

VIRGINIA ACTS OF ASSEMBLY -- 2000 SESSION

CHAPTER 591

An Act to amend and reenact § 40.1-51.4:4 of the Code of Virginia, relating to prohibition of use of polygraphs in certain employment situations.

[S 369]

Approved April 7, 2000

Be it enacted by the General Assembly of Virginia:

1. That § 40.1-51.4:4 of the Code of Virginia is amended and reenacted as follows:

§ 40.1-51.4:4. Prohibition of use of polygraphs in certain employment situations.

A. As used in this section, the term "lie detector test" means any test utilizing a polygraph or any other device, mechanism or instrument which is operated, or the results of which are used or interpreted by an examiner for the purpose of purporting to assist in or enable the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding the honesty of an individual.

B. Notwithstanding the provisions of § 40.1-2.1, it shall be unlawful for any law-enforcement agency *as defined in § 2.1-116.1* or regional jail to require any employee to submit to a lie detector test, or to discharge, demote or otherwise discriminate against any employee for refusal or failure to take a lie detector test, except that the chief executive officer of a law-enforcement agency or the superintendent of a regional jail may, by written directive, require an employee to submit to a lie detector test related to a particular internal administrative investigation concerning allegations of misconduct or criminal activity. No employee required to submit to a lie detector test shall be discharged, demoted or otherwise discriminated against solely on the basis of the results of the lie detector test.

C. Any person who believes that he has been discharged, demoted or otherwise discriminated against by any person in violation of this section may, within ninety days after such alleged violation occurs, file a complaint with the Commissioner. Upon a finding by the Commissioner of a violation of this section, the Commissioner shall order, in the event of discharge or demotion, reinstatement of such person to his former position with back pay plus interest at a rate not to exceed eight percent per annum. Such orders of the Commissioner which have become final under the Virginia Administrative Process Act (§ 9-6.14:1 et seq.) may be recorded, enforced and satisfied as orders or decrees of a circuit court upon certification of such orders by the Commissioner. The Commissioner, or his authorized representative, shall have the right to petition circuit court for injunctive or such other relief as may be necessary for enforcement of this section. No fees or costs shall be charged the Commonwealth by a court or any officer for or in connection with the filing of the complaint, pleadings, or other papers in any action authorized by this section.

D. *The analysis of any polygraph test charts produced during any polygraph examination administered to a party or witness shall not be submitted, referenced, referred to, offered or presented in any manner in any proceeding conducted pursuant to Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1 or conducted by any county, city or town except as to disciplinary or other actions taken against a polygrapher.*