

HOUSE BILL 260

By Windle

AN ACT to amend Tennessee Code Annotated, Title 8, Chapter 50; Title 50 and Title 62, relative to employers and employees.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 50, Chapter 1, is amended by adding the following language as a new part:

50-1-1001. As used in this part:

(1) "Lie detector test" means a polygraph, voice stress analyzer, 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;

(2) "Polygraph" means an instrument that records continuously, visually, permanently and simultaneously any changes in cardiovascular, respiratory and electrodermal patterns and is used to render a diagnostic opinion as to the honesty or dishonesty of an individual; and

(3) "Voice stress analyzer" means an instrument that records both mental and physical stress responses that are present in human voice, when a person suffers psychological stress in response to a question.

50-1-1002.

A public or private employer shall not:

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

(2) Use, accept, refer to, or inquire about the results of any lie detector test of an employee or prospective employee; or

(3) Discharge, discipline, discriminate against in any manner, deny employment or promotion, or threaten to take any such action against an employee or prospective employee for refusal to take a lie detector test, on the basis of the results of such a test, for filing a complaint, for testifying in any proceeding or for exercising any rights afforded by the Employee Polygraph Protection Act of 1988, 29 USC §2001 et seq.

50-1-1003.

(a) An employer in violation of § 50-1-1002 is liable to the employee or prospective employee for any legal or equitable relief as may be appropriate, including, but not limited to:

(1) Employment for the prospective employee, reinstatement or promotion of an employee and the payment of lost wages and benefits; and

(2) An action to recover the liability may be maintained against the employer by an employee or prospective employee:

(A) For or on behalf of the employee or prospective employee;

and

(B) On behalf of other employees or prospective employees similarly situated.

(b) An action must not be commenced pursuant to this section more than three (3) years after the date of the alleged violation.

(c) In any action brought pursuant to this section, the court, in its discretion, may allow the prevailing party reasonable costs, including attorney's fees.

(d) The department of labor and workforce development may impose against the person an administrative penalty of no more than ten thousand dollars (\$10,000) for each violation.

(e) In determining the amount of any administrative penalty to be imposed against the person, the department of labor and workforce development shall consider

the previous record of the person and the severity of the violation. Any administrative penalty imposed against the person is in addition to any other remedy or penalty provided pursuant to subsections (c) and (d).

(f) The commissioner of labor and workforce development may bring a civil action against an employer for a violation of this part. A court of competent jurisdiction may issue, without bond, a temporary or permanent restraining order or injunction or any legal or equitable relief as may be appropriate, such as employment of a prospective employee, reinstatement or promotion of an employee, and the payment of lost wages and benefits.

50-1-1004.

(a) The following are exempt from § 50-1-1002:

(1) Any employer who requests an employee or prospective employee to submit to a lie detector test if:

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

(B) The employee had access to the property that is the subject of the investigation;

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

(D) The employer provides to the employee, before the examination, a written statement that:

(i) Sets forth with particularity the specific incident or activity being investigated;

(ii) Is signed by the employer or an agent of the employer;

(iii) Is retained by the employer for at least three (3) years;

and

(iv) Contains an identification of the specific economic loss or injury to the business, a statement indicating that the employee had access to the property and a statement describing the basis of the employer's reasonable suspicion that the employee was involved in the incident;

(2) The use of the lie detector test on prospective employees who are employed to protect:

(A) Facilities, materials or operations having a significant impact on the health or safety of this state or any political subdivision of this state; or

(B) Currency, negotiable securities, precious commodities or instruments or proprietary information, requested by the potential employer whose primary business is to provide armored car personnel, personnel engaged in the design, installation and maintenance of security alarm systems or other security personnel; and

(3) The use of a lie detector test by any employer authorized to manufacture, distribute or dispense a controlled substance if:

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

(B) The test is administered to a current employee in connection with an ongoing investigation of misconduct involving a controlled

substance manufactured, distributed or dispensed by the employer if the employee had access to the property that is the subject of the investigation.

(b) The exemptions provided in subsection (a) are applicable only if:

(1) The lie detector test is administered by a person who holds a valid license as a polygraphic examiner or intern or is qualified as a polygraphic examiner pursuant to § 62-27-106; and

(2) The results of a lie detector test or the refusal to take the test is not used as the sole basis upon which an adverse employment action is taken against an employee or prospective employee.

SECTION 2. This act shall take effect upon becoming a law, the public welfare requiring it.