

**REPORT OF THE GOVERNMENT, MILITARY AND VETERANS  
AFFAIRS COMMITTEE OF THE NEBRASKA LEGISLATURE**

*Review of the Occupational Regulation of  
Truth & Deception Examiners*

Prepared in accordance with the Occupational Board Reform Act  
(Neb. Rev. Stat. §§84-933 to 84-948)

*Submitted to the Clerk of the Legislature of the 107th Nebraska Legislature*

Committee Members:

Sen. Tom Brewer, Chair  
Sen. Matt Hansen, Vice Chair  
Sen. Carol Blood  
Sen. Steve Halloran  
Sen. Megan Hunt  
Sen. John Lowe  
Sen. John McCollister  
Sen. Rita Sanders

Committee Staff:

Dick Clark, Committee Legal Counsel  
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## SUMMARY

In 1980, the Nebraska Legislature sent Legislative Bill 485, the Licensing of Truth and Deception Examiners Act (hereafter, “the Act”), to Governor Charlie Thone to be signed into law. Senator Dave Newell was chair of the Miscellaneous Subjects Committee and introduced LB 485 in 1979 as a committee bill. The bill received no opposition at hearing on April 4, 1979, and was placed on General File with amendments by a committee vote of 6–2. After the committee amendment was initially voted down on General File, a compromise amendment was successful and the bill was advanced. It was returned from Final Reading to Select File for a specific amendment and subsequently passed by the Legislature for approval by the governor.

The Act is codified at Neb. Rev. Stat. §§81-1901 through 81-1936. These sections have been amended infrequently: eight bills have revised these sections of law in the forty-one years since enactment of the Act.<sup>1</sup> Of these changes, some were harmonizing changes, *e.g.*, relating to bills modifying the Administrative Procedures Act or the original enactment of the Nebraska Uniform Limited Liability Company Act. Other changes were to adjust license fee amounts. One bill, LB 860 (2012), reduced the training requirements for certain license applicants.

The Act was intended “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, psychological stress evaluators, or voice analyzers.”<sup>2</sup> Persons subject to licensure under the act include polygraph examiners<sup>3</sup> and voice analysis examiners.<sup>4</sup> These examiners may either be classified as public examiners<sup>5</sup> (examiners working in an official role for a public agency) or as private examiners<sup>6</sup> (examiners working in any other capacity). The Act also contains requirements for examiner interns who are undergoing training.<sup>7</sup>

In order to obtain an examiner license, the applicant must meet the following requirements:

1. Hold a baccalaureate degree from an accredited institution or four years of relevant experience

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<sup>1</sup> Laws 1982, LB 928; Laws 1983, LB 447; Laws 1988, LB 352; Laws 1993, LB 121; Laws 1997, LB 752; Laws 2021, LB 860; and Laws 2020, LB 910.

<sup>2</sup> Neb. Rev. Stat. §81-1902.

<sup>3</sup> Neb. Rev. Stat. §81-1908.

<sup>4</sup> Neb. Rev. Stat. §81-1910.

<sup>5</sup> Neb. Rev. Stat. §81-1913.

<sup>6</sup> Neb. Rev. Stat. §81-1912.

<sup>7</sup> Neb. Rev. Stat. §§ 81-1919.

2. Complete the required course of study from either the National Institute for Truth Verification (250 hours) or the National Association of Computer Voice Stress Analysts (60 hours)
3. Suitably complete one-year internship, including personal administration of at least 40 supervised examinations
4. Not be under sentence for a felony in the preceding five years
5. No prior felony or misdemeanor convictions involving moral turpitude
6. Payment of a \$50 licensing fee
7. Fingerprint-based criminal history check
8. Seventy percent or more correct responses on a two-hour written examination administered by the Secretary of State

After collecting data on the occupational regulation of Truth and Deception Examiners and applying the statutory standard of review under the Occupational Board Reform Act (OBRA), it is the finding of this report that the registration scheme imposed on such persons by the Act is not the “least restrictive regulation necessary to protect [...] from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient.”<sup>8</sup>

It is the recommendation of this report that the licensure requirements of the Act be repealed in their entirety, while preserving the employment law protections in the Act as currently codified.

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<sup>8</sup> Neb. Rev. Stat. §84-946.

## **PROGRAM OPERATIONS DATA**

Licensure of truth and deception examiners under the Act is a duty assigned by the Legislature to the Secretary of State. Application and renewal fees received by the Secretary are remitted to the Treasurer for credit to the Secretary of State Cash Fund under Neb. Rev. Stat. § 81-1921. On July 26, 2021, committee staff submitted its OBRA survey request to Ms. Colleen Byelick, Chief Deputy and General Counsel to Secretary of State Bob Evnen. The committee received the Secretary's prompt response on September 29, 2021.

The Secretary's survey response indicated that there were at that time 54 professionals regulated under the Act. During the five-year reporting period, there were eight licenses issued, no license revocations, no license denials, and no penalties assessed for violations of the Act.

The Secretary administers the program with the advice of the Truth and Deception Advisory Board, which is comprised of nine members, including four polygraph examiners, four voice stress examiners, and the Secretary as chair. The Board held no meetings over the course of the five-year reporting period covered by this report.

The licensing program under the Act is housed in the Secretary of State's Licensing Division, which has two support staff and had an annual budget of \$351,278 in the 2020–2021 fiscal year. In addition to administering licenses pursuant to the Act, the Secretary also utilizes appropriated resources to conduct other licensure activities assigned to that office by statute, including, e.g., the licensure of private detectives.

*(The Secretary of State's full survey response is attached below as Appendix A.)*

## **COMPARISON WITH REGULATIONS IN OTHER STATES**

States requiring licensure for polygraph examiners and voice stress examiners are in the minority nationally. According to information provided to the committee by the Secretary,<sup>9</sup> twenty-two other states require licensure for polygraph examiners,<sup>10</sup> and fifteen other states require licensure of voice stress examiners.<sup>11</sup> Application and renewal fees vary widely across the states that maintain licensure programs, from a low of \$15 in Vermont to a high of \$620 in Nevada. Nebraska's \$50 licensing fee<sup>12</sup> is lower than the fee in most states requiring a license.

At a February 3, 2021 hearing of the Government, Military and Veterans Affairs Committee on Senator Mike Groene's LB 50, the Committee heard testimony from Lincoln County Sheriff Jerome Kramer asserting that Nebraska's requirement that a voice stress examiner applicant have completed forty supervised examinations was far more onerous than other states and made acquisition of a license practically impossible.

On May 19, 2021, the committee introduced an interim study resolution, LR 225, in order to receive information from the Secretary of State and interested members of the public relating to the Act and the committee's analysis of the act under OBRA. Testifiers asserted that the supervised examinations requirement and educational requirements for voice stress examiners in particular exceeded those in other states.

The Secretary's response noted that Texas ended its polygraph examiner license program in September of this year.<sup>13</sup>

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<sup>9</sup> See Appendix A.

<sup>10</sup> States requiring licensure of polygraph examiners include: AL, AR, IL, IN, IA, KY, ME, MI, MS, NV, NM, NC, ND, OK, OR, SC, SD, TN, UT, VT, VA, and WV.

<sup>11</sup> States requiring licensure of voice stress examiners include: AR, NV, NM, NC, ND, OK, OR, SC, SD, TN, UT, VT, VA, and WV. Additionally, IL requires a license only for voice stress examiners employed by law enforcement agencies.

<sup>12</sup> 433 Neb. Admin. Code, ch. 1, §010.01B

<sup>13</sup> Texas House Bill 1560 became effective September 1, 2021.

## **REVIEW OF BASIC ASSUMPTIONS UNDERLYING CREATION OF THE OCCUPATIONAL REGULATIONS**

According to the Secretary's survey response, the basic purpose of the Act is "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, psychological stress evaluators, or voice analyzers." That survey response mirrors the legislative intent language memorialized in section 2 of the Act.<sup>14</sup>

At the committee's interim study hearing, Mr. Tom Gorgen testified at the request of the committee. Mr. Gorgen holds Voice Stress Examiner's License No. 1 in Nebraska, and he has been a member of the advisory board since its creation in 1981. He described his work with Senator Dave Newell and others in crafting the original version of the Act. He pointed out that in 1988 the United States Congress enacted the Employee Polygraph Protection Act which effectively prohibited private businesses from using polygraph testing and voice stress testing for most employment purposes. Mr. Gorgen noted that the 1980 Nebraska law provided similar protections for employees.

According to Mr. Gorgen, the federal law change resulted in a "significant reduction" of private examiner applications: by his recollection, only two have been submitted in the last two decades. In written materials provided to the committee, Mr. Gorgen said, "Do I believe this law has served a purpose and benefited Nebraskans? Yes, I do. But as you can see in my opinion the original reasons for developing this law no longer exist."

There is another factor to consider besides the freedom of people to work in their chosen occupational field: whether the licensure of truth and deception examiners may cause members of the public, government agencies, or others to place undue weight on the value of polygraph and voice stress examinations. It appears that since the mid-20th Century heyday of technologically assisted truth and deception examination, psychological science has increasingly moved to a consensus view that polygraph and other "lie detector tests" are unsound measures of truthfulness.<sup>15</sup> Insofar as a "license" may be seen as the imprimatur of the state on a professional, a state license to engage in pseudoscience may promote unwarranted and potentially harmful reliance on the conclusions derived from that unsound method of inquiry.

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<sup>14</sup> See Neb. Rev. Stat. §81-1902

<sup>15</sup> See, e.g., Iacono, William G. "Forensic 'Lie Detection': Procedures Without Scientific Basis," *Journal of Forensic Psychology Practice*, Vol. 1 (2001), No. 1, pp. 75-86.

At the time of the Act’s passage, courts in Nebraska had long held polygraph examinations to be inadmissible as evidence,<sup>16</sup> and this is still the position of the courts today.<sup>17</sup> The principal use of truth and deception examinations at the time of the Act was in private employment screening. As noted above, state and federal law now broadly prohibit use of such tests in private employment screening.

The extent to which polygraph and voice stress examinations are taken seriously as analytical tools has been greatly diminished since the enactment of the Act. The dangers presented to the public by such examiners working in Nebraska seem to have likewise been mitigated by subsequent legislation and further developments in the private marketplace. Continuing to operate a licensing program for truth and deception examiners does not comport with the policy principles established in OBRA.

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<sup>16</sup> See *Boeche v. State*, 37 N.W.2d 593 (1949) and *State v. Steinmark*, 195 Neb. 545 (1976).

<sup>17</sup> *State v. Allen*, 301 Neb. 560 (2018) (“We have specifically prohibited the admission of the results of polygraph examinations in evidence, and we have disapproved of any reference to polygraph tests.”).

## **OBRA POLICY ANALYSIS**

The Occupational Board Reform Act (“OBRA”) makes several statements of policy which committees are instructed to apply as part of the regular OBRA review process.<sup>18</sup>

***1. Does the occupational regulation protect the fundamental right of an individual to pursue a lawful occupation?***

- a. Analysis: The Act broadly prohibits all persons who are unlicensed from engaging in the regulated activities in Nebraska. Because of the onerous application requirements, the Act substantially impairs the right of an individual to pursue an otherwise lawful occupation as a truth and deception examiner.

***2. Does the occupational regulation use the least restrictive regulation necessary to protect consumers from undue risk of present, significant, and substantiated harms that clearly threaten or endanger the health, safety, or welfare of the public when competition alone is not sufficient and which is consistent with the public interest?***

- a. Analysis: Committees completing their regular review of occupational regulations under OBRA must determine whether an occupational regulation is the least restrictive regulation necessary to mitigate the risk of harms that might otherwise result from the practice of the occupation.<sup>19</sup> If the legislative purpose of the Act is to protect members of the public from unqualified or unscrupulous truth and deception examiners, the licensure requirement in the Act does not appear to be the least restrictive regulation necessary to uniformly accomplish this end.

***3. Is the occupational regulation enforced only against individuals selling goods or services explicitly included in the governing statutes?***

- a. Analysis: No, the Act is broadly written so as to apply not only to polygraph and voice stress examiners but also to others using any technological means whatever to evaluate truthfulness.<sup>20</sup>

***4. Is the occupational regulation construed and applied to increase opportunities, promote competition, and encourage innovation?***

- a. Analysis: No. The Act as currently enforced makes it practically impossible to obtain licensure as a voice stress examiner in Nebraska. With respect to polygraph examiners, the Act imposes restrictions that diminish the population of examiners

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<sup>18</sup> See Neb. Rev Stat. §§84-946 and 84-948(7)

<sup>19</sup> Neb. Rev. Stat. §§84-937 and 84-948(4)

<sup>20</sup> Neb. Rev. Stat. §81-1902.



in the state and thus reduce competition in that segment of the labor market as well as stifling any possible innovation in this area. Moreover, individuals who in the future may develop reliable technology in this area would actually be in the position of seeking licensure from others whom the scientific consensus deems to be engaged in quackery.

5. ***Recommendation***

- a. Licensing provisions of the Licensing of Truth and Deception Examiners Act should be repealed in their entirety. Two sections<sup>21</sup> of the Act prohibit the use of truth and deception examinations as a condition for private employment and should be preserved in their current form.

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<sup>21</sup> Neb. Rev. Stat. §§81-1932 and 81-1933.

## **APPENDIX A: AGENCY SURVEY RESPONSE**

### **General Information**

- Committee of Jurisdiction: Government, Military and Veterans Affairs
- Occupation Regulated: Truth & Deception Examiners
- Occupational Board: Truth & Deception Advisory Board
- Contact: David Wilson, Director
- Purpose: "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, psychological stress evaluators, or voice analyzers."
- Regulated Professionals: 54
- Year Created: 1980
- Year Active: 1980
- Sunset Date: None

### **Authorization**

- Statutory Authorization: Neb. Rev. Stat. §§ 1901 to 1936
- Parent Agency: Secretary of State

### **Memberships**

- Number of Members: 9
- Who Appoints: Secretary of State
- Legislative Approval: No
- Qualifications of Members: Secretary is the Chair. 4 members are licensed polygraph examiners. 4 members are licensed voice stress examiners.
- Per Diem: No
- Expense Reimbursement: No
- Term Length: 2 years
- Terms Rotate or Expire at Once: Terms Rotate

### **Meetings**

- Required FY 2021-2020: 0
  - Held FY 2021-2020: 0
- Required FY 2020-2019: 0
  - Held FY 2020-2019: 0
- Required FY 2019-2018: 0
  - Held FY 2019-2018: 0
- Required FY 2018-2017: 0

- Held FY 2018-2017: 0
- Required FY 2017-2016: 0
  - Held FY 2017-2016: 0

## Operations

- Support Staff: 2
- Shared or Separate: Shared with Secretary of State's Licensing Division
- FY 2021-2020 Budget: 351278
- FY 2020-2019 Budget: 311512
- FY 2019-2018 Budget: 307841
- FY 2018-2017 Budget: 294656
- FY 2017-2016 Budget: 267197
- Other Funding Sources: None
- Spending Authority: Neb. Rev. Stat. §§ 81-1921, 81-1922, and 84-512

## Other

- Government Certificates Issued: 8
  - Issued Certificate Descriptions: 7 polygraph examiners; 1 voice stress examiner
- Government Certificates Revoked: 0
  - Revoked Certificate Descriptions: N/A
- Government Certificates Denied: 0
  - Denied Certificate Descriptions: N/A
- Government Certificates Penalties Against: 0
  - Penalty Certificate Descriptions: N/A
- Explanation of Effectiveness: "Truth and Deception examinations are tools often used by law enforcement agencies during criminal investigations, pre-employment screenings, or for post-conviction monitoring during probation/parole. The outcomes of those examinations can have serious and significant consequences for the examinee, the victims, and others involved in the underlying crime. The licensing scheme that Nebraska uses ensures that those using this tool are highly trained in the practices and procedures for giving these examinations."

- Potential Harm: "The Board ensures that only those with the skill and training are able to perform these tests. Otherwise, anyone who can afford the equipment could perform the tests, resulting in inaccurate or unreliable tests that could bring harm to the parties."
- Regulation Comparison: *[See attached table]*
- Subject to Regulations of Act (LB407): No

State	Requires Polygraph License	Attend Polygraph School	Exam	Internship Required?	Fee	Notes
Alabama	Yes	Yes	Yes	Yes	\$150	1. Must have proof of holding a college degree or evidence that the applicant has had five consecutive years of active investigative experience
Alaska	No					
Arizona	No					
Arkansas	Yes	Yes	No		\$120	
California	No					
Colorado	No					
Connecticut	No					
Delaware	No					
DC	No					
Florida	No					
Georgia	No					
Hawaii	No					
Idaho	No					
Illinois	Yes	Yes	Yes	Yes	\$100	
Indiana	Yes	No	No	No	\$150-\$300	Falls under their Private Detective License
Iowa	Yes				\$100	Falls under their Private Detective License
Kansas	No					
Kentucky	Yes	Yes	Yes	Yes	\$50	
Louisiana	No: certification only	Yes	Yes	Yes	\$50 to \$100	
Maine	Yes	Yes	Yes	Yes	\$100	
Maryland	No					
Massachusetts	No					
Michigan	Yes	No	Yes	Yes	\$100 -Private examiner	
Minnesota	No					
Mississippi	Yes	Yes	No	Yes	\$50	
Missouri	No					
Montana	No					License Only required in St. Louis County

Nevada	Yes	Yes	Yes	No		\$620	
New Hampshire	No						
New Jersey	No						
New Mexico	Yes	Yes	Yes	Yes		\$500	
New York	No						
North Carolina	Yes	Yes	Yes	Yes		\$150	
North Dakota	Yes	Yes	No	Yes		\$35	
Ohio	No						
Oklahoma	Yes	Yes	Yes	Yes		\$150	
Oregon	Yes	Yes	Yes	Yes		\$91	
Pennsylvania	No						
Rhode Island	No						
South Carolina	Yes	Yes	Yes	Yes	??		Fee not set in regulation.
South Dakota	Yes	Yes	No	No		\$75	
Tennessee	Yes	Yes	Yes	Yes		\$200	
Texas	No						Repealed its licensing laws in September
Utah	Yes	No	Yes	Yes		\$80	
Vermont	Yes	Yes	No	Yes		\$15	
Virginia	Yes	Yes	Yes	Yes		\$45	
Washington	No						
West Virginia	Yes	Yes	Yes	Yes		\$100	
Wisconsin	No						
Wyoming	No						

State	Requires Voice Stress License	Attend Voice Stress School	Exam	Internship Required?	Fee	Notes
Alabama	No					
Alaska	No					
Arizona	No					
<a href="#">Arkansas</a>	Yes	Yes	No	No	\$156	Background check required;
California	No					
Colorado	No					
Connecticut	No					
Delaware	No					
DC	No					
Florida	No					
Georgia	No					
Hawaii	No					
Idaho	No					
Illinois	No, for Law Enforcement Use					
Indiana	No					
Iowa	No					
Kansas	No					
Kentucky	NO					
Louisiana	No					
Maine	No					
Maryland	No					
Massachusetts	No					
Michigan	No					
Minnesota	No					
Mississippi	No					
Missouri	No					
Montana	No					
Nevada	No					

New Hampshire	No						
New Jersey	No						
New Mexico	No						
New York	No						
North Carolina	No						
North Dakota	No						
Ohio	No						
Oklahoma	No						
Oregon	No						
Pennsylvania	No						
Rhode Island	No						
South Carolina	No						
South Dakota	Yes	Yes	No	No		\$25	
Tennessee	No						
Texas	No						
Utah	No						
Vermont	No						
Virginia	No						
Washington	No						
West Virginia	No						
Wisconsin	No						
Wyoming	No						