

9-1-2001

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Recommended Citation

Tiffani Z. Moody, *TORTS Negligent or Improper Administration of a Polygraph Examination: Delete the Provisions Relating to Administration of the Polygraph in Conformity With the Provisions of Former Chapter 36 of Title 43 of the Official Code of Georgia Annotated*, 18 GA. ST. U. L. REV. (2001).

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TORTS

Negligent or Improper Administration of a Polygraph Examination: Delete the Provisions Relating to Administration of the Polygraph in Conformity with the Provisions of Former Chapter 36 of Title 43 of the Official Code of Georgia Annotated

CODE SECTION: O.C.G.A. § 51-1-37 (amended)
BILL NUMBER: HB 109
ACT NUMBER: 316
GEORGIA LAWS: 2001 Ga. Laws 1035
SUMMARY: The Act deletes certain provisions so as to eliminate a cause of action for persons claiming damages resulting from a polygraph examiner not being properly licensed. The licensing board was repealed in 1994, and therefore polygraph examiners are no longer even able to obtain the license that was formerly required.
EFFECTIVE DATE: July 1, 2001

History

Employers may use polygraph examinations to screen potential employees, evaluate compliance with company policies, and investigate possible wrongdoing.¹ In 1985, the Georgia General Assembly enacted the Georgia Polygraph Examiners Act, which created the State Board of Polygraph Examiners (“the Board”).² The Board was responsible for the administration and regulation of polygraph examiners.³ Specifically, the Board required polygraph examiners to obtain a license prior to conducting examinations.⁴ The Board was also responsible for providing the qualifications necessary to obtain such a license.⁵

1. See Claudia G. Catalano, Annotation, *Employee’s Action in Tort Against Party Administering Polygraph, Drug, or Similar Test at Request of Actual or Prospective Employer*, 89 A.L.R. 4th 527, § 2 (1991).

2. See 1985 Ga. Laws 1008, § 1, at 1009 (formerly found at O.C.G.A. § 43-36-1 (1994)).

3. See *id.* § 1, at 1010-11.

4. See *id.* § 1, at 1011-12.

5. See *id.*

In addition to creating the Board, the Act provided a cause of action for persons suffering damages due to a polygraph examiner failing to comply with the Georgia Polygraph Examiners Act.⁶ Damages could consist of the actual damages sustained by such person, including, but not limited to, back pay for the period during which the person did not work or was denied work as a result of the polygraph examination at issue.⁷

In 1994, the General Assembly repealed Title 43, section 36 of the Code, thereby eliminating the State Board of Polygraph Examiners.⁸ Consequently, polygraph examiners are no longer required, nor even able, to obtain a state license to conduct examinations. Thus, HB 109 was introduced to eliminate an obsolete reference contained in the provision relating to the State Board.

HB 109

Representative Jim Martin of the 47th District introduced HB 109 to the House of Representatives on January 10, 2001.⁹ The House assigned the bill to its Judiciary Committee, which favorably reported the bill in its original form.¹⁰ The House unanimously passed HB 109 on January 23, 2001.¹¹

HB 109 was introduced to the Senate on January 24, 2001, and the Senate assigned the bill to its Judiciary Committee.¹² The Committee favorably reported the bill without changes on February 14, 2001.¹³ On March 14, 2001, the Senate passed the bill without changes.¹⁴ The Governor signed HB 109 into law on April 27, 2001.¹⁵

6. See 1985 Ga. Laws 1008, § 2, at 1023 (formerly found at O.C.G.A. § 51-1-37 (2000)).

7. See *id.*

8. See 1994 Ga. Laws 744, § 1, at 745.

9. See State of Georgia Final Composite Status Sheet, HB 109, Mar. 21, 2001.

10. The bill was favorably reported by the Committee on Jan. 12, 2001. See *id.*

11. See *id.*; Georgia House of Representatives Voting Record, HB 109 (Jan. 23, 2001).

12. See State of Georgia Final Composite Status Sheet, HB 109, Mar. 21, 2001.

13. See *id.*

14. See *id.*; Georgia Senate Voting Record, HB 109 (Mar. 14, 2001).

15. See 2001 Ga. Laws 1035, § 2, at 1035.

The Act

The Act amends the Georgia Polygraph Examiners Act¹⁶ so as to eliminate a cause of action against a polygraph examiner who is not licensed by, or in compliance with, the State Board of Polygraph Examiners.¹⁷ Specifically, it completely eliminates Code section 51-1-37(a)(2).¹⁸ Since the Board was abolished in 1994 and no longer exists to license polygraph examiners, the Act simply changes Code section 51-1-37 to make it consistent with the current law.¹⁹

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16. Compare 1985 Ga. Laws 1008, § 2, at 1023 (formerly found at O.C.G.A. § 51-1-37 (2000)), with O.C.G.A. § 51-1-37 (Supp. 2001).

17. Compare 1985 Ga. Laws 1008, § 2, at 1023 (formerly found at O.C.G.A. § 51-1-37 (2000)), with O.C.G.A. § 51-1-37 (Supp. 2001).

18. Code section 51-1-37(a)(2) provided that any person who is given a polygraph examination and suffers damages as a result of “such polygraph examination having not been administered in conformity with the provisions of Chapter 36 of Title 43 shall have a cause of action against the polygraph examiner.” O.C.G.A. § 51-1-37(a)(2) (2000).

19. See Audio Recording of House Proceedings, Jan. 23, 2001 (remarks by Rep. Jim Martin), at <http://www.state.ga.us/services/leg/audio/2001archive.html>; see also Telephone Interview with Rep. Jim Martin, House District No. 47 (Apr. 3, 2001).