

By Mr. Cohen of Newton, petition of David B. Cohen, Nicholas J. Costello, Frances F. Alexander and Peter A. Vellucci relative to the use of lie detector tests by certain employers. Commerce and Labor.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Eighty-Six.

AN ACT STRENGTHENING EMPLOYEE RIGHTS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 149 of the General Laws is hereby amended by strik-
2 ing section 19B, as most recently amended by Chapter 620 of
3 the Acts of 1973, and substituting therefore the following
4 section: —

5 Section 19B. As used in this section the term "lie detector
6 test" shall mean any test utilizing a polygraph or any other
7 device, mechanism, instrument or written examination, which
8 is operated, or the results of which are used or interpreted by
9 an examiner for the purpose of purporting to assist in or
10 enable the detection of deception, the verification of truthful-
11 ness, or the rendering of a diagnostic opinion regarding the
12 honesty of an individual.

13 (1) It shall be unlawful for any employer or his agent, with
14 respect to any of his employees, or any person applying to him
15 for employment, including any person applying for employment
16 as a police officer, (a) to subject such person to, or request such
17 person to take, a lie detector test, or (b) to discharge, not hire,
18 demote or otherwise discriminate against such person for the
19 assertion of rights arising hereunder. This section shall not apply
20 to lie detector tests administered by law enforcement agencies as
21 may be otherwise permitted in criminal investigations.

22 The fact that the lie detector test was to be, or was, adminis-
23 tered outside the Commonwealth for employment within the
24 Commonwealth shall not be a valid defense. The provisions of

25 this section shall also apply to lie detector tests which are or may
26 be administered within the Commonwealth for employment
27 outside the Commonwealth.

28 All applications for employment within the Commonwealth
29 shall contain the following notice which shall be in clearly legible
30 print.

31 "It is illegal in Massachusetts to administer a lie detector test
32 as a condition of employment or continued employment. An
33 employer who violates this law may be subject to criminal
34 penalties and civil liability."

35 (2) Any person who violates any provision of this section
36 shall be punished by a fine of not more than one thousand
37 dollars or less than three hundred dollars. Second and subse-
38 quent violations of any provision of this section shall be pun-
39 ishable by a fine of not more than fifteen hundred dollars or
40 by imprisonment for not more than ninety days, or both.

41 In the case of a corporation, the responsible individual shall
42 be the president, chief operating officer or any managerial or
43 supervisory person who allows or condones the violation.

44 No waiver of the provisions of this section by an employee
45 or prospective employee shall be a defense to either criminal
46 prosecution or civil liability.

47 (3) Any person aggrieved by a violation of subsection (1)
48 may institute within three years of such violation and prosecute
49 in his own name and on his own behalf, or for himself and for
50 other similarly situated, a civil action for injunctive relief and
51 any damages thereby incurred, including treble damages for
52 any loss of wages or benefits. The total awarded shall equal or
53 exceed a minimum of five hundred dollars for each violation.
54 Any person so aggrieved who prevails shall be entitled to an
55 award of the costs of the litigation and a reasonable attorney's
56 fee.