act shall not apply with respect to the United States Government, any State or local government, or any political subdivision of a State or local government.

(b) National defense and security exemption.

(1) National defense. Nothing in this Act shall be construed to prohibit the administration, by the Federal Government, in the performance of any counterintelligence function, of any lie detector test to--

(A) any expert or consultant under contract to the Department of Defense of any employee of any contractor of such Department; or

(B) any expert or consultant under contract with the Department of Energy in connection with the atomic energy defense activities of such Department or any employee of any contractor of such Department in connection with such activities.

(2) Security. Nothing in this Act shall be construed to prohibit the administration, by the Federal Government, in the performance of any counterintelligence function, of any lie detector test to--

(A)(i) any individual employed by, assigned to, or detailed to the National Security Agency, the Defense Intelligence Agency, or the Central Intelligence Agency,

(ii) any expert or consultant under contract to any such Agency,

(iii) any employee of a contractor to any such agency,

(iv) any individual applying for a position in any such agency, or

(v) any individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for any such agency; or

(B) any expert, or consultant (or employee of such expert or consultant) under contract with any Federal Government department, agency, or program whose duties involve access to information that has been classified at the level of top secret or designated as being with a special access program under section 4.2(a) of Executive Order 12356 (or a successor Executive order).

(c) FBI contractors exemption. Nothing in this Act shall be construed to prohibit the administration, by the Federal Government, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

/\* Persons in private, non-security positions can be REQUESTED to take a polygraph test under the circumstances stated in this exception. \*/

(d) Limited exception for ongoing investigations. Subject to sections 2007 and 2009. this Act shall not prohibit an employer from requesting an employee to submit to a polygraph test if--

(1) the test is administered in connection with an ongoing investigation involving economic loss or injury to the employer's business, such as theft, embezzlement, misappropriation, or an act of unlawful industrial espionage or sabotage;

(2) the employee has access to the property that is the subject of the investigation;

(3) the employer has a reasonable suspicion that the employee was involved in the incident or activity under investigation; and

(4) the employer executes a statement, provided to the examinee before the test, that--

(A) sets forth with particularity the specific incident or activity being investigated and the basis for testing particular employees,

(B) is signed by a person (other than a polygraph examiner) authorized to legally bind the employer,

(C) is retained by the employer for at least 3 years, and

(D) contains at a minimum--

(i) an identification of the specific economic loss or injury to the business of the employer,

(ii) a statement indicating that the employee had access to the property that is the subject of the investigation, and

(iii) a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident or activity under investigation.

(e) Exemption for security services.

(1) In general. Subject to paragraph 2 and sections 2007 and 2209, this Act shall not prohibit the use of polygraph tests on prospective employees by any private employer whose primary business purpose consists of providing armored car personnel, personnel engaged in the design, installation, and maintenance of security alarm systems, or other uniformed or plainclothes security personnel and whose function includes protection of--

(A) facilities, materials, or operations having a significant impact on the health or safety of any State or political subdivision thereof, or the national security of the United States, as determined under rules and regulations issued by the Secretary within 90 days after the date of the enactment of this Act, including--

(i) facilities engaged in the production, transmission, or distribution of electric or nuclear power,

(ii) public water supply facilities,

(iii) shipments or storage of radioactive or other toxic waste materials, and

(iv) public transportation, or

(B) currency, negotiable securities, precious commodities or instruments, or proprietary information.

(2) Access. The exemption provided under this subsection shall not apply if the test is administered to a prospective employee who would not be employed to protect facilities, materials, operations, or assets referred to in paragraph (1).

(f) Exemption for drug security, drug theft, or drug diversion investigations.

(1) In general. Subject to paragraph (2) and sections 2007 and 2009, this Act shall not prohibit the use of a polygraph

test by any employer authorized to manufacture, distribute, or dispense a controlled substance listed in schedule I, III, or IV of section 202 of the Controlled Substances Act.

(2) Access. The exemption provided under this subsection shall apply--

(A) if the test is administered to a prospective employee who would have direct access to the manufacture, storage, distribution, or sale of any such controlled substance; or

(B) in the case of a test administered to a current employee, if--

(i) the test is administered in connection with an ongoing investigation of criminal or other misconduct involving, or potentially involving, loss or injury to the manufacturer, distribution, or dispensing of any such controlled substance by such employer, and

(ii) the employee has access to the person or property that is the subject of the investigation.

/\* This statute continues in the selection from the statutes menu entitled "Polygraph, part 2." \*/