

ASSEMBLY JUDICIARY COMMITTEE  
58th NEVADA ASSEMBLY SESSION

MINUTES

March 21, 1975

Chairman Barengo called to order this meeting of the Assembly Judiciary Committee on Friday, March 21, 1975 at the hour of 8:30 a.m.

MEMBERS PRESENT: Messrs. BARENGO, BANNER, HEANEY, HICKEY, POLISH, SENA, Mrs. HAYES and Mrs. WAGNER.

MEMBERS EXCUSED: Mr. LOWMAN.

Guests present at this meeting are listed on the attached Guest Register.

First to be considered at this meeting was A.B.357, and Assemblyman Robert E. Price, the main introducer of the bill, testified. This bill prohibits the use of the polygraph, or lie detector as it is more commonly known, as a means for becoming employed or as a mandatory requirement for continued employment. This has become a growing practice over the years--not only in Nevada, but throughout the United States. 12 states have taken action to ban the polygraph in various circumstances. Two particular problems arise with the use of the polygraph: (1.) The question of whether or not a polygraph may or may not be an invasion of privacy of the person involved.-- and (2.) The question of how accurate the polygraph is. Mr. Price stated that the machine itself depends a great deal on the quality of the operator, and even with the most qualified of operators, it is only 90% accurate.

Mr. Price explained that for a person who is not too quick of mind, it takes a moment to think after a question, and this could pass right by the machine. With other people who may be the nervous type, they may be telling the truth but may be worried and tense, and these reactions could register as lies.

As to the results of a polygraph test, they are only allowed under certain circumstances, even in a court case, where both parties agree to its admission. However, Mr. Price commented that there was a difference between using it in a court setting and using it in an employer/employee situation. In a court of law, the polygraph only repre-

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sents a portion of the evidence for or against someone. Whereas, in the employer/employee situation, it is the main factor of whether or not someone is given a job or loses one.

Mr. Price said he realizes that in the gaming and beverage industries polygraphs are necessary and used. In this regard, he tried to find a possible amendment to assist these industries. Mr. Price handed out a proposed amendment to this Committee, a copy of which is attached to these Minutes. Mr. Price said he tried to come up with certain language relating to specific incidents where a polygraph might be used, i.e. embezzlement, card cheating, etc. A.B.357 would prohibit the use of the polygraph for employment purposes, and for an employee, there must be mutual agreement. A person cannot be forced to take the polygraph test. Also, an employee would have the questions to be asked ahead of time. There can be no personal questions--all questions must be directly related to the incident being investigated. State of Nevada employees would be exempt, because the statutes already exclude public employees. At this point, this Committee proceeded to question Mr. Price.

Next to testify regarding A.B.357 was Mr. Frank Johnson, representing the Hilton Hotels Corporation. He said that he would really rather not see Nevada go into this type of legislation at all. Particularly, in the gaming industry there is an obligation to the stockholders to see that money does not disappear, and the gaming people are concerned about losing their licenses. He does agree with Mr. Price about the pre-employment relationships. For investigation purposes, Mr. Johnson feels that the polygraph is vital. He stated that in his years in the field, there has never been a case where the polygraph test has caused a loss of a job, and in fact, it has saved many jobs.

Mr. Hugo Wagner, Teamsters Union, Local 533, Reno, next related two particular instances where the polygraph caused loss of jobs, which employees were reinstated after negotiations. One involved a positive answer for the use of marijuana when the 22-year old employee was in his teens, and the other involved results which proved inconclusive. Mr. Wagner stated that the members of the union hate the polygraph because if you request a person to submit to testing, you are saying that he is crooked. Mr. Wagner said he has no real evidence against the polygraph, but he has been told many times that the bigger companies (retail food chains) bring in all their employees and give them these tests.

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Next to testify regarding A.B.357 was Russ Jones, of the firm Russ Jones & Associates, who stated that he was one of the licensed polygraph operators in the State of Nevada. He said he has heard people speaking at this meeting who do not know the facts. He stated the very strenuous requirements a person must meet before obtaining a license as a polygraph operator, among which are taking an oral examination before the licensing board and the Attorney General. He stated that he feels it is a violation of ethics to probe the individual's private life while administering a polygraph examination. As far as the polygraph being, or becoming, a necessity before a person is employed, Mr. Jones said 87% of the people he has tested were already employed. 13% of these people were discharged on the basis of their admissions. He said he felt that an employee should not be a "built-in" hazard for the employer. Mr. Jones said that in Reno he could find hundreds of employees who took this test and were happy with it because it relieved them of suspicion. He then cited a recent situation where many people in a casino were suspected of a crime. Then Mr. Jones said that the figures quoted by Mr. Price were not accurate at all.

Mr. Jones said that all that is being done is to protect the people and the employees. Mr. Jones explained that an associate operator works under a licensed operator. (There are only 4 licensed operators in Nevada.) He can administer tests, but he is under and answerable to the operator until he works out his required hours before being able to take the test as a qualified operator.

Mr. Jones requested that this Committee consider the overall picture, rather than taking an isolated author or case and deciding with that information. He would like to see this type of legislation not go into effect. He pointed out to this Committee that we are a gaming state, and this, also, should be taken into consideration. The Committee questioned Mr. Jones at length, and the Chairman allowed Mr. Price to question Mr. Jones briefly.

In regards to A.B.357, Mr. Dick Pierce stated that he would not speak on the bill, except to say that Mr. Jones expressed his thoughts and opinions.

Next, Mr. Ray Slaughter, a licensed polygraph operator from the southern part of Nevada, testified. He, also, said that Mr. Jones summed up what he had to say. He commented on the myths of polygraph testing. He stated

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that the people who mainly test for pre-employment purposes are the ones who pay at a lower level, which pay scale attracts many different types of people. He said that no one flunks a pre-employment polygraph test unless he is a "really bad guy". Mr. Slaughter said he goes over and over a question with an individual if there is a problem with a response. Nevada has excellent requirements and regulations for polygraph operators. States that do not have these regulations have problems. A person must work and be in training for 3 years to qualify to take the examinations. The polygraph operators are answerable to the Attorney General. For all these reasons, Mr. Slaughter doesn't think that passage of this bill is necessary.

John Gianotti testified next regarding A.B.357. He told the Committee that he hopes they do not dilute the effectiveness of the operators themselves through certain amendments to this bill. Then he gave examples of how the gaming industry uses the polygraph. He suggested two small amendments to the bill. Harrah's does not use the polygraph for pre-employment purposes, as he feels they have very good hiring practices and hire the best person they can to do the best job. Therefore, polygraphs in this instance are unnecessary. Mrs. Wagner asked Mr. Gianotti how many times during the last year or two Harrah's has employed the use of the polygraph. Mr. Gianotti replied that he did not know but he would make this information available to this Committee.

Mr. Les Kofoed, Executive Director, Gaming Industry Association of Nevada, Inc., said he couldn't add anything to what has already been said. He said he felt that Mr. Jones gave this Committee a very good picture of how the polygraph can be of value to people. He doesn't feel that the use of the polygraph should be banned in any "way, shape or form". If necessary, the rules could be tightened, but the use of the polygraph protects the innocent.

Mr. Gino Del Carlo, of the Nevada Bankers Association, was here representing himself today as a concerned resident of the State of Nevada. Mr. Del Carlo spoke in regards to A.B.357. Mr. Del Carlo mentioned that he has a Master's Degree in education and psychology. He mentioned a particular decision handed down regarding the polygraph, and explained what the facts of this case were. (Bugner v. Goodyear Tire and Rubber Co., 1972.) Mr. Del Carlo stated that individuals do have rights, and if they feel that they are being discriminated against, under federal law they are protected.

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Regarding A.B.357, Walter Shea, Jr., Polygraph Examiner for Carex, Inc., Las Vegas, was next to testify. He read from a prepared statement. Mr. Shea began by describing the television image of the polygraph testing procedure, and stated that the uninformed mind does not see the factual situation. He explained the testing procedure, stating that no one but the examiner and the individual being examined is in the room. There are several long-range psychological reasons for all the necessary requirements and procedures. The manner must be very precise. The examiner doesn't throw the individual being tested any "curves" or surprises. This is why they must know the questions ahead of time.

Mr. Shea suggested that the proponents of this bill seek out the polygraph examiners in this state and ask them what sort of legislation and restrictions are needed. He explained the use of marijuana as regards an individual's responses to the polygraph testing, and how the examiner and the employer generally react to an individual using marijuana at one time or another. Mr. Shea said he would send this Committee a written statement as to his comments today.

Mr. Shea is in the business of pre-employment and protective employment questioning, and he then explained to this Committee his procedures of questioning as related to his particular job with Carex, Inc. Mr. Shea also said he would send this Committee a copy of a list of questions which he uses in the course of his employment.

Next, testimony in connection with S.B.228 began. Mr. Pete Kelley, Nevada Retail Association, spoke next. They are opposed to S.B.228. Mr. Kelley said that when the bill was considered by the Senate, he was unable to be on hand to testify. He said this bill amends the Deceptive Trade Practices Act, which was passed during the last session of the Legislature. Under the terms of the Deceptive Trade Practices Act, the Commissioner of the Department of Commerce and the District Attorneys of the various counties of the state have the right to bring actions against people engaged in deceptive trade practices. The Retailers feel that they now have to cope with the District Attorneys and the Consumer Affairs Division. With the passage of S.B.228, they would also have to deal with the City Attorneys. He said that the

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Deceptive Trade Practices Act was established less than two years ago and that it should be given a fair trial before it is changed or amended. He asked this Committee to reconsider the Senate action and not pass this bill. He said he did not feel the Consumer Affairs Division is really in favor of this bill. Committee questioning ensued.

Mr. Kenneth O'Connell, Executive Vice President of the Las Vegas Chamber of Commerce, testified against S.B.228. He said Mr. Kelley expressed his thoughts on this bill. He said in Las Vegas there has been a great deal of cooperation between Rex Lundberg's office, Consumer Affairs Division in Las Vegas, and the city's businesses, as well as the Chamber of Commerce. In fact, he said that Mr. Lundberg has spoken at several meetings of the Chamber. He feels that the Legislature came up with some good, workable legislation last session, and it should be given a chance to prove its worth. The new District Attorney in Las Vegas has indicated that he will work with the Consumer Affairs Division. Mr. O'Connell expressed the fact that Mr. Lundberg has much respect from the business people of the area. He also said that if we pass too many regulations, young people will not want to get into business in this state. The Committee questioned Mr. O'Connell.

Also testifying against S.B.228 was Rusty Nash, Deputy District Attorney from Washoe County. He stated that he was against passage of this bill for different reasons than those of the businessmen testifying at this meeting. He said when the bill first came out, he was in favor of passage, but as he began to consider and study the bill and its effects, he concluded that if there were unlimited resources available, its passage might be good; however, there are not unlimited resources available. You would also have a duplication of effort with two offices in the same proximity working on the same type of cases, and in many instances the same cases. At the present time there is not really enough work to keep one attorney busy in the District Attorney's Office in Washoe County, and it would not be practical to fund the City Attorney's Office in this case. This would create two less than effective units, instead of one effective organization. And, in the future, if passed, a big political problem could arise as the two departments grew. Therefore, passage of this bill would result in counter-productivity. Questioning of Mr. Nash by this Committee followed. The fact was brought up that a Consumer Fraud Division was being set-up in Las Vegas at this time.

Mrs. Wagner moved to indefinitely postpone S.B.228, and Mrs. Hayes seconded. A vote on this motion followed with



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8 in favor of indefinite postponement. Mr. Lowman was not present for this vote. Legislation Action Form is attached to these Minutes.

Mr. Banner moved for adjournment, and Mr. Sena seconded. Chairman Barengo adjourned this meeting at 9:57 a.m.





Section 1. Chapter 613 or NRS is hereby amended by adding thereto a new section which shall read as follows:

1. It is unlawful for any employer, company, corporation, association or person doing business in this state to demand or require any applicant for employment ~~or any employee~~ to submit to an examination by a polygraph, lie detector or similar instrument as a condition of employment;

2. Section 1 shall not prohibit the use of a polygraph, lie detector or similar test when mutually agreed to by ~~the~~<sup>an</sup> employee and employer provided that:

a. The employee is furnished a complete list of the questions to be asked not less than 24 hours prior to the test;

b. The questions asked on such tests must be directly related to the incident being investigated and shall not include incidental inquiries concerning the employee's private life or other unrelated activities;

3. The prohibition of subsection 1 does not apply to employment by the State of Nevada or any political subdivision thereof.

4. Any person violating the provisions of this section is guilty of a misdemeanor.

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LEGISLATION ACTION

DATE Mar. 21, 1975  
BILL NO. S. B. 228

MOTION: \_\_\_\_\_

Do Pass \_\_\_\_\_ Amend \_\_\_\_\_ Indefinitely Postpone  Reconsider \_\_\_\_\_

Moved By Mrs. Wagner Seconded By Mrs. Hayes

AMENDMENT: \_\_\_\_\_

Moved By \_\_\_\_\_ Seconded By \_\_\_\_\_

AMENDMENT: \_\_\_\_\_

Moved By \_\_\_\_\_ Seconded By \_\_\_\_\_

VOTE:	MOTION		AMEND		AMEND	
	YES	NO	YES	NO	YES	NO
Barengo	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____
Banner	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____
Hayes	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____
Heaney	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____
Hickey	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____
Lowman	_____	_____	_____	_____	_____	_____
Polish	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____
Sena	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____
Wagner	<input checked="" type="checkbox"/>	_____	_____	_____	_____	_____

*Mr. Lowman not present.*

TALLY:

ORIGINAL MOTION: Passed  Defeated \_\_\_\_\_ Withdrawn \_\_\_\_\_

Amended & Passed \_\_\_\_\_ Amended & Defeated \_\_\_\_\_

Amended & Passed \_\_\_\_\_ Amended & Defeated \_\_\_\_\_

Attach to Minutes Mar. 21, 1975  
Date