

Governor's Office of Management and Budget

Alexis Sturm

Director



IL Regulatory Sunset Act Review of The Illinois Detection of Deception Examiners Act

March 18, 2021



**To the Honorable JB Pritzker
Governor of Illinois**

Governor Pritzker:

The Governor's Office of Management and Budget (GOMB) in collaboration with the Illinois Department of Financial and Professional Regulation (IDFPR), in compliance with the requirements set forth in the Illinois Regulatory Sunset Act (5 ILCS 80), has conducted a review of the Illinois Detection of Deception Examiners Act (225 ILCS 430), which is scheduled to sunset on January 1, 2022. The following recommendation is pursuant to this review:

The Detection of Deception Examiners Act (225 ILCS 430) should be allowed to sunset. It is not apparent that the role of detection of deception examiners is vital to the health, safety, and welfare of the public to a degree that justifies the continued regulation of this profession. If state agencies require detection of deception services, they can locate them via the American Polygraph Association website. The APA establishes standards of ethical practices, techniques, instrumentation of research, as well as provides advanced training and continuing education programs for detection of deception examiners in Illinois. Additionally, Illinois caselaw provides that the prejudicial effects of polygraphs substantially outweigh the probative value of admitting such testimony. Because such services are generally unlikely to provide a benefit to the state, regulating them will not change or improve their evaluative value in a meaningful manner.

The examination of this Act considered the nine factors set out in Section 6 of the Illinois Regulatory Sunset Act. The following report details the criteria and data utilized to come to the above recommendation.

Very sincerely and respectfully,

Alexis Sturm
Director
Governor's Office of Management and Budget

Criteria (1) “The extent to which the agency or program has permitted qualified applicants to serve the public.”

In Illinois, as of 2020, there are 74 Detection of Deception Examiners and 9 Detection of Deception Trainees licensed in Illinois. The Department has received 13 Detection of Deception Examiner applications and 11 Detection of Deception Trainee applications in the last five fiscal years.

The current licensure fee structure is as follows:

Type	Fee Amount
Application for a license:	\$50
Renewal Fee:	\$125/year
Temporary license:	\$50
Renewal Fee:	\$125 per year for full license (2-year license), \$50 per year for Trainee license (one-year license)
Restoration fee for a license:	Full license \$50, plus lapsed renewal fee, not to exceed \$675
Restoration fee after 5 years:	Full license, \$675 from non-renewed, \$250 from inactive. Temp license can only renew once, so N/A
Duplicate license:	\$20
Certification of a license:	\$20
Roster of registrants:	\$65 initial fee, and then \$2.50/thousand names
Application for a license for a professional licensed under the laws of another jurisdiction:	\$100
Continuing education sponsor:	No continuing education sponsor license

Currently, 24 U.S. states plus St. Louis County in Missouri require licensure for detection of deception examiners.

Criteria (2) “The extent to which the trade, business, profession, occupation, or industry being regulated is being administered in a nondiscriminatory manner both in terms of employment and rendering of services.”

IDFPR adheres to strict guidelines and requirements established for each profession regulated by the Department. Licensing decisions are based on an applicant’s ability to meet the requirements established by statute and administrative rule. Neither race nor any other identifier is a consideration for licensure under any of the professional licenses regulated by the Department. Consequently, the Department does not collect information from applicants to disclose their race or other social identifiers that could potentially lead to the act or perception of discrimination in licensing decisions.

Criteria (3) “The extent to which the regulatory agency or program has operated in the public interest, and the extent to which its operation has been impeded or enhanced by existing statutes, procedures, and practices of any other department of state government, and any other circumstances, including budgetary resources, and personnel matters.”

IDFPR is tasked with processing applications for licenses and renewal licenses for over 1 million professionals practicing in the state of Illinois. As resources continue to be strained in the state of Illinois, the Department has adopted internal policies, sought legislative and administrative rule changes, and developed enhanced licensing

processes to maintain efficiency and efficacy. Though these changes have proved to be successful, there is no substitute for the labor resources needed to maintain and improve licensing efficiencies. Over the last calendar year, IDFPR completed 80 new hires. However, in spite of the new hires, the agency ended the year with a net decrease in headcount. The agency maintains that personnel rules and laws often make it difficult to fill vacant positions in a timely manner.

Criteria (4) "The extent to which the agency running the program has recommended statutory changes to the General Assembly that would benefit the public as opposed to the persons it regulates."

In 2017, IDFPR sponsored Public Act 100-262, the purpose of which was to streamline and modernize the Agency's licensure and administrative case processes. The Act enhances the Department's e-license initiative to streamline initial licensure and renewal, as well as to allow recipients to learn the results of an administrative case more quickly so they can respond appropriately. This legislation ensures that regulated professions are able to use their time to address the needs of their clients, rather than addressing regulatory requirements. Furthermore, it benefits members of the public in that it enables the Department to more efficiently suspend the licenses of licensees determined to be in violation of rules and statutes. The agency maintains that this provides a fairer marketplace for the consumer.

In 2018, IDFPR supported Public Act 100-872, which removed the requirement that IDFPR refuse professional licenses to individuals who default on student loan debt that is guaranteed by the state. The agency believes this change removed a barrier to employment that can help people pay such debts.

Criteria (5) "The extent to which the agency or program has required the persons it regulates to report to it concerning the impact of rules and decisions of the agency or the impact of the program on the public regarding improved service, economy of service, and availability of service."

IDFPR establishes rules and makes regulatory decisions through the process established by the Joint Committee on Administrative Rules (JCAR), the administrative body responsible for approving rule proposals by state agencies. This process allows for input from industry and community stakeholders impacted by the Department's proposed changes. The Department works with lawmakers, community stakeholders and members of industry to ensure that regulations effectively protect Illinois citizens.

Criteria (6) "The extent to which persons regulated by the agency or under the program have been required to assess the problems in their industry that affect the public."

Full information on this criterion was not available at the time of this report.

Criteria (7) "The extent to which the agency or program has encouraged participation by the public in making its rules and decisions as opposed to participation solely by the persons it regulates and the extent to which such rules and decisions are consistent with statutory authority."

IDFPR adheres to the guidelines and requirements established by the Joint Committee on Administrative Rules (JCAR) and the Illinois General Assembly (ILGA) for approving rule proposals, legislative changes and internal policies. In addition, the Department adheres to the requirements established in the Illinois Open Meetings Act (5 ILCS 120).

Criteria (8) “The efficiency with which formal public complaints filed with the regulatory agency or under the program concerning persons subject to regulation have been processed to completion, by the executive director of the regulatory agencies or programs, by the Attorney General and by any other applicable department of the State government.”

IDFPR accepts public complaints via its website and by phone. The average time from a complaint being received to an investigation being opened is five days. The average time to complete an investigation varies according to how the investigation proceeds:

- Average time to close a case at Investigations: 9 months
- Average time to refer a case from Investigations to Prosecutions: 4 months
- Average time to close a case at Prosecutions: 13 months
- Average time to close a case at Prosecutions with Discipline: 35 months

These average times represent Department complaints overall. Individual complaint data for each regulated profession are not available.

Criteria (9) “The extent to which changes are necessary in the enabling laws of the agency or program to adequately comply with the factors listed in this section.”

IDFPR recommends that any proposed language for sunset extension provide for modernizations necessary to implement more streamlined and efficient regulation of this profession, which will ensure public safety and ease the burden of regulatory compliance:

- Allow applicants to apply for “Licensure by Endorsement” without providing education or test information to IDFPR, if: (1) The applicant has been licensed for 10 consecutive years in another state, (2) the other state sends verification of consecutive licensure of the applicant, and (3) the applicant has never been disciplined.
- Add a definition of “Email address of record,” standardizing IDFPR’s initiative to become more efficient and paperless.

Conclusion:

Polygraph tests do not provide a valid basis of evidence in a legal trial such that a courtroom deems them observable testimony in an Illinois court of law. Their usage, irrespective of the state’s regulation, will not produce legitimate evidence in any fashion and subsequently its regulation will not provide value. This, in addition to the already present American Polygraph Association’s requirements and ongoing continuing education requirements provide appropriate regulation to reasonably conclude the added burdens of state regulation of polygraphs does not improve public welfare, safety, or deter their erroneous use.