

OCA 82-0593

**Office of Legislative Liaison**  
Routing Slip

| TO:              | ACTION | INFO |
|------------------|--------|------|
| 1. D/OLL         |        | X    |
| 2. DD/OLL        |        | X    |
| 3. Admin Officer |        |      |
| 4. Liaison       |        |      |
| 5. Legislation   | X      |      |
| 6. Ch/Liaison    |        |      |
| 7. DCh/Liaison   |        |      |
| 8.               |        |      |
| 9.               |        |      |
| 10.              |        |      |

SUSPENSE

Date

|  |
|--|
| Action Officer:                        |
| Remarks:<br><i>Att. of Acha office</i> |

Name/Date

LEE H. HAMILTON, INDIANA, CHAIRMAN  
LOUIS STOKES, OHIO  
DAVE MCCURDY, OKLAHOMA  
ANTHONY C. BEILENSON, CALIFORNIA  
ROBERT W. KASTENMEIER, WISCONSIN  
DAN DANIEL, VIRGINIA  
ROBERT A. ROE, NEW JERSEY  
GEORGE E. BROWN, JR., CALIFORNIA  
MATTHEW F. MCHUGH, NEW YORK  
BERNARD J. DWYER, NEW JERSEY  
  
BOB STUMP, ARIZONA  
ANDY IRELAND, FLORIDA  
HENRY J. HYDE, ILLINOIS  
DICK CHENEY, WYOMING  
BOB LIVINGSTON, LOUISIANA  
BOB MCEWEN, OHIO

# U.S. HOUSE OF REPRESENTATIVES

PERMANENT SELECT COMMITTEE  
ON INTELLIGENCE  
WASHINGTON, DC 20515

56-0593  
~~HR~~ HPS

THOMAS K. LATIMER, STAFF DIRECTOR  
MICHAEL J. O'NEIL, CHIEF COUNSEL  
STEVEN K. BERRY, ASSOCIATE COUNSEL

February 28, 1986

MEMORANDUM FOR:

[Redacted]

STAT

Deputy Director  
Office of Congressional Affairs  
Central Intelligence Agency


Emil Moschella  
Office of Congressional and Public Affairs  
Federal Bureau of Investigation

[Redacted]

STAT

Office of Legislative Affairs  
National Security Agency

FROM:

  
David S. Addington  
Counsel, Subcommittee on Legislation

SUBJECT:

Pending Private Sector Polygraph Legislation

1. Background. As I discussed with you on the telephone today, Congressman C. W. Bill Young's office has asked me to check informally and promptly with each of your agencies on legislation aimed at private sector polygraph usage to be considered shortly by the House of Representatives. As you know, Congressman Young has been one of the strongest supporters in the House of ensuring the availability of polygraph examinations for personnel security screening to protect sensitive national security information.

2. Expected Floor Action. The House will soon consider H.R. 1524, as reported (H. Rept. 99-416) under the rule approved by the House on December 12, 1985 (H. Res. 337). As the floor debate preceding adoption of the rule made clear, Congressman Young intends to offer H.R. 3916 as an amendment in the nature of a substitute to H.R. 1524. When he offers H.R. 3916 as a substitute to H.R. 1524, he would like to include whatever amendments to H.R. 3916 may be necessary to ensure that its enactment would have no adverse impact on federal agency polygraph programs.

3. Potential Concerns with H.R. 3916. Section 4 of H.R. 3916 provides that:

"No employer may take any action affecting the employment status of an employee or prospective employee, if such action is based on the results of a polygraph examination of such employee or prospective employee that has not been administered in accordance with sections 5 and 6 of this Act."

The drafters of H.R. 3916 clearly intended to regulate only private sector polygraph usage, as evidenced by the use in Section 2(2) of the bill of the National Labor Relations Act definition of "employer," which excludes the United States. However, because the provisions of section 5 (relating to the rights of polygraph examinees), section 6 (relating to minimum standards for polygraph examinations), section 8 (regarding certification of polygraph examiners) and section 9 (regarding disclosure of polygraph information) establish requirements and prohibitions not qualified by the term "employer," concern has arisen that Sections 5, 6, 8, and 9 of H.R. 3916 could be construed to apply to the use of polygraphs by the United States (which, of course, includes your agencies). Moreover, concern has been expressed that the bill could have an adverse impact on industrial personnel security polygraph programs under which key employees of private sector companies under contract to U.S. intelligence agencies must undergo polygraph examinations as a condition of access to sensitive classified information.

4. Request for Informal Response by March 7th. Attached is a page of draft amendments to H.R. 3916 dated February 25, 1986 under consideration by Congressman Young's staff to alleviate any possible federal agency concerns, especially national security concerns, with H.R. 3916. Please have the appropriate member of your staff telephone me (225-7310) by Friday, March 7th with your informal thoughts on the following:

(1) Would the attached proposed amendments to be incorporated in H.R. 3916 before it is offered as a substitute to H.R. 1524 ensure that H.R. 3916, if it were to become law, would not have an adverse effect on your agency?

(2) What would be the likely response of your agency if Mr. Young were to request your agency's views on H.R. 3916 with the proposed amendments, as a substitute to H.R. 1524? (Obviously the hope is that your agency head would respond that he supported the revised H.R. 3916 package, or at least that he had no objection.)

The emphasis on this request is informality and speed. We understand that your response can only be informal guidance. Thank you for your help.

Enclosures: H.R. 1524 as reported  
H. Rept. 99-416  
H. Res. 337  
Floor Action on H.Res. 337  
H.R. 3916  
Amendments to H.R. 3916 (February 25, 1985)

cc: Mr. Harry Glenn  
Office of the Honorable C.W. Bill Young

February 25, 1986

Amendments to H.R. 3916 as introduced

Amendment No. 1--On page 6, after line 7, insert the following new subsection at the end of Section 5 (relating to rights of polygraph examinee):

"(d) Nothing in this section shall be construed to apply with respect to a polygraph examination conducted by, or at the direction of, the United States in accordance with otherwise applicable Federal law."

Amendment No. 2--On page 9, after line 16, insert the following new subsection at the end of Section 6 (relating to minimum standards for polygraph examinations):

"(j) Nothing in this section shall be construed to apply to a polygraph examiner employed by the United States, or conducting a polygraph examination at the direction of the United States in accordance with otherwise applicable Federal law."

Amendment No. 3--On page 11, after line 25, insert the following new subsection in Section 8 (relating to certification of polygraph examiners):

"(d) Nothing in this section shall be construed to apply to a polygraph examiner employed by the United States, or conducting a polygraph examination at the direction of the United States in accordance with otherwise applicable Federal law."

Amendment No. 4--On page 12, after line 14, insert the following new subsection in Section 12 (relating to disclosure of information):

"(d) Nothing in this section prohibits the disclosure of information obtained during a polygraph examination to a federal law enforcement agency or intelligence agency in accordance with otherwise applicable Federal law or to prohibit subsequent redisclosure by such an agency in accordance with such law."

Explanation for Amendments

The use of the National Labor Relations Act definition of "employer" in Section 2(2)(A) of H.R. 3916, which excludes the United States, and the findings set forth in Section 3 of the bill, make clear that the bill is intended to regulate private sector use of polygraphs for commercial purposes, and is not intended to regulate use of polygraphs by the United States. However, several provisions of the bill would have an unintended adverse impact on the use of polygraphs by the United States for national security and law enforcement purposes as currently permitted by federal law.

The amendments ensure that H.R. 3916 will not restrict currently authorized national security and law enforcement uses of the polygraph, including uses in industrial security programs conducted at the direction of the United States to protect national security projects. The amendments also ensure that H.R. 3916 will not affect existing controls on the qualifications of federal agency polygraph examiners and on the use by federal agencies of polygraph-derived information.

IA

## Union Calendar No. 251

99<sup>TH</sup> CONGRESS  
1<sup>ST</sup> SESSION

# H. R. 1524

[Report No. 99-416]

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

---

### IN THE HOUSE OF REPRESENTATIVES

MARCH 7, 1985

Mr. WILLIAMS (for himself, Mr. MARTINEZ, Mr. FORD of Michigan, Mr. KEMP, Mr. MCKINNEY, Mr. HAYES, Mr. OWENS, Mr. DYMALLY, Mr. BOUCHER, Mr. MURPHY, Mr. TAUKE, Mr. LOWRY of Washington, Mr. COURTER, and Mr. EDWARDS of California) introduced the following bill; which was referred to the Committee on Education and Labor

AUGUST 20, 1985

Additional sponsors: Mr. CLAY, Mr. DELLUMS, Mr. SAVAGE, Mr. ATKINS, Mr. BIAGGI, Mr. SMITH of Florida, Mr. GARCIA, Mr. BERMAN, Mrs. BOXER, Mr. STOKES, Mr. RICHARDSON, Mr. WILSON, Mr. KILDEE, Mr. ACKERMAN, Mr. HEETEL of Michigan, Mr. HAWKINS, Mr. MATSUI, Mr. DOWNEY of New York, Mr. VENTO, Mr. TOWNS, Mr. CONYERS, Mr. MORRISON of Connecticut, Mr. MRAZEK, Mr. SEIBERLING, Mr. EVANS of Illinois, Mr. STALLINGS, Mr. RAHALL, Mr. OBERSTAR, Mr. BROWN of California, Mrs. SCHROEDER, Mr. FAZIO, Mr. EDWARDS of Oklahoma, Mr. SOLAEZ, Mr. KOLTER, Mr. NEAL, Mr. KASTENMEIER, Mr. BARNES, Mr. FOGLIETTA, Mr. SIKORSKI, Mr. MITCHELL, Mr. GAYDOS, Mr. WIRTH, Mr. COELHO, Mr. TORRES, Mr. FRANK, Mr. DASCHLE, Mr. FEIGHAN, Mr. BOEHLEBT, Mr. DORGAN of North Dakota, Mr. KOSTMAYER, Mr. GEPHARDT, Mrs. BURTON of California, Mr. CABR, Mr. DYSON, Mr. LEHMAN of California, Mr. WISE, Mr. CLINGER, Mr. GLICKMAN, Mr. MOODY, Mr. CROCKETT, Mr. BATES, Mr. STUDDS, Mr. EDGAR, Mr. LUKE, Mr. WOLPE, Mr. DWYER of New Jersey, Ms. KAPTUB, Mr. GONZALEZ, Mrs. COLLINS, Mr. PEASE, Mr. SMITH of Iowa, Mr. RODINO, Mr. OLIN, Mr. MOLLOHAN, Mr. AKAKA, Mr. ROBINSON, Mr. BONIOR of Michigan, Mr. SWIFT, Mr. MOAKLEY, Mr. ENGLISH, Mr. WHEAT, Mr. HOYER, Mr. WALGREEN, Mr. YATES, Mr. MAUROULES, Mr. LEVINE, of California, Mr. CARPER, Mr. NOWAK, Mr. LELAND, Mr. SLATTERY, Mrs. SCHNEIDER, Mr. RINALDO, Mr. ROYBAL,

★

Mr. ASPIN, Mr. SAXTON, Mr. FAUNTROY, Mr. HOWARD, Ms. MIKULSKI, Mr. WATKINS, Mr. MARKEY, Mr. WEAVER, Mr. RANGEL, Mr. LUNDINE, Mr. STARK, Mr. BEDELL, Mr. KANJOBSKI, Mr. HAMILTON, Mr. PERKINS, Mr. RIDGE, Mr. FLORIO, Mr. BORSKI, Mr. ST GERMAIN, Mr. SABO, Mr. DONNELLY, Mrs. JOHNSON, Mr. WEISS, Mr. DIXON, Mr. PENNY, Mr. MANTON, Mr. BOLAND, Mrs. BENTLEY, Mr. STAGGEES, Mr. SYNAR, Mr. SCHEUER, Mr. TORRICELLI, Mr. SCHUMER, Mrs. HOLT, Mr. MINETA, Mr. AU COIN, Ms. SNOWE, Mr. TRAFICANT, Mr. NIELSON of Utah, Mr. GUABINI, Mr. EARLY, Mr. TRAXLER, Mr. GRAY of Pennsylvania, Ms. OAKAR, and Mr. ROE

DECEMBER 5, 1985

Additional sponsors: Mr. LEACH of Iowa, Mr. VISCLOSKY, Mr. GALLO, Mr. DURBIN, Mr. LEVIN of Michigan, Mr. LIGHTFOOT, Mr. BROOKS, Mr. GRAY of Illinois, Mr. BOSCO, Mr. CONTE, Mr. BUSTAMANTE, Mr. GEJDENSON, Mrs. KENNELLY, and Mr. OBEY

DECEMBER 5, 1985

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

[Strike out all after the enacting clause and insert the part printed in italic]

[For text of introduced bill, see copy of bill as introduced on March 7, 1985]

---

## A BILL

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled*

3 **SECTION 1. SHORT TITLE.**

4 *This Act may be cited as the "Employee Polygraph*  
5 *Protection Act of 1985".*

6 **SEC. 2. PROHIBITIONS ON LIE DETECTOR USE.**

7 *It shall be unlawful for any employer engaged in com-*  
8 *merce or in the production of goods for commerce—*

1           (1) *directly or indirectly, to require, request, sug-*  
2           *gest, or cause any employee or prospective employee to*  
3           *take or submit to any lie detector test;*

4           (2) *to use, accept, refer to, or inquire concerning*  
5           *the results of any lie detector test of any employee or*  
6           *prospective employee;*

7           (3) *to discharge, dismiss, discipline in any*  
8           *manner, or deny employment or promotion to, or*  
9           *threaten to take any such action against—*

10           (A) *any employee or prospective employee*  
11           *who refuses, declines, or fails to take or submit to*  
12           *any lie detector test; or*

13           (B) *any employee or prospective employee on*  
14           *the basis of the results of any lie detector test; or*

15           (4) *to discharge or in any manner discriminate*  
16           *against an employee or prospective employee because—*

17           (A) *such employee or prospective employee*  
18           *has filed any complaint or instituted or caused to*  
19           *be instituted any proceeding under or related to*  
20           *this Act;*

21           (B) *such employee or prospective employee*  
22           *has testified or is about to testify in any such pro-*  
23           *ceeding; or*

1                   (C) of the exercise by such employee, on  
2                   *behalf of himself or others, of any right afforded*  
3                   *by this Act.*

4 **SEC. 3. NOTICE OF PROTECTION.**

5           *The Secretary of Labor shall prepare, have printed, and*  
6 *distribute a notice that employers are prohibited by this Act*  
7 *from using a lie detector test on any employee or prospective*  
8 *employee. Upon receipt by the employer, such notice shall be*  
9 *posted at all times in conspicuous places upon the premises of*  
10 *every employer engaged in commerce or in the production of*  
11 *goods for commerce.*

12 **SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.**

13           (a) *IN GENERAL.*—*The Secretary of Labor shall—*

14                   (1) *issue such rules and regulations as may be*  
15                   *necessary or appropriate for carrying out this Act;*

16                   (2) *cooperate with regional, State, local, and other*  
17 *agencies, and cooperate with and furnish technical as-*  
18 *sistance to employers, labor organizations, and employ-*  
19 *ment agencies to aid in effectuating the purposes of*  
20 *this Act; and*

21                   (3) *make investigations and inspections and re-*  
22 *quire the keeping of records necessary or appropriate*  
23 *for the administration of this Act.*

24           (b) *SUBPENA AUTHORITY.*—*For the purpose of any*  
25 *hearing or investigation under this Act, the Secretary shall*



1 *have the authority contained in sections 9 and 10 of the Fed-*  
2 *eral Trade Commission Act (15 U.S.C. 49, 50).*

3 **SEC. 5. ENFORCEMENT PROVISIONS.**

4 (a) *CIVIL PENALTIES.*—(1) *Subject to paragraph (2),*  
5 *whoever violates this Act may be assessed a civil penalty of*  
6 *not more than \$10,000.*

7 (2) *In determining the amount of any penalty under*  
8 *paragraph (1), the Secretary shall take into account the pre-*  
9 *vious record of the person in terms of compliance with this*  
10 *Act and the gravity of the violation.*

11 (3) *Any civil penalty assessed under this subsection*  
12 *shall be collected in the same manner as is required by sub-*  
13 *sections (b) through (e) of section 503 of the Migrant and*  
14 *Seasonal Agricultural Worker Protection Act (29 U.S.C.*  
15 *1853) with respect to civil penalties assessed under subsec-*  
16 *tion (a) of such section.*

17 (b) *INJUNCTIVE ACTIONS BY THE SECRETARY.*—*The*  
18 *Secretary may bring an action to restrain violations of this*  
19 *Act. The district courts of the United States shall have juris-*  
20 *isdiction, for cause shown, to issue temporary or permanent*  
21 *restraining orders and injunctions to require compliance with*  
22 *this Act.*

23 (c) *PRIVATE CIVIL ACTIONS.*—(1) *An employer who*  
24 *violates the provisions of this Act shall be liable to the em-*  
25 *ployee or prospective employee affected by such violation. An*

1 *employer who violates the provisions of this Act shall be*  
2 *liable for such legal or equitable relief as may be appropriate,*  
3 *including without limitation employment, reinstatement, pro-*  
4 *motion, and the payment of wages lost and an additional*  
5 *amount as liquidated damages.*

6 (2) *An action to recover the liability prescribed in para-*  
7 *graph (1) may be maintained against the employer in any*  
8 *Federal or State court of competent jurisdiction by any one*  
9 *or more employees for or in behalf of himself or themselves*  
10 *and other employees similarly situated.*

11 (3) *The court shall award to a prevailing plaintiff in*  
12 *any action under this subsection the reasonable costs of such*  
13 *action, including attorneys' fees.*

14 **SEC. 6. EXEMPTIONS.**

15 (a) **NO APPLICATION TO GOVERNMENTAL EMPLOY-**  
16 **ERS.**—*The provisions of this Act shall not apply with respect*  
17 *to the United States Government, a State or local govern-*  
18 *ment, or any political subdivision of a State or local*  
19 *government.*

20 (b) **COUNTERINTELLIGENCE PROGRAM EXEMP-**  
21 **TION.**—(1) *Nothing in this Act shall be construed to prohibit*  
22 *the administration, in the performance of any counterintelli-*  
23 *gence function, of any lie detector test that is conducted pur-*  
24 *suant to section 1221 of the Department of Defense Authori-*  
25 *zation Act, 1986.*

1       (2) *Nothing in this Act shall be construed to prohibit the*  
2 *administration, in the performance of any intelligence or*  
3 *counterintelligence function, of any lie detector test—*

4           (A) *to an individual assigned or detailed to the*  
5 *Central Intelligence Agency or to any expert or con-*  
6 *sultant under a contract with the Central Intelligence*  
7 *Agency;*

8           (B) *to (i) an individual employed by or assigned*  
9 *or detailed to the National Security Agency, (ii) an*  
10 *expert or consultant under contract to the National Se-*  
11 *curity Agency, (iii) an employee of a contractor of the*  
12 *National Security Agency, or (iv) an individual apply-*  
13 *ing for a position in the National Security Agency; or*

14           (C) *to an individual assigned to a space where*  
15 *sensitive cryptologic information is produced, proc-*  
16 *essed, or stored for the Central Intelligence Agency or*  
17 *the National Security Agency.*

18       (c) *EXEMPTION FOR FBI CONTRACTORS.—Nothing*  
19 *in this Act shall be construed to prohibit the administration,*  
20 *in the performance of any counterintelligence function, of*  
21 *any lie detector test to an employee of a contractor of the*  
22 *Federal Bureau of Investigation of the Department of Justice*  
23 *who is engaged in the performance of any work under the*  
24 *contract with such Bureau.*

1           (d) *EXEMPTION FOR DRUG THEFT OR DIVERSION*  
2 *INVESTIGATIONS.*—*This Act shall not prohibit the use of a*  
3 *lie detector test on current employees by an employer investi-*  
4 *gating a reported theft or diversion of a controlled substance*  
5 *listed in schedule I, II, III, or IV pursuant to section 202 of*  
6 *the Controlled Substances Act (21 U.S.C. 812) to the extent*  
7 *that—*

- 8                   (1) *such use is consistent with—*  
9                           (A) *applicable State and local law, and*  
10                           (B) *any negotiated collective bargaining*  
11                           *agreement,*  
12                   *that explicitly or implicitly limits or prohibits the use*  
13                   *of lie detector tests on such employees; and*  
14                   (2) *the test is administered only to employees with*  
15                   *direct access to such controlled substances.*

16 **SEC. 7. DEFINITIONS.**

17 *As used in this Act—*

- 18                   (1) *The term “lie detector test” includes any ex-*  
19 *amination involving the use of any polygraph, decepto-*  
20 *graph, voice stress analyzer, psychological stress eval-*  
21 *uator, or any other similar device (whether mechanical,*  
22 *electrical, or chemical) which is used, or the results of*  
23 *which are used, for the purpose of detecting deception*  
24 *or verifying the truth of statements.*

1           (2) *The term "employer" includes any person*  
2           *acting directly or indirectly in the interest of an*  
3           *employer in relation to an employee or prospective*  
4           *employee.*

5           (3) *The term "commerce" has the meaning pro-*  
6           *vided by section 3(b) of the Fair Labor Standards Act*  
7           *(29 U.S.C. 203(b)).*

8 **SEC. 8. EFFECTIVE DATE.**

9           *The provisions of this Act shall take effect on the date of*  
10          *enactment, except for section 3, which shall take effect six*  
11          *months after the date of enactment of this Act.*

Union Calendar No. 251

99<sup>TH</sup> CONGRESS  
1<sup>ST</sup> Session

**H. R. 1524**

[Report No. 99-416]

---

---

## **A BILL**

To prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

---

---

DECEMBER 5, 1985

Reported with an amendment, committed to the Committee of the Whole House on the State of the Union, and ordered to be printed

99TH CONGRESS } HOUSE OF REPRESENTATIVES { REPORT  
1st Session } 99-416

---

## EMPLOYEE POLYGRAPH PROTECTION ACT OF 1985

DECEMBER 5, 1985.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. HAWKINS, from the Committee on Education and Labor,  
submitted the following

### REPORT

together with

### DISSENTING AND SUPPLEMENTAL VIEWS

[To accompany H.R. 1524 which on March 7, 1985 was referred to the Committee on Education and Labor]

[Including cost estimate of the Congressional Budget Office]

The Committee on Education and Labor, to whom was referred the bill (H.R. 1524) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, having considered the same, report favorably thereon an amendment in the nature of a substitute and recommend that the bill as amended do pass.

The Committee amended the proposed legislation so as to allow employers to polygraph an employee when it is used for certain national security functions.

The bill as amended would read as follows:

#### SECTION 1. SHORT TITLE.

This Act may be cited as the "Employee Polygraph Protection Act of 1985".

#### SEC. 2. PROHIBITIONS ON LIE DETECTOR USE.

It shall be unlawful for any employer engaged in commerce or in the production of goods for commerce—

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

(2) to use, accept, refer to, or inquire concerning the results of any lie detector test of any employee or prospective employee;

(3) to discharge, dismiss, discipline in any manner, or deny employment or promotion to, or threaten to take any such action against—

(A) any employee or prospective employee who refuses, declines, or fails to take or submit to any lie detector test; or

(B) any employee or prospective employee on the basis of the results of any lie detector test; or

(4) to discharge or in any manner discriminate against an employee or prospective employee because—

(A) such employee or prospective employee has filed any complaint or instituted or caused to be instituted any proceeding under or related to this Act;

(B) such employee or prospective employee has testified or is about to testify in any such proceeding; or

(C) of the exercise by such employee, on behalf of himself or others, of any right afforded by this Act.

### SEC. 3. NOTICE OF PROTECTION.

The Secretary of Labor shall prepare, have printed, and distribute a notice that employers are prohibited by this Act from using a lie detector test on any employee or prospective employee. Upon receipt by the employer, such notice shall be posted at all times in conspicuous places upon the premises of every employer engaged in commerce or in the production of goods for commerce.

### SEC. 4. AUTHORITY OF THE SECRETARY OF LABOR.

(a) IN GENERAL.—The Secretary of Labor shall—

(1) issue such rules and regulations as may be necessary or appropriate for carrying out this Act;

(2) cooperate with regional, State, local, and other agencies, and cooperate with and furnish technical assistance to employers, labor organizations, and employment agencies to aid in effectuating the purposes of this Act; and

(3) make investigations and inspections and require the keeping of records necessary or appropriate for the administration of this Act.

(b) SUBPENA AUTHORITY.—For the purpose of any hearing or investigation under this Act, the Secretary shall have the authority contained in sections 9 and 10 of the Federal Trade Commission Act (15 U.S.C. 49, 50).

### SEC. 5. ENFORCEMENT PROVISIONS.

(a) CIVIL PENALTIES.—(1) Subject to paragraph (2), whoever violates this Act may be assessed a civil penalty of not more than \$10,000.



(2) In determining the amount of any penalty under paragraph (1), the Secretary shall take into account the previous record of the person in terms of compliance with this Act and the gravity of the violation.

(3) Any civil penalty assessed under this subsection shall be collected in the same manner as is required by subsections (b) through (e) of section 503 of the Migrant and Seasonal Agricultural Worker Protection Act (29 U.S.C. 1853) with respect to civil penalties assessed under subsection (a) of such section.

(b) **INJUNCTIVE ACTIONS BY THE SECRETARY.**—The Secretary may bring an action to restrain violations of this Act. The district courts of the United States shall have jurisdiction, for cause shown, to issue temporary or permanent restraining orders and injunctions to require compliance with this Act.

(c) **PRIVATE CIVIL ACTIONS.**—(1) An employer who violates the provisions of this Act shall be liable to the employee or prospective employee affected by such violation. An employer who violates the provisions of this Act shall be liable for such legal or equitable relief as may be appropriate, including without limitation employment, reinstatement, promotion, and the payment of wages lost and an additional amount as liquidated damages.

(2) An action to recover the liability prescribed in paragraph (1) may be maintained against the employer in any Federal or State court of competent jurisdiction by any one or more employees for or in behalf of himself or themselves and other employees similarly situated.

(3) The court shall award to a prevailing plaintiff in any action under this subsection the reasonable costs of such action, including attorneys' fees.

#### **SEC. 6. EXEMPTIONS.**

(a) **NO APPLICATION TO GOVERNMENTAL EMPLOYERS.**—The provisions of this Act shall not apply with respect to the United States Government, a State or local government, or any political subdivision of a State or local government.

(b) **COUNTERINTELLIGENCE PROGRAM EXEMPTION.**—(1) Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test that is conducted pursuant to section 1221 of the Department of Defense Authorization Act, 1986.

(2) Nothing in this Act shall be construed to prohibit the administration, in the performance of any intelligence or counterintelligence function, of any lie detector test—

(A) to an individual assigned or detailed to the Central Intelligence Agency or to any expert or consultant under a contract with the Central Intelligence Agency;

(B) to (i) an individual employed by or assigned or detailed to the National Security Agency, (ii) an expert or consultant under contract to the National Security Agency, (iii) an employee of a contractor of

the National Security Agency, or (iv) an individual applying for a position in the National Security Agency; or

(C) to an individual assigned to a space where sensitive cryptologic information is produced, processed, or stored for the Central Intelligence Agency or the National Security Agency.

(c) **EXEMPTION FOR FBI CONTRACTORS.**—Nothing in this Act shall be construed to prohibit the administration, in the performance of any counterintelligence function, of any lie detector test to an employee of a contractor of the Federal Bureau of Investigation of the Department of Justice who is engaged in the performance of any work under the contract with such Bureau.

(d) **EXEMPTION FOR DRUG THEFT OR DIVERSION INVESTIGATIONS.**—This Act shall not prohibit the use of a lie detector test on current employees by an employer investigating a reported theft or diversion of a controlled substance listed in schedule I, II, III, or IV pursuant to section 202 of the Controlled Substance Act (21 U.S.C. 812) to the extent that—

(1) such use is consistent with—

(A) applicable State and local law, and

(B) any negotiated collective bargaining agreement,

that explicitly or implicitly limits or prohibits the use of lie detector tests on such employees; and

(2) the test is administered only to employees with direct access to such controlled substances.

#### **SEC. 7. DEFINITIONS.**

As used in this Act—

(1) The term “lie detector test” includes any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any other similar device (whether mechanical, electrical, or chemical) which is used, or the results of which are used, for the purpose of detecting deception or verifying the truth of statements.

(2) The term “employer” includes any person acting directly or indirectly in the interest of an employer in relation to an employee or prospective employee.

(3) The term “commerce” has the meaning provided by section 3(b) of the Fair Labor Standards Act (29 U.S.C. 203(b)).

#### **SEC. 8. EFFECTIVE DATE.**

The provisions of this Act shall take effect on the date of enactment, except for section 3, which shall take effect six months after the date of enactment of this Act.

#### **INTRODUCTION AND BRIEF SUMMARY OF LEGISLATION**

An estimated 98 percent of the more than two million polygraph tests administered each year are in private industry. Approximate-

ly three-quarters of the polygraph tests are administered in pre-employment testing while the other one-quarter are used for investigations. However, these tests, which affect close to two million private sector employees each year, are not reliable.

The theory of polygraphs and other lie detectors assumes that there is a direct correlation between deception and physiological responses. However, this basic premise that there is a unique physiological response characterizing a lie is inaccurate. In fact, a lie detector does not register deception; it registers stress through physiological responses—whether out of anxiety, fear, anger, or nervousness.

H.R. 1524, the Employee Polygraph Protection Act of 1985, and similar legislation have been introduced in the 99th Congress to address this problem at the national level. Thirty-one states and the District of Columbia have passed legislation affecting the use of lie detectors in the workplace. However, these separate laws have not proven effective. Employers can undermine state law by pressuring current employees and potential employees into “volunteering” to take a test even where the state forbids an employer from requiring or requesting an examination. Where a state completely bans the use of lie detectors in the workforce, employers may avoid the law by “hiring” in a neighboring state which permits examinations and then “transferring” the employee into the state where such testing is prohibited.

H.R. 1524 would uniformly ban the use of these tests by most private employers. This legislation would protect workers who are wrongfully denied employment and whose careers are devastated because of lie detector test inaccuracies and employer abuses.

Some employers who currently use lie detectors extensively testified on their preference for mandatory regulation of the examiners rather than the elimination of the tests. They believe that lie detector tests are their most cost effective and convenient tools for employee screening to prevent employee theft. However, this ignores the fact that lie detectors are unreliable in detecting truth as well as glossing over the fact that the use of lie detectors violates workers' rights. Examiners often question employees concerning their sexual practices, home situations, finances, political and religious beliefs as well as other personal subjects.

The Employee Polygraph Protection Act of 1985, if enacted, would protect workers from discrimination in employment by eliminating the general use of lie detectors in the workplace.

#### LEGISLATIVE HISTORY AND COMMITTEE ACTION

H.R. 1524, the Employee Polygraph Protection Act of 1985, was introduced on March 7, 1985 by Representative Pat Williams and now includes more than 160 cosponsors from both parties.

The original legislation, which prohibits the use of lie detectors by private sector employers involved in interstate commerce, was referred to the Committee on Education and Labor. On April 1, 1985 the bill was referred to the Subcommittee on Employment Opportunities. The bill was also jointly referred to the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards on August 27, 1985.

Hearings were held on this and similar legislation by the Subcommittee on Employment Opportunities on July 30, 1985 and September 18, 1985. Testimony was received from Representative Stewart McKinney on July 30 and Representative Robert L. Livingston on September 18 and other witnesses representing private employers and employees. Since the 93rd Congress, four other hearings have been held on this issue.

The Subcommittee on Employment Opportunities held an open mark-up session on September 18 and unanimously accepted an amendment in the nature of a substitute to H.R. 1524 offered by Representative Pat Williams and Chairman Matthew Martinez. The Subcommittee favorably reported the substitute bill, with amendment, by unanimous voice vote to the full committee.

The Committee on Education and Labor met on October 23, 1985 to consider H.R. 1524 as amended. At that time the Committee approved a motion discharging the Subcommittee on Labor-Management Relations and the Subcommittee on Labor Standards from further consideration of H.R. 1524. The full committee, by voice vote ordered the substitute bill, with amendment, to be favorably reported to the House of Representatives.

Congress has been interested in the lie-detector test issue for more than 20 years. For the past seven Congresses, 35 separate bills have been introduced concerning the use of these devices. The majority of this legislation has been introduced in the House. Fourteen of the 35 bills supported regulation of the industry. The remaining 21 bills completely banned or partially banned the use of the lie detectors in the private workforce.

In the 99th Congress, eight bills relating to lie detectors have been introduced. Seven of these bills were introduced in the House of Representatives. A bill has also been introduced in the Senate by Chairman Orrin Hatch and the Ranking Minority Member, Senator Edward M. Kennedy and was referred to the Committee on Labor and Human Resources. Five of the bills introduced ban the use of lie detectors by most private sector employers, including the Senate version; while the others regulate the industry.

#### NEED FOR LEGISLATION

The lie detector has become primarily an employment opportunities issue, with the vast majority of the tests now being administered in the workforce.

More than 2 million lie detector tests are administered in the private sector each year. This use is more than all of the examinations in criminal cases and in the Government combined. The growing number of lie detector tests, triple the number given ten years ago, has raised the need for legislative review of the accuracy of these devices, the instances of their abuse and the determination of their effect on the private workforce.

Lie detector devices can include the Voice Stress Analyzer (VSA), the Psychological Stress Evaluator (PSA), psychological examinations and the polygraph.

Polygraphs have received the most attention in recent years and are now the most widely used device by employers. Polygraph machines, consisting of pneumograph tubes placed around the chest

and stomach, a cardio-cuff placed on the left arm and electrodes placed on two fingers on the right hand, measure a subject's changes in pulse, blood pressure and perspiration when responding to a series of questions. The machine measures bodily functions and the polygraph examiner renders a judgment of "truthful", "untruthful" or "inconclusive" based on the responses and reactions to questions.

The validity of this lie detector test has been the source of increasing debate during the last two decades. Federal studies have concluded that the test's inaccuracy and the violation of workers' rights outweigh any positive results of lie detectors.

For more than 20 years the Congress has been interested in the validity of these tests and every study done since 1983 for the United States Congress has found that there is no scientific basis for polygraphs as lie detectors.

In 1965 the Foreign Operations and Government Information Subcommittee of the House Committee on Government Operations stated in a lie detector study, "There is no lie detector; neither machine nor human. People have been deceived by a myth that a metal box in the hands of an investigator can detect truth or falsehood." Two decades later the Office of Technical Assessment (OTA) in another investigation for Congress, re-emphasized the 1965 findings by stating, "There is little research or scientific evidence to establish polygraph test validity in screening situations, whether they be pre-employment, pre-clearance, periodic or aperiodic, random or 'dragnet'." Other studies have reaffirmed this position including the Privacy Protection Study Commission, established by Congress in 1974, which reported lie detector tests are "an unreasonable invasion of privacy that should be summarily proscribed". The Commission also recommended a federal law banning not only the use of these tests in employment but also the banning of the manufacturing and selling of the devices.

The primary factors affecting the validity of polygraphs are the examiner, the subject and the setting. Examiners, many of whom have less than six weeks of training after high school and do not have advanced degrees, render a speculative interpretation on the meaning of a complex graphic pattern reflecting oral, behavioral and physiological responses. When an examiner administers and scores a test, no one can determine what portion of the score is attributed to the test display, the subject's behavior, or the examiner's bias. No one, regardless of experience, can determine from a polygraph chart why a subject responded in a certain way, whether out of guilt, fear, anger or an artificial reaction resulting from self-inflicted pain. Testimony received by the subcommittee shows that polygraph test results can be controlled by the examinee. By being able to recognize relevant questions and by physiologically responding "correctly" to them, the test can be beaten. The test results reflect physiological stress only regardless of cause.

Employers, feeling they have an absolute right to screen prospective employees and monitor current ones, while believing in the reliability of lie detectors, have begun to use the polygraph test as an easy and inexpensive way to find dishonest and potentially dishonest people. More than thirty percent of the Fortune 500 companies and at least half of the retail trade firms reportedly rely on the

tests as a replacement for or enhancement of reference checks. These tests, used by employers in pre-employment and random on-the-job screening, are not used just to detect deception, but are often used to gain personal information about applicants' thoughts and attitudes. Many opponents of the polygraph believe the money employers use for this test could be more effectively spent for a background check of a applicants' work history and sound inventory control systems.

Employers believe that the polygraph is their major source of protection against the estimated \$40 billion lost in the private sector each year due to theft. The National Institute of Justice estimates that securities fraud, corporate kickbacks, embezzlement, and insurance fraud cost employers three times the amount of loss than employee pilferage. However, corporate management which is usually responsible for these types of thefts are not subjected to lie detector tests, while the hourly employees are most likely to be subjected to testing. In fact, the vast majority of the corporate management has never taken a lie detector test. Many opponents of these tests believe that good personnel practices and sound inventory control methods are much more effective in deterring theft. In addition, the results of internal auditing procedures can be used as evidence in court against an employee while the polygraph results may not.

The National Institute of Justice Study on Employee Theft shows that employers who display respect for their employees' rights and do not administer lie detector tests have a lower theft rate than those who do administer the tests. Although employees are frequently the most noticeable victim of lie detector tests, employers may also be compromising their security by relying on machines that do not work.

The growing use of these subjective tests by employers to ferret out "dishonest" employees and "undesirable" applicants has caused many people not only to focus on the accuracy of these tests, but also the lawfulness of this practice. The legal concerns over the lie detector tests include the violation of employees' rights—to privacy, to the due process of law and to the equal protection of the laws of the United States. Many polygraphers have only six weeks of training after high school. Many do not have adequate training in labor relations; and these polygraphers are subjecting workers to questions which frequently violate workers' rights. Federal action is needed to protect workers' rights, while also protecting employers from a growing number of lawsuits regarding lie detector examinations, many of which are being won by workers and applicants.

State statutes on lie detectors vary greatly. Some States have no statutes on this subject. In States with prohibitions, enforcement is ineffective. Where enforcement is adequate, employers often send workers over State lines for testing. Some State laws prohibit an employer from "requiring" a lie detector test; however, the law does not protect employees from being coerced into "volunteering" for the test. This loophole has allowed many employers to force workers to "volunteer" for a lie detector. Workers have testified that they dared not refuse to take a test because it would cost them their job.

Basic protection of rights afforded criminals by excluding lie detector test results as evidence in our nation's courts is not similarly afforded to the estimated two million workers forced to take these tests each year. The courts have determined lie detector examinations to be unreliable as evidence, yet employers continue to subject workers to them and many base employment decisions solely on test results. H.R. 1524 recognizes that these rights and protections granted to accused individuals under investigation in the criminal justice system should be extended to workers. The fundamental principle of the law that that everyone is considered innocent until proven guilty is violated by lie detector tests, which are tests given to prove one's innocence.

Lie detector tests have a built-in bias against truthful people. The more honest workers are, the more likely they will fail the test because of their heightened sensitivity to having their honesty challenged, or from fear of suspicion being misdirected at them. Dr. Leonard Saxe, principal author of the U.S. Congress, Office of Technology Assessment (OTA) report, "The Scientific Validity of Polygraph Tests", agrees that "because exceptionally honest and intelligent individuals may be highly reactive to questions about their truthfulness, such desirable employees will be misidentified at higher rates than other less desirable employees." Those workers who fail the test carry this stigma with them on their personnel records which could ruin their future careers. Subcommittee testimony demonstrated that being fired from a job after failing a polygraph examination, even after being proven innocent, has kept a worker from reentering the job market.

In analyzing whether the use of lie detectors in the workplace should continue, Congress must weigh the interests of both parties, employers and employees alike. Where a less drastic and abusive method to deter and detect theft exists, such as strong personnel and inventory control methods, Congress must urge that those alternatives be used. We must carefully scrutinize the validity as well as the abuses of lie detector examinations. It is the judgment of this Committee that H.R. 1524 is necessary to address the concerns outlined above.

#### MAJOR PROVISIONS OF H.R. 1524

Denial of employment opportunities caused from the use of lie detector devices by employers is a major concern of the Committee on Education and Labor. The Committee, by reporting H.R. 1524, the Employee Polygraph Protection Act, intends to protect employees by prohibiting the use of lie detectors in the private workforce; protecting the thousands of innocent people who are wrongfully denied employment each year because of these inaccurate devices.

#### PROHIBITIONS

The Committee recognizes that specific details relating to employer prohibitions concerning the administration of lie detector tests are needed to protect employees' rights. The Committee, by agreeing to language prohibiting employers from indirectly suggesting a lie detector test, acknowledges a major concern that employers not be allowed to "coerce" employees into volunteering for a test. As

polygraphers and employees acknowledge, refusal to volunteer for a test in a state that only prohibits an employer from requiring an examination can many times result in the loss of a job. The bill prohibits not only indirect suggestion of a lie detector test, but also prohibits employers from requiring or requesting lie detector tests or from referring to a test to change a person's employment status in any way.

The Committee also recognizes the need to protect "whistleblowers" from employer retaliation. The bill prohibits employers from discriminating against a person who files a complaint or chooses to testify in a proceeding related to lie detector violations.

#### NOTIFICATION REQUIREMENTS

The Committee understands that employees have an appropriate need to be informed of their rights regarding lie detector tests in the workforce. The bill makes a concerted effort to inform employees by requiring employers to post a notice in conspicuous places on the premises at all times. This notice, which is similar to the notices required by the Fair Labor Standards Act, will be prepared, printed and distributed by the Secretary of Labor, relieving employers from all responsibility, except for posting requirements. The Committee, by accepting the bill language, recognizes the need for the Secretary of Labor to have adequate authority to effectively enforce the Act, including the right to issue rules and regulations, to make appropriate investigations and inspections, and to subpoena appropriate witnesses for any hearing or investigation.

#### ENFORCEMENT PROVISIONS

The Committee recognizes the need for strong enforcement provisions to discourage employers from violating this Act. By accepting the language of the substitute to H.R. 1524, the Committee determined that relief by private right of action as well as by injunctive enforcement by the Secretary of Labor will give victims a viable set of remedies.

The Committee recognizes the seriousness of international violations of this Act by providing for civil penalties of up to \$10,000. This reported bill also details the administrative procedures for the assessment and collection of these fines for intentional violations as outlined in the Migrant and Seasonal Agricultural Worker Protection Act.

#### EXEMPTIONS

The Committee recognizes that certain employers should be exempted from the provisions of this bill. It is the intent of this Committee that in matters of national security, private consultants, contractors and employees of contractors will be exempted from this Act when performing counterintelligence or intelligence work with the Central Intelligence Agency, the National Security Agency or the Federal Bureau of Investigation. The Committee also acknowledges that cryptologists working for the CIA or NSA are also exempted from this Act. This Committee reiterates the provision in Section 1221 of the Department of Defense Authorization



Act, which allows the Department of Defense to administer lie detector tests during the next two years as part of their limited counterintelligence polygraph program. The Committee understands that these exemptions will include private contractors as well as individual consultants.

The Committee, recognizing that the theft or diversion of controlled substances represents a threat to the security of our nation, adopted language which would also allow the use of lie detectors on those individuals with direct access to controlled substances in only those cases when the theft or diversion of such substances has been reported to the Drug Enforcement Administration as required by current controlled substances law. This exemption must be consistent with any state and local law, or collective bargaining agreement governing polygraph use.

By allowing lie detectors to be administered to those employees with direct access to controlled substances, after a reported theft, we protect the rights of all other employees within the same facility. The Committee determines "direct access" to apply only to those employees, including pharmacists and pharmacists technicians, whose duties and responsibilities would bring these individuals into the immediate areas where scheduled narcotics are stored.

With regards to these exemptions, the Committee intends that lie detectors only be used as one tool in the investigation of a theft. During consideration of this legislation, members of the Committee, including the Chairman and ranking minority member of the Subcommittee with jurisdiction and the author of the bill, emphasized that lie detectors shall not be used as the sole determinant of an employer's action against an employee.

The Committee, by accepting the subcommittee substitute bill, also placed the focus of coverage for the bill's provisions on employers to facilitate enforcement monitoring and also to expand Federal agency exemptions. By defining "employer" to include any person acting directly or indirectly in the interest of an employer in relation to any employee or prospective employee, private sector actions are broadened, and Federal employer exemptions are increased.

#### OVERSIGHT FINDINGS

With reference to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee reports that no findings or recommendations of the Committee on Government Operations were received during the 99th Congress with reference to the subject matter addressed by H.R. 1524. This is new legislation. No oversight findings exist which might be reported to conform with clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives.

#### COST ESTIMATE

The Congressional Budget Office (CBO) has provided the Committee on Education and Labor with the following estimate on the costs involved in implementing this legislation. The Committee concurs with and adopts CBO's estimate, pursuant to Clause 7 of

Rule XIII of the Rules of the House of Representatives. No other cost estimates have been received from any Federal agencies or departments.

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, November 7, 1985.*

Hon. AUGUSTUS F. HAWKINS,  
*Chairman, Committee on Education and Labor, U.S. House of Representatives, Rayburn House Office Building, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has reviewed H.R. 1524, the Employee Polygraph Protection Act of 1985, as ordered reported by the House Committee on Education and Labor, October 23, 1985.

This bill outlaws the use of polygraph tests on any employee or prospective employee by private employers. The Secretary of Labor is directed to distribute notice that employers are prohibited from using lie detector tests, to issue rules and regulations, and to enforce the provisions of this act. No significant costs to the federal government, and no cost to state or local governments is expected to be incurred as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them.

With best wishes,  
Sincerely,

RUDOLPH G. PENNER, *Director.*

#### INFLATIONARY IMPACT STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives and after reviewing the Congressional Budget Office cost estimate, the Committee expects this legislation will not have an inflationary impact upon prices and costs in the operation of the national economy.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of Rule XIII of the Rules of the House of Representatives, the Committee reports that there are no changes to existing Federal law made by this bill as reported.

#### SECTION-BY-SECTION ANALYSIS OF H.R. 1524

##### SECTION 1—SHORT TITLE

This section cites the Act as the "Employee Polygraph Protection Act of 1985".

##### SECTION 2—PROHIBITIONS OF LIE DETECTOR USE

Section 2 outlines the lie detector prohibitions for employers engaged in commerce or the production of goods for commerce.

This section makes it illegal for employers, when dealing with employees or potential employees, to:

1. Require, request, suggest or cause a person to take or submit to any lie detector test;

2. Use, accept, refer to, or inquire concerning the results of any lie detector test;

3. Discharge, dismiss, discipline, or deny employment or promotion to a person, or threaten to, for refusing, declining, or failing to take or submit to any lie detector test or on the results of any lie detector test;

4. Discharge or discriminate (commit reprisal) against a person for filing any complaint, instituting or causing to be instituted, or testifying in any proceeding related to this Act.

#### SECTION 3—NOTICE OF PROTECTION

This Section requires the Secretary of Labor to prepare, print and distribute a notice to employers that states employers are prohibited by this Act from using a lie detector test on any employee or prospective employee.

It also requires the employer upon receipt of the notice to post it on the premises in a conspicuous place.

#### SECTION 4—AUTHORITY OF THE SECRETARY OF LABOR

Section 4 authorizes the Secretary of Labor to set up provisions for the implementation of the Act by allowing the Secretary to:

1. Issue needed rules and regulations;

2. Work with regional, State, local or other agencies and furnish assistance to employers, labor organizations, or employment agencies;

3. Investigate, inspect, and require proper recordkeeping.

This Section also gives the Secretary subpoena authority for any hearing or investigation as outlined by the Federal Trade Commission Act (Sections 9 and 10).

#### SECTION 5—ENFORCEMENT PROVISIONS

This Section allows the injunctive action by the Secretary of Labor or private civil action for employees or potential employees violated by Section 2 of this Act.

The U.S. District Courts have jurisdiction to issue temporary or permanent restraining orders and injunctions as defined by the Secretary of Labor. The Secretary is also allowed to access civil penalties of not more than \$10,000. The penalty is based on the previous record in terms of compliance with the Act as well as the gravity of the violation. Collection of such penalties is the same as provided for in the Migrant and Seasonal Agricultural Worker Protection Act (Subsection (b) through (e) of Section 503).

Employees or potential employees may also pursue private civil action. Employers in violation of this Act are liable for legal or equitable relief which may include employment, reinstatement, promotion, payment of lost wages, or an additional amount as liquidated damages as well as the costs of such actions including attorney's fees for prevailing plaintiffs. Any one or more employees may bring suit against the employer for the damages in any Federal or State court.

**SECTION 6—EXEMPTIONS**

Section 6 exempts all governmental employers, whether Federal, State, Local or a political subdivision.

There is also an exemption of private contractors doing business related to intelligence or counterintelligence matters with specific agencies. This section exempts certain private consultants, contractors and employees of contractors with the Central Intelligence Agency, the National Security Agency and the Federal Bureau of Investigation. It also exempts individuals assigned to space where sensitive cryptologic information is produced, processed or stored with the CIA or NSA.

This section prohibits this Act from prohibiting any lie detector test of private contractors of any counterintelligence function used by the Department of Defense pursuant to Section 1221 of the Department of Defense Authorization Act, 1986.

A final exemption allows for employers to polygraph employees with direct access to controlled substances when the substance has been reported stolen to the Drug Enforcement Administration. However, this exemption cannot conflict with state or local laws or collective bargaining agreements.

**SECTION 7—DEFINITIONS**

This Section provides definitions for the term used in this Act.

It defines "lie-detector tests" as any examination involving the use of any polygraph, deceptograph, voice stress analyzer, psychological stress evaluator, or any similar device whether mechanical, electrical or chemical used to detect deception or verify truth.

It defines "employer" as anyone acting directly or indirectly on behalf of an employer.

Reference to Section 3(b) of the Fair Labor Standards Act provides the definition of "commerce".

**SECTION 8—EFFECTIVE DATE**

Section 8 states the effective date as the date of enactment except for Section 3, requiring the printing and posting of the prohibition notice, which takes effect six months after the date of enactment.

### DISSENTING VIEWS ON H.R. 1524

We strongly oppose enactment of this legislation. In their efforts to combat a few alleged abuses, the supporters of H.R. 1524 would deny employers, employees, and consumers the use of a valuable tool for combatting theft. Passage of this bill would cost some employers their business and employees their jobs. Consumers would pay an even greater price for goods and services they purchase.

The polygraph and other lie detectors are not perfect. We do not claim that they are, nor that they should be used as the sole means of selecting an employee or deciding whether or not to retain an employee. However, we are aware of any evidence that indicates polygraphs are *less* accurate than alternatives such as application forms, interviews, or background checks. Absent such evidence, we see no reason why polygraphs should not continue to be available to employers and employees to supplement other means to verify employee honesty.

The debate surrounding the use of lie detectors tends to be more emotional than objective. In part, this result is unavoidable. Determining the precise validity of polygraphs and other lie detectors is close to impossible. Field studies are difficult to validate, and "laboratory" studies cannot exactly replicate polygraph usage. The Office of Technology Assessment (OTA) in its 1983 report, *Scientific Validity of Polygraph Testing*, concluded that "no overall measure or single, simple judgment of polygraph testing validity can be established based on available scientific evidence."

We agree that it is impossible to scientifically establish a single figure for the accuracy of the polygraph. By the same token, it is impossible to establish the accuracy of a personal interview or background investigation as an employment tool. Yet on one is holding the latter to a standard of 100% accuracy or advocating their prohibition.

The majority's report accompanying this legislation relies on a selective and arguably inaccurate recitation of federal studies to date, while it ignores entirely a significant number of private studies ascribing a relatively high degree of accuracy to polygraph testing. For example, it excerpts a quote from a 1965 report by a Government Operations subcommittee to buttress the case against polygraphs while failing to state that the report did not advocate banning polygraph tests, but rather recommended improvements in the administration of such tests and further research. Likewise, the findings of the 1983 study by OTA—the methodology of which has been questioned—are reiterated only in part. In fact, OTA found "meaningful scientific evidence of polygraph validity" in investigating specific criminal incidents.

While science is uncertain, business is not. Testimony before the Committee indicated that many employers who are vulnerable to employee theft rely heavily on lie detectors, both to screen prospec-

tive employees and to identify employee malfeasance. Employers who rely on polygraphs are convinced that their use substantially reduces losses due to theft, and in some cases represents the difference between a viable business and bankruptcy.

Yet once again, this Committee has chosen to substitute its judgment for that of the people best able to judge. Business men and women would not pay for polygraph tests if they were not reliable. And yet, implicitly in this bill and explicitly in this report, the majority of the Committee has stated that polygraphs are not reliable.

The Committee has also chosen to establish a double standard; one standard for the public sector and a much more restrictive one for the private sector. All governmental employers—federal, state and local—are exempt, as are private contractors involved in intelligence or counterintelligence work.

This exemption is no doubt influenced by the House of Representatives' action earlier this year during consideration of the Department of Defense Authorization Act of 1986. By an overwhelming margin of 333 to 71, the House agreed to an amendment offered by Representative Dickinson to require a polygraph examination of individuals with access to certain classified information, both prior to such access and aperiodically thereafter, and to allow such an examination for other individuals. Like the House as a whole, a vast majority of the Committee supported this amendment.

The legislation creates another exemption for the private sector. Under the rubric of national security, the Committee has provided for a limited exemption for the drug industry. Polygraph examinations would be permitted for employees with "direct access" to controlled substances following a theft or diversion that has been reported to the Drug Enforcement Agency. However, the national security extrapolation is both tenuous and incomplete. Pre-employment screening in the drug industry is prohibited, and the exemption is nullified when a collective bargaining agreement or state law prohibits the use of polygraph tests.

Despite agreeing to these exemptions and exceptions, the Committee erroneously maintains that polygraphs should not be permitted in the private sector because they are not admissible as evidence in our courts. The analogy between employment and judicial use is a faulty one. In giving such deference to the courts, the Committees' majority overlooks the fact that the courts have repeatedly permitted both the use of polygraphs and subsequent personnel actions in private employment for decades. Moreover, polygraph results have been, and continue to be, admitted as evidence in several state and federal courts. The practice is by no means universal, and is generally subject to restrictions. For example, some courts have permitted the introduction of polygraph results contingent upon prior stipulation by both parties.

Unlike this judicial approach which is found in several state statutes as well, H.R. 1524 would prohibit the use of polygraphs even at the request of an employee. Where several employees have access to a single cash register or inventory, no amount of good management can identify an employee guilty of theft. Often it is the employees who want to use a polygraph so as to help prove their innocence.

The Committee's decisions incorporated into H.R. 1524 are contradictory. The Committee has seen fit to preempt state law in almost all respects, yet has allowed state preemption in the area of drug thefts. It has deemed polygraphs to be unreliable, yet has found them of value with regard to national security. It has found polygraphs effective in reducing the theft of drugs, yet has found them ineffective in reducing the theft of jewels, money, or any other product or service. It has declared them useful to the public sector, but unavailable to the private sector.

We believe that this legislation should be rejected. It is unnecessary and will only result in an added burden on businesses, as well as increased costs for consumers. At the very least, the bill should be further amended to recognize the special needs of those industries—like the drug industry—that are especially vulnerable to employee theft. Two amendments were offered but not adopted in Committee to accomplish this goal. Mrs. Roukema offered an amendment to exempt the protective security industry, while Mr. Army offered an amendment to permit the broader use of polygraphs in the drug industry under certain procedures. These amendments should be adopted by the House.

**BILL GOODLING.**  
**MARGE ROUKEMA.**  
**STEVE BARTLETT.**  
**DICK ARMEY.**  
**HARRIS W. FAWELL.**

**SUPPLEMENTAL VIEWS BY THE HONORABLE STEVE GUNDERSON ON H.R. 1524—THE “EMPLOYEE POLYGRAPH PROTECTION ACT OF 1985”**

While I oppose a complete ban on the use of polygraph testing in the private sector workplace, as is provided for the most part in H.R. 1524, I share the opinion of the Committee that the accuracy of these examinations is questionable. In many cases, this problem of examination validity, combined with a number of other factors, has resulted in unfairly discriminating against job applicants and employees.

According to recent studies, the use of polygraphs has tripled in the last 10 years. Although exact numbers vary, it has been reported that well over 1 million polygraph exams are given each year with an increasing percentage of those tests administered to workers and job applicants. In fact, according to a study published by the Office of Technology Assessment (OTA) in November, 1983, private employers were found to be responsible for more polygraph examinations every year than either criminal justice investigators or the Federal government.

Polygraphs are used by a variety of businesses, but are particularly prevalent in businesses where the risk of theft and fraud are high and employee turnover is high as well. At a time when business and industry are experiencing tremendous losses each year due to employee theft, with losses as high as \$10 billion per year in the retailing industry alone, it is no wonder that businesses are using any tool they can in order to prevent such thefts. According to the Drug Enforcement Agency, for the period from July 1984 to March 1985, a total of 8,861 drug thefts were reported to the Drug Enforcement Agency (DEA), with 15 percent of those attributed to employees—a percentage that seems to be on the rise according to statistics. Reasons given by employers for using the polygraph exam in screening job applicants include: Verification of the truth on employment applications; screening out of potential thieves; prevention of industrial espionage, and detection of drug and/or alcohol abuse where appropriate, amongst applicants; among others. These are facts about a future employee which an employer has the right to know. However, the real question is whether or not the polygraph exam is really the proper tool by which to gain this information.

Arguments against the use of polygraph exams within the private sector range from the uncertainty of its actual validity to the potential for examiner discrimination and inappropriate questioning to occur. There has been surprisingly little research in the area of polygraph validity, particularly for those used in business. The results of such studies on polygraph accuracy that do exist, vary widely, depending on the methodology used and the motives of the researchers, among other factors. Further, the types of individuals



tested, training of the individual examiners, and the purpose of the test and types of questions asked can differ substantially. It is also feared that polygraph testing can also be subject to a number of countermeasures such as physical movement, drugs, hypnosis, bio-feedback, and prior experience in passing an exam that can affect validity. OTA also concluded that the mathematical chances of incorrectly identifying innocent persons as deceptive, even with an accurate test (false positives) is the highest when the polygraph is used for screening purposes.

So, the real question here is while we are not convinced that the polygraph test is always an accurate, fair method of employee screening, is it the proper role of the Federal government to prohibit its use within the private sector—particularly within those industries at the highest risk of employee theft.

During Committee consideration, I expressed my reservations about providing a Federal ban of all polygraph testing, particularly when this bill would do nothing to prohibit examination use within Federal, State, or local government entities. Again, I am however, torn over the fact that test inaccuracies, particularly when used in job applicant screening when tension runs high, can result in discrimination against an honest job applicant or employee.

To address this problem, it has been my feeling that such polygraph testing should be allowed in certain circumstances with regard to current employees where actual employee theft triggers testing—such as provided in the Committee-adopted amendment on pharmaceutical industry testing. And, I feel that in certain, very “high risk” industries, pre-employment testing might be useful, as well as defensible, if conducted along with other traditional forms of screening such as interviewing and checking references. However, I cannot totally oppose the provisions of H.R. 1524, in that I have concerns over inaccuracy and abuse in polygraph testing as an employment practice.

If and when H.R. 1524 comes to the floor of the House, I expect to be open to arguments pro and con with regard to this issue, particularly with regard to this bill. I should think that the Congress can find a responsible, appropriate role for the Federal government to take in order to in some way oversee polygraph testing in the private sector workplace. I know that this is not an easy role to determine, however any answer that we ascertain must be fair to both employees and employers.

STEVE GUNDERSON.

○

## House Calendar No. 108

99TH CONGRESS  
1ST SESSION

# H. RES. 337

[Report No. 99-431]

Providing for the consideration of the bill (H.R. 1524) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

---

### IN THE HOUSE OF REPRESENTATIVES

DECEMBER 10, 1985

Mr. MOAKLEY, from the Committee on Rules, reported the following resolution; which was referred to the House Calendar and ordered to be printed

---

## RESOLUTION

Providing for the consideration of the bill (H.R. 1524) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

1       *Resolved*, That at any time after the adoption of this  
2 resolution the Speaker may, pursuant to clause 1(b) of rule  
3 XXIII, declare the House resolved into the Committee of the  
4 Whole House on the State of the Union for the consideration  
5 of the bill (H.R. 1524) to prevent the denial of employment  
6 opportunities by prohibiting the use of lie detectors by em-

1 ployers involved in or affecting interstate commerce, and the  
2 first reading of the bill shall be dispensed with. After general  
3 debate, which shall be confined to the bill and shall continue  
4 not to exceed one hour, to be equally divided and controlled  
5 by the chairman and ranking minority member of the Com-  
6 mittee on Education and Labor, the bill shall be considered  
7 for amendment under the five-minute rule. It shall be in  
8 order to consider the amendment in the nature of a substitute  
9 recommended by the Committee on Education and Labor  
10 now printed in the bill as an original bill for the purpose of  
11 amendment under the five-minute rule and each section shall  
12 be considered as having been read. At the conclusion of the  
13 consideration of the bill for amendment, the Committee shall  
14 rise and report the bill to the House with such amendments  
15 as may have been adopted, and any Member may demand a  
16 separate vote in the House on any amendment adopted in the  
17 Committee of the Whole to the bill or the committee amend-  
18 ment in the nature of a substitute. The previous question  
19 shall be considered as ordered on the bill and amendments  
20 thereto to final passage without intervening motion except  
21 one motion to recommit with or without instructions.

House Calendar No. 108

99TH CONGRESS  
1ST SESSION

**H. RES. 337**

[Report No. 99-431]

---

---

## **RESOLUTION**

Providing for the consideration of the bill (H.R. 1524) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce.

DECEMBER 10, 1985

Referred to the House Calendar and ordered to be printed



1 (1) the term "commerce" has the meaning provid-  
2 ed by section 3(b) of the Fair Labor Standards Act (29  
3 U.S.C. 203(b));

4 (2) the term "employer" has the same meaning  
5 as—

6 (A) such term is defined in section 2(2) of the  
7 National Labor Relations Act (29 U.S.C. 152(2));  
8 and

9 (B) the term "carrier" is defined in section 1  
10 of the Railway Labor Act (45 U.S.C. 151);

11 (3) the term "polygraph examination" means—

12 (A) any examination involving the use of any  
13 polygraph, deceptograph, voice stress analyzer,  
14 psychological stress evaluator, or any other simi-  
15 lar device which is used for the purpose of detect-  
16 ing deception or verifying the truth of statements;  
17 and

18 (B) any interview of any employee or pro-  
19 spective employee that uses any device referred to  
20 in subparagraph (A) regardless of terms used in  
21 reporting to an employer the findings, opinions, or  
22 statements made in or results of such examina-  
23 tion;



1 (4) provide for Federal oversight of the adminis-  
2 tration of such standards.

3 PROHIBITION OF POLYGRAPH TESTING NOT IN  
4 ACCORDANCE WITH MINIMUM STANDARDS

5 SEC. 4. No employer may take any action affecting the  
6 employment status of an employee or prospective employee,  
7 if such action is based on the results of a polygraph examina-  
8 tion of such employee or prospective employee that has not  
9 been administered in accordance with sections 5 and 6 of this  
10 Act.

11 RIGHTS OF POLYGRAPH EXAMINEE

12 SEC. 5. (a) Each prospective examinee shall sign a noti-  
13 fication prior to any polygraph examination which states  
14 that—

15 (1) such examinee is consenting voluntarily to  
16 take the examination;

17 (2) the polygraph examiner may not inquire  
18 into—

19 (A) religious beliefs or affiliations;

20 (B) beliefs or opinions regarding racial mat-  
21 ters;

22 (C) political beliefs or affiliations;

23 (D) sexual preferences or activities, unless  
24 necessary to determine the qualifications of the  
25 employee to be employed by a nursing home, rest  
26 home, sanitarium, hospital, day nursery or similar



1 child care facility, or such other institution or  
2 service in which the well-being of children, the  
3 aged, handicapped, or infirm are entrusted to the  
4 care of the employees of such institutions or serv-  
5 ices; or

6 (E) beliefs, affiliations, or opinions regarding  
7 unions or labor organizations;

8 (3) such examinee may terminate the examination  
9 at any time;

10 (4) such examinee shall be provided with a writ-  
11 ten copy of any opinions or conclusions rendered as a  
12 result of the examination upon written request and  
13 payment of a reasonable fee by such examinee;

14 (5) the polygraph examiner is prohibited from  
15 asking the examinee any question during the examina-  
16 tion that is not in writing and was not reviewed with  
17 the examinee prior to the examination;

18 (6) such examinee has specific legal rights and  
19 remedies if the polygraph examination is not conducted  
20 in accordance with the provisions of this Act; and

21 (7) such examinee may receive a copy of the noti-  
22 fication upon written request.

23 (b) Upon written request from an examinee, a polygraph  
24 examiner shall provide a signed copy of all opinions or con-

1 clusions of a polygraph examination rendered in accordance  
2 with section 6 of this Act.

3 (c) No action may be taken by an employer regarding  
4 the employment status of an employee or an applicant for  
5 employment that is based solely on opinions or conclusions of  
6 a polygraph examiner reached by analysis of a polygraph  
7 chart.

8 MINIMUM STANDARDS FOR POLYGRAPH EXAMINATIONS

9 SEC. 6. (a) A polygraph examination may be conducted  
10 only by a person who—

11 (1) is at least twenty-one years of age;

12 (2) is a citizen of the United States;

13 (3) is a person of good moral character;

14 (4) is in compliance with all laws, rules, and regu-  
15 lations of any appropriate State or local government  
16 authority; and

17 (5)(A) has successfully completed a formal training  
18 course in the use of polygraphs that has been approved  
19 by the Secretary; and

20 (B) has completed a polygraph examiner intern-  
21 ship of at least six months in duration under the direct  
22 supervision of a polygraph examiner who has met the  
23 requirements of this section.

24 (b) Notwithstanding the provisions of paragraph (5) of  
25 subsection (a), a person shall be permitted to conduct a poly-

1 graph examination in accordance with the provisions of this  
2 Act, if such person—

3 (1) has met the requirements of paragraphs (1)  
4 through (4) of subsection (a); and

5 (2)(A) on the date of enactment of this Act, holds  
6 a valid polygraph examiner license issued by a State  
7 licensing authority; or

8 (B)(i) within a period of five years immediately  
9 preceding the date of enactment of this Act, has con-  
10 ducted not less than two hundred polygraph examina-  
11 tions; and

12 (ii) within one year after the date of enactment of  
13 this Act, has satisfactorily completed a formal training  
14 course in the administration of polygraph examinations  
15 approved by the Secretary.

16 (c) All examiners meeting the requirements of subsec-  
17 tions (a) and (b) of this section shall be required every  
18 twenty-four months to complete not less than twenty-four  
19 hours of continuing education approved by the Secretary re-  
20 garding the use of polygraphs.

21 (d) A polygraph examiner may not ask a question during  
22 a polygraph examination, unless such question is in writing  
23 and has been reviewed with the examinee prior to such  
24 examination.

25 (e) A polygraph examiner may not inquire into—

1 (1) religious beliefs or affiliations;

2 (2) beliefs or opinions regarding racial matters;

3 (3) political beliefs or affiliations;

4 (4) sexual preferences or activities, unless neces-  
5 sary to determine the qualifications of the employee to  
6 be employed by a nursing home, rest home, sanitarium,  
7 hospital, day nursery or similar child care facility, or  
8 such other institution or service in which the well-  
9 being of children, the aged, handicapped, or infirm are  
10 entrusted to the care of the employees of such institu-  
11 tions or services; and

12 (5) beliefs, affiliations, or opinions regarding  
13 unions or labor organizations.

14 (f) A polygraph examiner may not perform more than  
15 twelve polygraph examinations in any twenty-four period.

16 (g)(1) A polygraph examiner shall—

17 (A) use an instrument which records continuously,  
18 visually, permanently, and simultaneously changes in  
19 cardiovascular, respiratory, and galvanic skin response  
20 patterns as minimum instrumentation standards; and

21 (B) base an opinion of truthfulness upon changes  
22 in physiological activity or reactivity in the cardiovas-  
23 cular, respiratory, and galvanic skin response patterns.

24 (2) A polygraph examiner may use an instrument which  
25 records additional physiological patterns as measured in para-

1 graph (1) and may consider such additional patterns in ren-  
2 dering an opinion.

3 (h) All conclusions or opinions of the polygraph examin-  
4 er arising from the polygraph examination shall—

5 (1) be in writing and based only on polygraph  
6 chart analysis;

7 (2) contain no information other than admissions,  
8 information, and interpretation of the chart data rele-  
9 vant to the purpose and stated objectives of the exami-  
10 nation; and

11 (3) contain no recommendation regarding the pro-  
12 spective or continued employment of an examinee.

13 (i) A polygraph examiner shall maintain all opinions, re-  
14 ports, charts, questions lists, and all other records relating to  
15 the polygraph examination for a minimum of two years after  
16 administering such examination.

17 CERTIFICATION OF ADMINISTRATIVE PLANS

18 SEC. 7. (a) Any State or local government agency which  
19 desires to develop and enforce standards for the use of poly-  
20 graphs by employers and polygraph examiners may submit an  
21 administrative plan to the Secretary at such times, in such  
22 manner, and containing or accompanied by such information  
23 as the Secretary may reasonably require. Such plan shall—

24 (1) identify any agency designated as responsible  
25 for administering the plan;

1           (2) describe the standards in the administrative  
2           plan governing polygraph examiners and the use of  
3           polygraph examinations;

4           (3) provide assurances that such standards and the  
5           enforcement of such standards, shall be at least as ef-  
6           fective as the standards set out in this Act; and

7           (4) explain the manner in which the standards in  
8           such plan are administered and enforced by such  
9           agency to assure compliance with this Act.

10          (b) The Secretary may approve and certify any adminis-  
11          trative plan providing adequate assurances and meeting the  
12          requirements of subsection (a).

13          (c) The Secretary shall make a continuing evaluation of  
14          each administrative plan which has been certified. If the Sec-  
15          retary finds that a plan is not being administered in a manner  
16          that assures substantial compliance with the standards of this  
17          Act, the Secretary shall notify the State or local government  
18          of the withdrawal of certification of such plan and, upon re-  
19          ceipt of such notice, such plan shall cease to be in effect.

20          (d) Review of a decision of the Secretary to withdraw  
21          certification of an administrative plan under this section may  
22          be obtained in the United States court of appeals for the cir-  
23          cuit in which the State or local government agency is located  
24          by filing a petition for review with such court within thirty  
25          days after receipt of the notice of withdrawal of certification.

1           **CERTIFICATION OF POLYGRAPH EXAMINERS**

2           **SEC. 8. (a)(1) No person may conduct a polygraph ex-**  
3 **amination, unless such person is—**

4               **(A) certified by the Secretary to conduct poly-**  
5 **graph examinations;**

6               **(B) conducting such examinations in compliance**  
7 **with sections 5 and 6 of this Act; and**

8               **(C) implementing rules and regulations issued by**  
9 **the Secretary pursuant to section 12 of this Act.**

10           **(2) The provisions of paragraph (1) shall not apply if**  
11 **such person has met the requirements of an administrative**  
12 **plan adopted pursuant to section 7 of this Act.**

13           **(b) The Secretary shall make a continuing evaluation of**  
14 **each certification required by subsection (a) of this section. If**  
15 **the Secretary finds that a person is not in compliance with**  
16 **the provisions of sections 5, 6, and 7 of this Act, the Secre-**  
17 **tary shall notify the person of the withdrawal of certification**  
18 **and, upon receipt of such notice, such person may not con-**  
19 **duct polygraph examinations.**

20           **(c) Review of a decision of the Secretary to withdraw a**  
21 **certification under this section may be obtained in the United**  
22 **States district court in the district in which the person resides**  
23 **or has a principal place of business by filing a petition for**  
24 **review with such court within thirty days after receipt of the**  
25 **notice of withdrawal of certification.**

1                                   DISCLOSURE OF INFORMATION

2           SEC. 9. (a) A person may not disclose information ob-  
3 tained during a polygraph examination, except as provided in  
4 this section.

5           (b) A polygraph examiner, polygraph trainee, or em-  
6 ployee of a polygraph examiner may disclose information ac-  
7 quired from a polygraph examination only to—

8                   (1) the examinee or any other person specifically  
9                   designated in writing by the examinee; and

10                   (2) the person or governmental agency that re-  
11                   quested the examination.

12           (c) An employer for whom a polygraph examination is  
13 conducted may disclose information from the examination  
14 only to a person described in subsection (b).

15                                   WAIVER OF RIGHTS PROHIBITED

16           SEC. 10. The rights and procedures provided pursuant  
17 to this Act may not be waived by contract or otherwise. No  
18 polygraph examiner may request an examinee to waive any  
19 such right or procedure.

20                                   NOTICE OF PROTECTION

21           SEC. 11. The Secretary shall prepare and print a notice  
22 setting forth information necessary to effectuate the purposes  
23 of this Act. Such notice shall be posted at all times in con-  
24 spicuous places upon the premises of every employer engaged  
25 in any business in or affecting interstate commerce.



1                   **AUTHORITY OF THE SECRETARY**

2       **SEC. 12.** The Secretary shall—

3                   (1) issue such rules and regulations as may be  
4       necessary or appropriate for carrying out this Act;

5                   (2) cooperate with regional, State, local, and other  
6       agencies, and cooperate with and furnish technical as-  
7       sistance to employers, labor organizations, and employ-  
8       ment agencies to carry out the purposes of this Act;  
9       and

10                  (3) make investigations and inspections and re-  
11       quire the keeping of records necessary and appropriate  
12       for the administration of this Act.

13                   **CIVIL PENALTIES**

14       **SEC. 13.** (a) Subject to the provisions of subsection (b) of  
15       this section, whoever violates this Act may be assessed a  
16       civil penalty of not more than \$10,000 by the Secretary.

17                  (b) In determining the amount of any penalty under sub-  
18       section (a) of this section, the Secretary shall consider the  
19       previous record of the person in complying with the Act and  
20       the gravity of the violation.

21                   **RELIEF**

22       **SEC. 14.** (a) Any person who is given a polygraph ex-  
23       amination in violation of this Act may bring a civil action  
24       against the polygraph examiner in the United States district  
25       court in the district in which the alleged violation occurred or  
26       in which the examiner has its principal office.

1 (b) Upon a finding of a violation of this section, such  
2 court may grant appropriate relief, including the imposition of  
3 a civil fine of not more than \$10,000.

4 (c) In addition to the relief provided in subsections (a)  
5 and (b) of this section, an employee or prospective employee  
6 seeking relief from a violation of this Act in which the certifi-  
7 cation requirements of section 7 of this Act have not been  
8 complied with, shall be provided relief in accordance with the  
9 provisions of sections 11(b), 16, and 17 of the Fair Labor  
10 Standards Act of 1938 (29 U.S.C. 211(b), 216, and 217).  
11 Amounts owing to a person as a result of a violation of this  
12 Act shall be deemed to be unpaid minimum wages or unpaid  
13 overtime compensation for purposes of sections 16 and 17 of  
14 the Fair Labor Standards Act of 1938 (29 U.S.C. 216 and  
15 217).

16 (d) The remedies provided by this Act shall be exclusive  
17 and may not be construed to permit a cause of action by an  
18 examinee against any party other than an employer, a pro-  
19 spective employer, or a polygraph examiner.

20 (e) If a State or local government agency is in compli-  
21 ance with section 7 of this Act, any person seeking relief  
22 under this section must first exhaust the remedies of the ad-  
23 ministrative plan of the State or local government agency.

24 EFFECTIVE DATE

25 SEC. 15. This Act shall take effect one year after the  
26 date of enactment.

H 11950

## CONGRESSIONAL RECORD — HOUSE

December 12, 1985

Mr. MICHEL. Mr. Speaker, I take this time for the purpose of inquiring of the majority leader, it is my understanding the majority leader was prepared to make several unanimous-consent requests relative to the bringing up of conference reports on Monday and waiving points of order.

On the continuing resolution, I would rather delay giving unanimous consent to waiving points of order on the continuing resolution until the gentleman from Massachusetts and the gentleman from Mississippi have an opportunity to discuss an item that we did last year in this same kind of process. If there is that general accord and agreement, we can agree to that unanimous-consent request.

**AUTHORIZING THE SPEAKER TO DECLARE RECESSES AT ANYTIME ON MONDAY NEXT**

Mr. WRIGHT. If the gentleman will yield, Mr. Speaker, I ask unanimous consent that it may be order for the Speaker to declare recesses at any time on the legislative day Monday, December 16, 1985, subject to the call of the Chair.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. WRIGHT. May I inquire of the gentleman further, with respect to other unanimous consent requests that may be useful, would the gentleman have an objection to a unanimous-consent request waiving points of order with specific reference to the Deficit Reduction Amendments of 1985 or the Food Security Act of 1985?

Mr. MICHEL. I would inquire of the gentleman, is that reconciliation?

Mr. WRIGHT. The reconciliation bill or the farm bill.

Mr. MICHEL. I cannot give the gentleman unanimous-consent request on reconciliation at this time. I was hoping that Mr. MADIGAN would be available to make sure that we could be all right on waiving points of order on the farm bill.

**REQUEST FOR CONSIDERATION OF SUNDRY RULES ON MONDAY NEXT**

Mr. WRIGHT. Mr. Speaker, I ask unanimous consent that rules reported by the Rules Committee, if necessary, regarding the continuing resolution appropriations and the Food Security Act of 1985 and the Deficit Reduction Amendments of 1985 may be considered on the same day if reported by the Rules Committee on Monday next.

□ 1650

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. MICHEL. Mr. Speaker, reserving the right to object, particularly on reconciliation, I have got to see that reconciliation act before agreeing to that unanimous-consent request.

Mr. WRIGHT. May I ask unanimous consent, then, Mr. Speaker, that any rules reported by the Rules Committee with respect to the Continuing Appropriations Act of 1986 or the Food Security Act of 1985, the so-called

farm bill, if reported on Monday next, December 16, may be considered by the House on the same day? I am asking that the rule may be considered by the House.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. CONTE. Reserving the right to object, Mr. Speaker, the thing I am concerned about on the appropriation bill is that you can go to the bill and make certain amendments in order that would not be germane and we would not have an opportunity to raise an objection. I would like to have a little more time to talk with my committee chairman about where we are going to go and reach some kind of an agreement with him.

Mr. WHITTEN. Mr. Speaker, if the gentleman will yield, the gentleman and I have reached agreement in the past. I would be glad to discuss with him the situation on this. I would like to have a little more time, too, to just see what it means.

Mr. CONTE. All right. Then I object, Mr. Speaker.

The SPEAKER. The gentleman objects?

Mr. CONTE. At this time, yes, Mr. Speaker.

The SPEAKER. Objection is heard.  
**REQUEST TO WAIVE 3-DAY RULE FOR CONSIDERATION OF CONFERENCE REPORT ON THE FOOD SECURITY ACT OF 1985 ON MONDAY NEXT**

Mr. WRIGHT. Mr. Speaker, would the gentleman consider this unanimous-consent request: Mr. Speaker, I ask unanimous consent to waive the 3-day rule on the Food Security Act of 1985 with respect to the conference report or any rule that may be reported with respect to that bill on Monday next.

The SPEAKER. Is there objection to the request of the gentleman from Texas?

Mr. MICHEL. Mr. Speaker, reserving the right to object, I would hope that the majority leader would withhold that until I get hold of my ranking minority member to make sure that everything is on the square.

Mr. WRIGHT. Mr. Speaker, I withdraw the unanimous-consent request at this time.

The SPEAKER. The gentleman withdraws his request.

**PROVIDING FOR CONSIDERATION OF H.R. 1524, POLYGRAPH PROTECTION ACT OF 1985**

Mr. MOAKLEY. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 337 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

**H. RES. 337**

*Resolved*, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 1(b) of rule XXIII, declare the House resolved into the Committee of the Whole House on the State of the

Union for the consideration of the bill (H.R. 1524) to prevent the denial of employment opportunities by prohibiting the use of lie detectors by employers involved in or affecting interstate commerce, and the first reading of the bill shall be dispensed with. After general debate, which shall be confined to the bill and shall continue not to exceed one hour, to be equally divided and controlled by the chairman and ranking minority member of the Committee on Education and Labor, the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider the amendment in the nature of a substitute recommended by the Committee on Education and Labor now printed in the bill as an original bill for the purpose of amendment under the five-minute rule and each section shall be considered as having been read. At the conclusion of the consideration of the bill for amendment, the Committee shall rise and report the bill to the House with such amendments as may have been adopted, and any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or the committee amendment in the nature of a substitute. The previous question shall be considered as ordered on the bill and amendments there to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER. The gentleman from Massachusetts [Mr. MOAKLEY] is recognized for 1 hour.

Mr. MOAKLEY. Mr. Speaker, I yield the customary 30 minutes to the gentleman from Tennessee [Mr. QUILLEN] for the purpose of debate only, and pending that I yield myself such time as I may use.

(Mr. MOAKLEY asked and was given permission to revise and extend his remarks.)

Mr. MOAKLEY. Mr. Speaker, House Resolution 337 is an open rule that provides for the consideration of the bill H.R. 1524, the Polygraph Protection Act of 1985.

Mr. Speaker, the rule provides 1 hour of general debate, to be equally divided between the chairman and ranking minority member of the Committee on Education and Labor.

House Resolution 337 also makes in order an Education and Labor Committee amendment in the nature of a substitute now printed in the bill as original text for the purpose of amendment. The substitute is to be considered by section, with each section to be considered as read. In addition, Mr. Speaker, the rule provides for one motion to recommit with or without instructions.

H.R. 1524, the Employee Polygraph Protection Act of 1985, is a bill that would prohibit private employers involved in interstate commerce from requiring their employees, or their prospective employees from submitting to polygraph tests. This legislation is intended to protect workers who are wrongfully denied employment and whose careers are devastated because of lie detector test inaccuracies and employer abuses. The bill provides that employers who violate its provisions may be assessed a civil penalty of up to \$10,000.

December 12, 1985

## CONGRESSIONAL RECORD — HOUSE

H 11951

Mr. Speaker, the bill does make exceptions for Federal and State government employees. It also exempts drug company employees who have direct access to controlled substances in connection with an official theft investigation. The bill provides an additional exception for employees related to CIA, FBI, and the National Security Agency. Because of the recent spy scandals, the Government is considering a requirement that all Government employees and contractors who have or want to obtain a high-level security clearance take a polygraph test.

Mr. Speaker, H.R. 1524 is an attempt to answer the complaint that lie detector tests are inaccurate in the hiring of workers, and would require employers to use more reliable ways to verify personnel information.

Mr. QUILLEN. Mr. Speaker, I yield myself such time as I may use.

(Mr. QUILLEN asked and was given permission to revise and extend his remarks.)

Mr. QUILLEN. Mr. Speaker, the rule has been ably explained. It is an open rule, but the bill is controversial. I received a number of wires and communications today in opposition to the measure.

Mr. Speaker, I oppose the measure on final passage, but I do not oppose the rule. I urge the adoption of the rule.

Mr. Speaker, I yield 5 minutes to the gentleman from New York [Mr. FISH].

(Mr. FISH asked and was given permission to revise and extend his remarks.)

Mr. FISH. Mr. Speaker, I thank the gentleman for yielding me this time.

It is not my intention to take the full 5 minutes that was so generously offered, but I do rise to express my concerns over the Employee Polygraph Protection Act of 1985, which are both procedural and substantive.

On the procedural side, H.R. 1524 was reported out of the Education and Labor Committee only last week, on December 5, 1985. It received a rule late Tuesday night, and, until a couple of hours ago, was to be considered by the full House of Representatives.

H.R. 1524 was clearly drafted to insure that the House Judiciary Committee would not review any of its provisions. The Judiciary Committee, over the years, has held many hearings that attest to the accuracy and benefits of the use of the polygraph. However, the Judiciary Committee was short-circuited, and did not have any opportunity to improve the bill.

My substantive concerns are several in nature:

First, H.R. 1524 is drafted under the assumption that polygraphs are not a useful method to screen individuals for employment purposes or to help in the investigation of theft losses or breaches of security. Employers who rely on polygraphs as a screening tool are convinced of the validity of this device.

In fact, the Office of Technology Assessment found "meaningful scientific evidence of polygraph validity." H.R. 1524 is an emotional, rather than an objective, response to insuring that polygraphs are used in a way that is reasonable and not violative of civil rights and privacy concerns.

Second, H.R. 1524 is poorly drafted and could unintentionally thwart our efforts to combat terrorism and espionage.

I base this on the fact that the exemption language in section 6 is not broad enough. For example, while it appears on its face that DOD contractors are exempt, it is unclear whether personnel involved at securities research laboratories could be screened by a polygraph to insure their reliability.

One of the most serious defects in H.R. 1524 is the failure of section 6 to provide for an exemption for employees of commercial aviation and employees who have access to secure areas of airports. Airlines are responsible for the safety of passengers, cargo and aircraft.

Mr. Speaker, recent international and domestic incidents demonstrate the unique danger to air travel of terrorist and hijack attempts against commercial aviation. Just last July, Congress, in reaction to a lack of security at airports outside the United States, passed legislation specifically dealing with terrorism.

If offered, I will strongly support amendments that would permit the use of polygraphs to screen employees of commercial aviation and secure areas of airports if the duties of these individuals involve access to aircraft, either directly or indirectly through food services, maintenance, or baggage handling. I would also support any broadening of section 6 to include private security personnel.

Finally, I have serious concerns about the lack of a provision that would exempt Government contractors who are subject to the provisions of the Privacy Act. For example, there are a number of Government contractors who have access to highly sensitive information such as tax records, loan applications, and other credit information. These contractors routinely use polygraphs, in addition to other standard employee evaluation tools, to insure that their employees do not use such information in a fraudulent manner.

In conclusion, while there is considerable merit to H.R. 1524, it needs serious improvement. Hopefully, in the ensuing weeks and months, a reasonable compromise can be worked out to ensure that polygraphs will be used professionally and accurately while not jeopardizing legitimate uses of this device, especially in the area of combatting terrorism and espionage.

□ 1700

Mr. QUILLEN. Mr. Speaker, I have no further requests for time.

I urge adoption of the open rule, and I yield back the balance of my time.

Mr. MOAKLEY. Mr. Speaker, for purposes of debate only, I yield 3 minutes to the gentleman from Georgia [Mr. DARDEN].

Mr. DARDEN. Mr. Speaker, I thank the gentleman for yielding.

Mr. Speaker, as a former district attorney, I am opposed to this bill in its present form; however, I want to commend the gentleman from Montana [Mr. WILLIAMS] for bringing the issue before this House which needs some serious debate and consideration.

I think it is very evident, Mr. Speaker, that polygraphs have been abused in many instances. I believe that polygraphs should be regulated and that minimum standards should be imposed.

Accordingly, Mr. Speaker, on this day the gentleman from Florida [Mr. Young] and I have introduced H.R. 3916 which will be offered when this matter comes to the floor, in the nature of a substitute.

Let me say that the bill in its present form, Mr. Speaker, to which I am adamantly opposed, would effectively do away with the use of all polygraphs as far as private industry is concerned.

Let me emphasize, there have been abuses in the past, Mr. Speaker, but I believe that an orderly regulation of this industry should be imposed and that is what my substitute, which this rule allows, will do.

Let me say in conclusion, Mr. Speaker, that while I disagree with the original bill, I heartily support this open rule and urge its passage by the House.

Mr. MOAKLEY. Mr. Speaker, I yield 3 minutes to the gentleman from Montana [Mr. WILLIAMS].

Mr. WILLIAMS. Mr. Speaker, I thank the gentleman.

As the people on both sides of this issue fully recognize now, this is a good rule. It is an open rule. It is the best that either side could hope for and it is not contentious.

Likewise, the bill has had a significant amount of support. It has gathered about 170 cosponsors on both sides of the aisle, because people believe that the growing number of polygraphs in the private sector needs to be stemmed. Both sides understand there are abuses. With this legislation we are simply trying to stem those abuses.

There are 2 million polygraph lie detector examinations a year given now in the United States and 98 percent of those are given by private business, far outstripping the amount given by government and criminal pursuits combined.

The number of tests given in this country has tripled in just the past 10 years. We are simply trying to stem the tide and bring some prudent reason to this.