

By Mr. Cohen of Newton, petition of David B. Cohen, Frances F. Alexander, Jack H. Backman, George Bachrach and Frederick E. Berry for legislation to limit the use of lie detector tests. Commerce and Labor.

The Commonwealth of Massachusetts

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

AN ACT LIMITING TESTING OF EMPLOYEES.

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 149B of the General Laws is hereby amended by
2 striking out section 19B, as most recently amended by chapter
3 620 of the Acts of 1973, and inserting in its place the following
4 sections: —

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 No employer, either personally or through an agent or repre-
14 sentative shall directly or indirectly require, request, or permit
15 any employee or applicant for employment or prospective
16 employment to submit to a lie detector test as a condition
17 of employment or continued employment.

18 The fact that the lie detector test was to be, or was admin-
19 istered outside the Commonwealth for employment within the
20 Commonwealth shall not be a valid defense. The provisions of
21 this section shall also apply to lie detector tests which are or
22 may be administered within the Commonwealth for employ-
23 ment outside the Commonwealth.

24 Any person who violates any provision of this section shall
25 be punished by a fine of not more than one thousand dollars
26 or less than three hundred dollars. Second and subsequent
27 violations of any provision of this section shall be punishable
28 by a fine of not more than five thousand dollars or less than
29 fifteen hundred dollars or by imprisonment for not more than
30 ninety days, or both.

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

34 No waiver of the provisions of this section by an employee
35 or prospective employee shall be a defense to either criminal
36 prosecution or civil liability.

37 This section shall not apply to the federal government or any
38 agency thereof or to formal criminal investigations conducted
39 by a state, municipal or local police department, or law enforce-
40 ment agencies of the Commonwealth.

41 All applications for employment used within the Common-
42 wealth shall contain the following notice which shall be in
43 clearly legible print and be separately acknowledged by the
44 signature of the applicant.

45 "It is illegal in Massachusetts to administer a lie detector test
46 as a condition of obtaining employment or continued employ-
47 ment. An employer who violates this law may be subject to
48 criminal penalties and civil liability.

49 Section 19C. It shall be unlawful, except in accord with
50 regulations promulgated by the commissioner of labor and
51 industries for the protection of public health and safety, after
52 notice and public hearing pursuant to section two of chapter
53 thirty A, for any employer or other person in authority to
54 require as a condition of employment, or the receipt of any
55 other benefit, that the employee, prospective employee or other
56 person seeking a benefit submit a sample of his urine, blood or
57 other bodily fluid or tissue for analysis.

58 Section 19D. Any person aggrieved by a violation of sections
59 nineteen B or nineteen C may institute within three years of
60 such violation and prosecute in his own name and on his own
61 behalf, or for himself and for others similarly situated, a civil
62 action in the superior court for injunctive relief, including rein-

63 statement with full rights and benefits, and any damages thereby
64 incurred, including treble damages for any loss of wages or
65 benefits. The total award of damages shall equal or exceed a
66 minimum of five hundred dollars for each violation. Any
67 person so aggrieved who prevails shall be entitled to an award
68 of the cost of the litigation and reasonable attorneys' fees.

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