

2C:40A-1

LEGISLATIVE HISTORY CHECKLIST

NJSA: 2C:40A-1

(Pharmacies - employees involved in dispensing narcotics - permit lie detector tests as condition of employment)

LAWS OF: 1983

CHAPTER: 463

Bill No: A716

Sponsor(s): Herman

Date Introduced: February 8, 1982

Committee:

Assembly: Commerce and Industry

Senate: Labor, Industry and Professions

Amended during passage:

YES

Amendments denoted by asterisks

according to Governor's recommendations

Date of Passage:

Assembly: December 8, 1983. Re-enacted 12-8-83

Senate: January 9, 1984. Re-enacted 1-9-84

Date of Approval: January 12, 1984

Following statements are attached if available:

Sponsor statement:

YES

Committee statement:

Assembly

YES

Senate

YES

Fiscal Note:

NO

Veto Message:

YES

Message on Signing:

NO

Following were printed:

Reports:

NO

Hearings:

NO

rdv

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CHAPTER 463 LAWS OF N. J. 1983
APPROVED 1/12/84

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ASSEMBLY, No. 716

STATE OF NEW JERSEY

INTRODUCED FEBRUARY 8, 1982

By Assemblyman HERMAN

Referred to Committee on Commerce and Industry

AN ACT concerning employer required lie detector tests and amend-
ing N. J. S. 2C:40A-1.

1 BE IT ENACTED *by the Senate and General Assembly of the State*
2 *of New Jersey:*

1 1. N. J. S. 2C:40A-1 is amended to read as follows:
2 2C:40A-1. Employer Requiring Lie Detector Test. Any person
3 who as an employer shall influence, request or require an employee
4 *or prospective employee* to take or submit to a *[lie detector]*
5 **[*polygraph*]** **lie detector** test as a condition of employ-
6 ment or continued employment, commits a disorderly persons
7 offense. The provisions of this section shall not apply if*: (1) the
8 employer is authorized to manufacture, distribute or dispense
9 *[narcotics or]* controlled dangerous substances pursuant to the
10 provisions of the "New Jersey Controlled Dangerous Substances
11 Act," P. L. 1970, c. 226 (C. 24:21-1 et seq.)*; (2) *the employee or*
12 *prospective employee is or will be directly involved in the manu-*
13 *facture, distribution, or dispensing of, or has or will have access*
14 *to, legally distributed controlled dangerous substances; and*
15 *(3) the test, which shall cover a period of time no greater than*
16 *5 years preceding the test, and except as provided in this section,*
17 *shall be limited to the work of the employee or prospective em-*
18 *ployee and the individual's improper handling, use or illegal sale*
19 *of legally distributed controlled dangerous substances. The test*
20 *may include standard baseline questions necessary and for the*
21 *sole purpose of establishing a normal test pattern. Any employee*
22 *or prospective employee who is required to take a **[poly-*

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.
Matter printed in italics thus is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:
*—Assembly committee amendments adopted May 17, 1982.
**—Assembly amendments adopted in accordance with Governor's recom-
mendations November 21, 1983.

22A graph]** **lie detector** test as a precondition of employment
23 or continued employment shall have the right to be represented by
24 legal counsel. A copy of the report containing the results of a
25 **[polygraph]** **lie detector** test shall be in writing and be
26 provided, upon request, to the individual who has taken the test.
27 Information obtained from the test shall not be released to any
28 other employer or person. The employee or prospective employee
29 shall be informed of his right to present to the employer the
30 results of an independently administered second **[polygraph]**
31 **lie detector** examination prior to any personnel decision being
31A made in his behalf by the employer*.

32 **[Pharmacists and pharmacy owners, however, may not influence,**
33 request or require an employee to take or submit to a lie detector
34 test if that employee is not directly involved in the dispensing of
35 narcotics or controlled dangerous substances.]*

1. 2. This act shall take effect immediately.

ASSEMBLY, No. 716

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3 who as an employer shall influence, request or require an employee
4 to take or submit to a lie detector test as a condition of employment
5 or continued employment, commits a disorderly persons offense.
6 The provisions of this section shall not apply if the employer is
7 authorized to manufacture, distribute or dispense narcotics or
8 controlled dangerous substances pursuant to the provisions of the
9 "New Jersey Controlled Dangerous Substances Act," P. L. 1970,
10 c. 226 (C. 24:21-1 et seq.).

11 *Pharmacists and pharmacy owners, however, may not influence,*
12 *request or require an employee to take or submit to a lie detector*
13 *test if that employee is not directly involved in the dispensing of*
14 *narcotics or controlled dangerous substances.*

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STATEMENT

Presently, employers are generally prohibited from requiring employees to take or submit to a lie detector test as a condition of employment. An exception to this general prohibition is made for employers authorized to manufacture, distribute or dispense nar-

Matter printed in italics thus is new matter.

cotics and other controlled dangerous substances. This exception has been abused by some employers such as chain drug stores which are requiring all their employees including employees like cashiers who are only peripherally involved with the sale of drugs to take lie detector tests. This bill would clarify that pharmacists and pharmacy owners may only require those employees directly involved in the dispensing of narcotics or controlled dangerous substances to submit to a lie detector test as a condition of employment.

ASSEMBLY COMMERCE AND INDUSTRY COMMITTEE

STATEMENT TO

ASSEMBLY, No. 716

with Assembly committee amendments

STATE OF NEW JERSEY

DATED: MAY 17, 1982

The Assembly Commerce and Industry Committee favorably reports this bill which provides a more balanced approach to the problems of commercial narcotics theft by (1) narrowing the employee population that, if asked, must submit to a lie detector (polygraph) test and by (2) carefully defining the conditions under which an employee may be tested. Current law is now being interpreted as permitting any employers "authorized to manufacture, distribute or dispense narcotics or controlled dangerous substances" to influence, request or require any of their employees to submit to a lie detector test as a condition of employment. Moreover, at the present time, there are no statutory controls on the testing procedure.

After consulting with the New Jersey Pharmaceutical Association and the New Jersey Council of Chain Drug Stores, the bill was amended by the committee to:

(1) Require that the employee or prospective employee to be tested be *directly* involved in the manufacture, distribution, or dispensing of, or have access to, legally distribute controlled dangerous substances; and

(2) Insure that the test not cover a period of time any greater than 5 years prior to its administration; and

(3) Limit the test questions to the work of the employee or prospective employee and the individual's improper handling, use or illegal sale of such drugs; and

(4) Allow the inclusion of standard baseline questions necessary and for the sole purpose of establishing a normal test pattern; and

(5) Give the employee or prospective employee the right to have an attorney present during the testing; and

(6) Require that the written results of the test be made available to the employee or prospective employee and not be released to any other employer or stranger; and lastly,

(7) Provide an opportunity to the employee or prospective employee to submit a second, independently-administered set of test results to the employer before any personnel decision is made concerning the employee or prospective employee.

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SENATE LABOR, INDUSTRY AND PROFESSIONS
COMMITTEE

STATEMENT TO
ASSEMBLY, No. 716
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STATE OF NEW JERSEY

DATED: DECEMBER 16, 1982

Under the provisions of this bill an employer who is authorized to manufacture, distribute or dispense controlled dangerous substances can only require those employees or prospective employees to take a polygraph test who are or will be directly involved in the manufacture, distribution or dispensing of, or have or will have access to, the legally distributed controlled dangerous substances.

Such test may only contain standard baseline questions to establish a normal test pattern and questions regarding the employee's or prospective employee's preceding five years' work and his improper handling, use or illegal sale of legally distributed controlled dangerous substances. Such an employee or prospective employee may have an attorney present during the testing. The written results of the test must be made available to the employee or prospective employee and may not be released to any other employer or person. In addition, the employee or prospective employee may submit on his behalf to the employer the results of an independently administered polygraph test before any personnel decision is made concerning him.

Currently any employer who manufactures, distributes or dispenses controlled dangerous substances can require any of his employees to take a polygraph test. From June 1966 to September 1981 it was illegal for any employer to require an employee or prospective employee to take a polygraph test as a condition of employment.

This bill was prompted when a chain drug store attempted to require a number of its personnel who were not directly involved in the dispensing of controlled dangerous substances to take a polygraph test.

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

September 6, 1983

ASSEMBLY BILL NO. 716 (OCR)

To the General Assembly:

Pursuant to the Article V, Section 1, Paragraph 14 of the Constitution, I herewith return Assembly Bill No. 716 (OCR) with my objections and recommendations for amendment.

In recent years, New Jersey has been plagued by an increase in the sale, possession, and use of illicit drugs. The trafficking in illegal drugs is destroying our youth and has added to our crime problem. A major reason for the increasing drug problem has been theft from establishments which manufacture, distribute, or dispense narcotics or controlled dangerous substances.

A-716 addresses the aforementioned problem by clarifying and defining the instances wherein an employer who is authorized to manufacture, distribute, or dispense narcotics and other controlled dangerous substances may require his employees to submit to a polygraph test as a condition of employment. I believe that this bill is an important step in solving a problem that threatens our citizens and our way of life in New Jersey.

However, I object to the insertion of the term "polygraph" for the term "lie detector". These terms are not synonymous. A "polygraph" is merely one kind of a "lie detector". For instance, there exist other lie detectors that measure truth or falsity by way of a buzzer or a ball attached to a float. The substitution of the term "polygraph" for the term "lie detector" will narrow and limit the application of A-716 without logical reason.

Therefore, I herewith return Assembly Bill No. 716 and recommend that it be amended as follows:

Page 1, Section 1, Line 5: DELETE "polygraph" and INSERT "lie detector".

Page 1, Section 1, Line 22: DELETE "polygraph" and INSERT "lie detector".

STATE OF NEW JERSEY
EXECUTIVE DEPARTMENT

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Page 2, Section 1, Line 24-25: DELETE "polygraph" and INSERT "lie detector".

Page 2, Section 1, Line 30: DELETE "polygraph" and INSERT "lie detector".

Respectfully,

/s/ Thomas H. Kean

GOVERNOR

Attest:

/s/ W. Cary Edwards

Chief Counsel to the Governor

FOR IMMEDIATE RELEASE

FOR FURTHER INFORMATION

JUNE 15, 1981

KATHRYN FORSYTH

Governor Brendan Byrne today signed A-1079, sponsored by Assemblyman Christopher J. Jackman (D-Hudson) and Martin Herman (D-Gloucester).

The bill amends Title 2C by adding a "Racketeering" chapter modeled after similar provisions in the Federal Organized Crime Control Act of 1970.

Its purpose is to provide state law enforcement authorities with certain criminal and civil sanctions designed to fight infiltration of legitimate businesses by organized criminals.

It establishes a new criminal offense, "leader of organized crime," making it illegal to organize or manage a continuing series of crimes constituting a "pattern of racketeering."

In addition, it amends the Title to deal with the "fencing" of stolen property by defining "fencing" as a separate offense, increasing penalties for all theft offenses and providing for civil penalties against possessors of stolen property.

The bill also provides for certain civil remedies for racketeering violations. These remedies include divestment of interest; restrictions on future activities; denial, suspension or revocation of a corporate charter; restitution; and monetary penalties.

"Racketeering activities" are defined as specified criminal activities, including murder, illegal gambling, promoting prostitution, extortion and criminal usury.

"A pattern of racketeering activity" is defined as the committing of two such incidents within ten years of one another, plus a showing that the incidents of racketeering activity...are not isolated incidents."

In addition, the bill prohibits any business investment or acquisition of enterprises with income derived from racketeering activity.

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