

*Reprinted 2/88*

Labor and Industrial Relations: Sherzan, Chair; Metcalf and Running.

*Amend per 5021 & To Pass 1/25/88 (p. 157)*

JAN 27 1987

HOUSE FILE 102  
BY SHERZAN

LABOR & INDUSTRIAL RELATIONS

Passed House, Date 2/3/88 (p. 223)

Passed Senate, Date 3/30/88 (p. 1173)

Vote: Ayes 75 Nays 20

Vote: Ayes 33 Nays 14

Approved May 12, 1988

*Motion to reconsider (p. 223) w/d 2/16 (p. 227)*

A BILL FOR

1 An Act relating to the prohibition of polygraph examinations as a  
50212 condition of employment, and providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HOUSE FILE 102

H-5043

1 Amend House File 102 as follows:

- 2 1. Page 1, line 25, by inserting after the word
- 3 "officer" the following: "or to an employer
- 4 administering a polygraph examination to an employee
- 5 who has access to controlled substances as defined in
- 6 section 204.101 but is not licensed to dispense the
- 7 controlled substances".

H-5043 FILED FEBRUARY 3, 1988 BY METCALF of Polk  
MOTION TO SUSPEND RULES LOST (p. 223)

HOUSE FILE 102

H-5048

1 Amend House File 102 as follows:

- 2 1. Page 1, line 35, by striking the word "serious"
- 3 and inserting the word "simple".

H-5048 FILED FEBRUARY 3, 1988 BY BENNETT of Ida  
MOTION TO SUSPEND RULES LOST (p. 221)

HF 102

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1 Section 1. Section 730.4, Code 1987, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4 730.4 POLYGRAPH EXAMINATION PROHIBITED.

5 1. As used in this section, "polygraph examination" means  
6 any procedure which involves the use of instrumentation or a  
7 mechanical or electrical device to enable or assist the  
8 detection of deception, the verification of truthfulness, or  
9 the rendering of a diagnostic opinion regarding either of  
10 these, and includes a lie detector or similar test.

11 2. An employer shall not as a condition of employment,  
12 promotion, or change in status of employment, or as an express  
13 or implied condition of a benefit or privilege of employment,  
14 do any of the following:

15 a. Request or require that an employee or applicant for  
16 employment take or submit to a polygraph examination.

17 b. Administer, cause to be administered, threaten to  
18 administer, or attempt to administer a polygraph examination  
19 to an employee or applicant for employment.

20 c. Request or require that an employee or applicant for  
21 employment give an express or implied waiver of a practice  
22 prohibited by this section.

23 3. Subsection 2 does not apply to the state or a political  
24 subdivision of the state when in the process of selecting a  
25 candidate for employment as a peace officer.

26 4. An employee shall not be discharged, disciplined, or  
27 discriminated against in any manner for filing a complaint or  
28 testifying in any proceeding or action involving violations of  
29 this section. An employee discharged, disciplined, or  
30 otherwise discriminated against in violation of this section  
31 shall be compensated by the employer in the amount of any loss  
32 of wages and benefits arising out of the discrimination and  
33 shall be restored to the employee's previous position of  
34 employment.

35 5. A person who violates this section commits a serious

1 misdemeanor.

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EXPLANATION

3 This bill broadens the prohibitions and increases the  
 4 penalties in the section prohibiting polygraph examinations by  
 5 employers. Under present law it is a simple misdemeanor for  
 6 an employer to require an employee or applicant to take a  
 7 polygraph examination as a condition of employment. This bill  
 8 makes it a serious misdemeanor for an employer, as a condition  
 9 of employment, promotion, or change in status, to request or  
 10 require an employee or applicant to take such an examination,  
 11 administer the examination to the employee or applicant, or  
 12 request or require a waiver by the employee or applicant. The  
 13 bill prohibits reprisals against employees who file complaints  
 14 or participate in litigation and provides for compensation of  
 15 lost wages and restoration of status. The exception for  
 16 candidates for employment as peace officers is retained.

HOUSE FILE 102  
 AMENDMENT H-5021  
 FISCAL NOTE

REQUESTED BY REPRESENTATIVE SHERZAN

In compliance with a written request received January 29, 1988, a fiscal note for H-5021 is hereby submitted pursuant to Joint Rule 17. Data used in developing this fiscal note are available from the Legislative Fiscal Bureau to members of the Legislature upon request.

H-5021 to HF 102 would require polygraph examiners to be licensed and regulated by the Division of Labor Services. The Commissioner of Labor Services shall promulgate standards and license polygraph examiners. The bill limits the use of polygraph examinations as a condition to employment or a promotion to workers who are employed in nuclear facilities, dispense prescription drugs, or are peace officers.

**Fiscal Impact**

1. The Department of Employment Services, Division of Labor Services, estimates that two additional FTE's and support cost would be need to regulate polygraph examiners. The aggregate cost need to administer HF 102 as amended by H-5021 would be approximately \$46,000.

(LSP-1737H, JEM)

FILED FEBRUARY 1, 1988

BY DENNIS PROUTY, FISCAL DIRECTOR

## HOUSE FILE 102

H-5021

1 Amend House File 102 as follows:

2 1. Page 1, by striking lines 1 through 5 and  
3 inserting the following:

4 "Section 1. NEW SECTION. 730.7 POLYGRAPH  
5 EXAMINATION PROHIBITED -- EXCEPTIONS -- REMEDIES --  
6 PENALTIES.

7 1. As used in this section and sections 730.8 and  
8 730.9, "polygraph examination" means".

9 2. Page 1, line 25, by inserting after the word  
10 "officer" the following: ", to a person administering  
11 a polygraph examination as part of a security  
12 clearance required at a federally licensed nuclear  
13 facility, or to an employer authorized to dispense  
14 prescription drugs as defined in section 155A.3,  
15 subsection 28, if the state or political subdivision,  
16 person conducting the security clearance, or employer  
17 authorized to dispense prescription drugs complies  
18 with the minimum procedures set forth in section 730.8  
19 and the person administering and interpreting the  
20 polygraph examination is a licensed polygraph examiner  
21 in compliance with section 730.9".

22 3. By striking page 1, line 35 through page 2,  
23 line 1, and inserting the following:

24 "5. If the labor commissioner finds, after notice  
25 and opportunity for a hearing pursuant to chapter 17A,  
26 that a person has violated this section, the labor  
27 commissioner may impose an administrative penalty of  
28 not more than five thousand dollars for each  
29 violation. The decision of the labor commissioner  
30 constitutes final agency action for purposes of  
31 judicial review."

32 4. Page 2, by inserting after line 1 the  
33 following:

34 "Sec. \_\_\_\_ . NEW SECTION. 730.8 PROCEDURES TO  
35 PROTECT EXAMINEES.

36 1. A person described in section 730.7, subsection  
37 3, who seeks to administer a polygraph examination  
38 otherwise prohibited by section 730.7, subsection 2,  
39 shall comply with the following minimum procedures to  
40 protect examinees:

41 a. Prior to the beginning of a polygraph  
42 examination, each prospective examinee shall be  
43 provided with, and shall sign a receipt for, a  
44 notification on a form prescribed by the labor  
45 commissioner, which contains the following  
46 information:

47 (1) That the examinee may refuse to take a  
48 polygraph examination.

49 (2) That the examinee may refuse to answer any  
50 question.

HOUSE FILE 102  
BY SHERZAN

(As Amended and Passed by the House February 3, 1988)

Passed House, Date 2/17/88 (p. 1508) Passed Senate, Date 3/30/88 (p. 1173)  
Vote: Ayes 82 Nays 17 Vote: Ayes 33 Nays 14  
Approved May 12, 1988

A BILL FOR

1 An Act relating to the prohibition of polygraph examinations as a  
2 condition of employment, and providing a penalty.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments \_\_\_\_\_

1 Section 1. Section 730.4, Code 1987, is amended by  
2 striking the section and inserting in lieu thereof the  
3 following:

4 730.4 POLYGRAPH EXAMINATION PROHIBITED.

5 1. As used in this section, "polygraph examination" means  
6 any procedure which involves the use of instrumentation or a  
7 mechanical or electrical device to enable or assist the  
8 detection of deception, the verification of truthfulness, or  
9 the rendering of a diagnostic opinion regarding either of  
10 these, and includes a lie detector or similar test.

11 2. An employer shall not as a condition of employment,  
12 promotion, or change in status of employment, or as an express  
13 or implied condition of a benefit or privilege of employment,  
14 knowingly do any of the following:

15 a. Request or require that an employee or applicant for  
16 employment take or submit to a polygraph examination.

17 b. Administer, cause to be administered, threaten to  
18 administer, or attempt to administer a polygraph examination  
19 to an employee or applicant for employment.

20 c. Request or require that an employee or applicant for  
21 employment give an express or implied waiver of a practice  
22 prohibited by this section.

23 3. Subsection 2 does not apply to the state or a political  
24 subdivision of the state when in the process of selecting a  
25 candidate for employment as a peace officer.

26 4. An employee who acted in good faith shall not be  
27 discharged, disciplined, or discriminated against in any  
28 manner for filing a complaint or testifying in any proceeding  
29 or action involving violations of this section. An employee  
30 discharged, disciplined, or otherwise discriminated against in  
31 violation of this section shall be compensated by the employer  
32 in the amount of any loss of wages and benefits arising out of  
33 the discrimination and shall be restored to the employee's  
34 previous position of employment.

35 5. A person who violates this section commits a serious

- 1 misdemeanor.
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H-5021

Page Two

1 (3) That the examinee may terminate the  
2 examination at any time.

3 (4) That the examinee may make a written request  
4 to the examiner within thirty days after the  
5 examination that the results of the examination be  
6 furnished to the examinee. The examiner shall within  
7 thirty days after receipt of the request provide the  
8 examinee with a written copy of any opinions or  
9 conclusions rendered as a result of the examination.

10 (5) That the examinee may make a written request  
11 to the examiner that an audio recording be made of the  
12 examination and pretest interview. The examiner shall  
13 furnish the examinee a copy of the recording within  
14 thirty days after receipt of the request.

15 (6) That the examinee may file a complaint with  
16 the labor commissioner if the examinee feels  
17 mistreated in connection with the polygraph  
18 examination. The employer shall include the name and  
19 business address of the labor commissioner and the  
20 polygraph examiner in the notification.

21 b. Each prospective examinee shall be shown a list  
22 of all questions to be asked, on a form prescribed by  
23 the labor commissioner. The questions shall be  
24 reviewed with the examinee prior to the commencement  
25 of the examination.

26 c. If the polygraph examiner is a law enforcement  
27 officer or other officer of the court, that fact shall  
28 be disclosed to the examinee prior to the commencement  
29 of the examination, and the examiner shall further  
30 inform the examinee that if the examinee chooses to  
31 proceed with the examination, under such  
32 circumstances, any illegal activity disclosed during  
33 the examination may be used against the examinee in  
34 court.

35 2. The labor commissioner shall adopt rules,  
36 prescribe forms, receive complaints, and conduct  
37 investigations as necessary to administer this  
38 section.

39 Sec. \_\_\_\_ . NEW SECTION. 730.9 LICENSE REQUIRED  
40 FOR POLYGRAPH EXAMINERS -- RULES -- PENALTIES.

41 1. An employer or person acting on behalf of an  
42 employer shall not administer a polygraph examination  
43 to an employee or applicant for employment or  
44 interpret the results of such an examination without  
45 holding a valid license to do so issued by the labor  
46 commissioner as provided in this section.

47 2. A person is qualified to receive a license as a  
48 polygraph examiner if the person meets all of the  
49 following requirements:

50 a. Is at least eighteen years of age.



HOUSE FILE 102

S-5448

1 Amend the amendment, S-5317, to House File 102 as  
2 amended, passed, and reprinted by the House, as  
3 follows:

4 1. Page 1, by striking lines 24 through 28 and  
5 inserting the following:

6 "A person who in good faith brings an action under  
7 this subsection alleging that an employer has required  
8 or requested a polygraph examination in violation of  
9 this section shall establish that sufficient evidence  
10 exists upon which a reasonable person could find that  
11 a violation has occurred. Upon proof that sufficient  
12 evidence exists upon which a finding could be made  
13 that a violation has occurred as required under this  
14 paragraph, the employer has the burden of proving that  
15 the requirements of this section were met."

S-5448

Filed March 18, 1988

*Adopted 2/30 (p. 1172)*

BY LINN FUHRMAN  
RICHARD VARN

S-5317

1 Amend House File 102 as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, line 25, by inserting after the word  
4 "officer" the following: "or a corrections officer".

5 2. Page 1, by inserting after line 34 the  
6 following:

7 "5. This section may be enforced through a civil  
8 action.

9 a. A person who violates this section or who aids  
10 in the violation of this section is liable to an  
11 aggrieved employee or applicant for employment for  
12 affirmative relief including reinstatement or hiring,  
13 with or without back pay, or any other equitable  
14 relief as the court deems appropriate including  
15 attorney fees and court costs.

16 b. When a person commits, is committing, or  
17 proposes to commit, an act in violation of this  
18 section, an injunction may be granted through an  
19 action in district court to prohibit the person from  
20 continuing such acts. The action for injunctive  
21 relief may be brought by an aggrieved employee or  
22 applicant for employment, the county attorney, or the  
23 attorney general.

24 In an action brought under this subsection alleging  
25 that an employer has required or requested a polygraph  
26 examination in violation of this section, the employer  
27 has the burden of proving that the requirements of  
28 this section were met."

29 3. By renumbering as necessary.

S-5317

Filed March 10, 1988

*Adopted as amended by 5448 3/30 (p 1172)*

BY COMMITTEE ON BUSINESS AND  
LABOR RELATIONS  
JAMES D. WELLS, Chairperson

HOUSE FILE 102

S-5338

1 Amend the Committee amendment, S-5317, to House  
2 File 102, as amended and passed by the House, as  
3 follows:

4 1. Page 1, by striking lines 24 through 28.

S-5338

Filed March 11, 1988

*w/s 3/30 (p 1172)*

BY LINN FUHRMAN

SENATE AMENDMENT TO HOUSE FILE 102

H-6169

1 Amend House File 102 as amended, passed, and  
2 reprinted by the House, as follows:

3 1. Page 1, line 25, by inserting after the word  
4 "officer" the following: "or a corrections officer".

5 2. Page 1, by inserting after line 34 the  
6 following:

7 "5. This section may be enforced through a civil  
8 action.

9 a. A person who violates this section or who aids  
10 in the violation of this section is liable to an  
11 aggrieved employee or applicant for employment for  
12 affirmative relief including reinstatement or hiring,  
13 with or without back pay, or any other equitable  
14 relief as the court deems appropriate including  
15 attorney fees and court costs.

16 b. When a person commits, is committing, or  
17 proposes to commit, an act in violation of this  
18 section, an injunction may be granted through an  
19 action in district court to prohibit the person from  
20 continuing such acts. The action for injunctive  
21 relief may be brought by an aggrieved employee or  
22 applicant for employment, the county attorney, or the  
23 attorney general.

24 A person who in good faith brings an action under  
25 this subsection alleging that an employer has required  
26 or requested a polygraph examination in violation of  
27 this section shall establish that sufficient evidence  
28 exists upon which a reasonable person could find that  
29 a violation has occurred. Upon proof that sufficient  
30 evidence exists upon which a finding could be made  
31 that a violation has occurred as required under this  
32 paragraph, the employer has the burden of proving that  
33 the requirements of this section were met."

34 3. By renumbering as necessary.

RECEIVED FROM THE SENATE

H-6169 FILED APRIL 4, 1988

*House Committee 4/7 (p. 15-8)*

H-5021

Page Three

1 b. Is a citizen of the United States.  
2 c. Has not been convicted of a felony.  
3 d. Has not been released or discharged with other  
4 than honorable conditions from any of the armed  
5 services of the United States or any other nation.  
6 e. Has passed a test conducted by the labor  
7 commissioner to determine the person's competency as a  
8 polygraph examiner.

9 f. Has satisfactorily completed not less than six  
10 months of internship training approved by the labor  
11 commissioner.

12 g. Has met any other qualifications of education  
13 or training established by the labor commissioner,  
14 which qualifications shall be at least as stringent as  
15 those recommended by the American polygraph  
16 association.

17 3. The labor commissioner may design or adopt, and  
18 thereafter administer, any test deemed appropriate to  
19 determine the competency of an applicant for a  
20 polygraph examiner license. The test shall be so  
21 designed as to ensure that the applicant is thoroughly  
22 familiar with the code of ethics of the American  
23 polygraph association and has been trained in  
24 accordance with association rules. The test shall  
25 include a rigorous examination of the applicant's  
26 knowledge of and familiarity with all aspects of  
27 operating polygraph equipment.

28 4. A polygraph examiner license shall be issued  
29 for a period of one year. It may be reissued from  
30 year to year.

31 5. The labor commissioner shall charge a fee of  
32 one hundred dollars for each issuance or reissuance of  
33 a polygraph examiner license. The fees shall be  
34 deposited in the general fund of the state.

35 6. The commissioner of labor shall adopt rules to  
36 govern the licensing of polygraph examiners and the  
37 administration and interpretation of polygraph  
38 examinations by licensed examiners. The rules shall  
39 include:

40 a. The type and amount of training or schooling  
41 required before a person may be licensed.

42 b. Standards of accuracy which shall be met by  
43 machines or other devices to be used in polygraph  
44 examinations.

45 c. The conditions under which a polygraph  
46 examination may be given.

47 7. If the labor commissioner finds, after notice  
48 and opportunity for a hearing pursuant to chapter 17A,  
49 that a person has administered or interpreted a  
50 polygraph examination in violation of subsection 1,

H-5021

Page Four

- 1 the labor commissioner may impose an administrative  
 2 penalty of not more than five thousand dollars for  
 3 each violation. The decision of the labor  
 4 commissioner constitutes final agency action for  
 5 purposes of judicial review.  
 6 8. This section does not authorize any polygraph  
 7 examination otherwise prohibited by law.  
 8 Sec. \_\_\_\_\_. REPEAL. Section 730.4, Code 1987, is  
 9 repealed."  
 10 5. Title page, by striking line 2 and inserting  
 11 the following: "condition of employment, providing  
 12 exceptions, providing protective procedures, providing  
 13 for the licensing of polygraph examiners, and  
 14 providing administrative penalties."

BY COMMITTEE ON LABOR AND  
 INDUSTRIAL RELATIONS

H-5021 FILED JANUARY 25, 1988

*1/27 2/3 (p. 211)*  
*1/27 2/3 (p. 211)*  
*1/27 2/3 (p. 211)*

HOUSE FILE 102

H-5024

- 1 Amend the Committee Amendment, H-5021, to House  
 2 File 102 as follows:  
 3 1. Page 1, by striking lines 13 through 15 and  
 4 inserting the following: "facility, or to an  
 5 employer, other than a hospital licensed pursuant to  
 6 chapter 135B, authorized to dispense prescription  
 7 drugs as defined in section 155A.3, subsection 28,  
 8 administering a polygraph examination to an employee  
 9 who has access to the prescription drugs, if the state  
 10 or political subdivision,".

H-5024 FILED JANUARY 26, 1988

BY SHERZAN of Polk

*1/27 2/3 (p. 211)*

HOUSE FILE 102

H-5030

- Amend House File 102 as follows:  
 1. Page 1, line 13, by inserting after the word  
 "employment," the following: "knowingly".  
 2. Page 1, line 26, by inserting after the word  
 "employee" the words "who acted in good faith".

H-5030 FILED JANUARY 28, 1988

BY HERMANN of Scott

*1/27 2/3 (p. 211)*

HOUSE FILE 102

H-5038

- 1 Amend Amendment, H-5021, to House File 102, as  
 2 follows:  
 3 1. Page 1, line 10, by inserting before the  
 4 word "to" the following: "to an employer  
 5 involved in interstate transportation if the  
 6 employee could present a danger to the public,".

H-5038 FILED FEBRUARY 2, 1988

BY HERMANN of Scott

*1/27 2/3 (p. 211)*

HOUSE FILE 102

AN ACT

RELATING TO THE PROHIBITION OF POLYGRAPH EXAMINATIONS AS A  
CONDITION OF EMPLOYMENT, AND PROVIDING A PENALTY.

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

Section 1. Section 730.4, Code 1987, is amended by striking the section and inserting in lieu thereof the following:

730.4 POLYGRAPH EXAMINATION PROHIBITED.

1. As used in this section, "polygraph examination" means any procedure which involves the use of instrumentation or a mechanical or electrical device to enable or assist the detection of deception, the verification of truthfulness, or the rendering of a diagnostic opinion regarding either of these, and includes a lie detector or similar test.

2. An employer shall not as a condition of employment, promotion, or change in status of employment, or as an express or implied condition of a benefit or privilege of employment, knowingly do any of the following:

- a. Request or require that an employee or applicant for employment take or submit to a polygraph examination.
- b. Administer, cause to be administered, threaten to administer, or attempt to administer a polygraph examination to an employee or applicant for employment.
- c. Request or require that an employee or applicant for employment give an express or implied waiver of a practice prohibited by this section.

3. Subsection 2 does not apply to the state or a political subdivision of the state when in the process of selecting a candidate for employment as a peace officer or a corrections officer.

4. An employee who acted in good faith shall not be discharged, disciplined, or discriminated against in any manner for filing a complaint or testifying in any proceeding or action involving violations of this section. An employee discharged, disciplined, or otherwise discriminated against in violation of this section shall be compensated by the employer in the amount of any loss of wages and benefits arising out of the discrimination and shall be restored to the employee's previous position of employment.

5. This section may be enforced through a civil action.

a. A person who violates this section or who aids in the violation of this section is liable to an aggrieved employee or applicant for employment for affirmative relief including reinstatement or hiring, with or without back pay, or any other equitable relief as the court deems appropriate including attorney fees and court costs.

b. When a person commits, is committing, or proposes to commit, an act in violation of this section, an injunction may be granted through an action in district court to prohibit the person from continuing such acts. The action for injunctive relief may be brought by an aggrieved employee or applicant for employment, the county attorney, or the attorney general.

A person who in good faith brings an action under this subsection alleging that an employer has required or requested a polygraph examination in violation of this section shall establish that sufficient evidence exists upon which a reasonable person could find that a violation has occurred. Upon proof that sufficient evidence exists upon which a finding could be made that a violation has occurred as required under this paragraph, the employer has the burden of proving that the requirements of this section were met.

6. A person who violates this section commits a serious misdemeanor.

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DONALD D. AVENSON  
Speaker of the House

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JO ANN ZIMMERMAN  
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 102, Seventy-second General Assembly.

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JOSEPH O'HERN  
Chief Clerk of the House

Approved May 12, 1988

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TERRY E. BRANSTAD  
Governor