

House Bill 2392

Sponsored by Representative ESQUIVEL (at the request of Ray Shipley) (Pre-session filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Authorizes law enforcement units to use polygraph examinations in screening applicants for positions as police officers.

A BILL FOR AN ACT

1
2 Relating to law enforcement units; creating new provisions; and amending ORS 659.840 and
3 659A.300.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. (1) As used in this section:**

6 (a) "Law enforcement unit" has the meaning given that term in ORS 181.610.

7 (b) "Police officer" has the meaning given that term in ORS 181.610.

8 (c) "Polygraph examination or psychological stress test" has the meaning given that term
9 in ORS 659A.300.

10 (2) A law enforcement unit may require a person to take a polygraph examination or
11 psychological stress test as a condition of employment if the person is applying for a position
12 as a police officer. The law enforcement unit shall limit the scope of the examination or test
13 to those matters that have a bearing on the person's fitness to serve as a police officer.

14 **SECTION 2.** ORS 659.840 is amended to read:

15 659.840. (1) **Except as otherwise provided in section 1 of this 2007 Act**, no person, or agent
16 or representative of such person, shall require, as a condition for employment or continuation of
17 employment, any person or employee to take a breathalyzer test, polygraph test or any other form
18 of a so-called lie detector test. However, nothing in this section shall be construed to prohibit the
19 administration of a breathalyzer test to an individual if the individual consents to the test. If the
20 employer has reasonable grounds to believe that the individual is under the influence of intoxicating
21 liquor, the employer may require, as a condition for employment or continuation of employment, the
22 administration of a blood alcohol content test by a third party or a breathalyzer test. The employer
23 shall not require the employee to pay the cost of administering any such test.

24 (2) For the purposes of this section, an individual is "under the influence of intoxicating
25 liquor" when the individual's blood alcohol content exceeds the amount prescribed in a collective
26 bargaining agreement or the amount prescribed in the employer's work rules if there is no applica-
27 ble collective bargaining provision.

28 **SECTION 3.** ORS 659A.300 is amended to read:

29 659A.300. (1) Except as provided in this section, it is an unlawful employment practice for any
30 employer to subject, directly or indirectly, any employee or prospective employee to any
31 breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (2) As used in this section:

2 (a) "Breathalyzer test" means a test to detect the presence of alcohol in the body through the
3 use of instrumentation or mechanical devices.

4 (b) "Genetic test" has the meaning given in ORS 192.531.

5 (c) "Polygraph examination or psychological stress test" means a test to detect deception or to
6 verify the truth of statements through the use of instrumentation or mechanical devices.

7 (d) An individual is "under the influence of intoxicating liquor" when the individual's blood al-
8cohol content exceeds the amount prescribed in a collective bargaining agreement or the amount
9prescribed in the employer's work rules if there is no applicable collective bargaining provision.

10 (3) Nothing in subsection (1) of this section shall be construed to prohibit the administration of
11 a polygraph examination to an individual: [,]

12 (a) If the individual consents to the examination, during the course of criminal or civil judicial
13 proceedings in which the individual is a party or witness or during the course of a criminal inves-
14 tigation conducted by a law enforcement agency, as defined in ORS 181.010, a district attorney or
15 the Attorney General.

16 (b) **Under the provisions of section 1 of this 2007 Act.**

17 (4) Nothing in subsection (1) of this section shall be construed to prohibit the administration of
18 a breathalyzer test to an individual if the individual consents to the test. If the employer has rea-
19 sonable grounds to believe that the individual is under the influence of intoxicating liquor, the em-
20 ployer may require, as a condition for employment or continuation of employment, the
21 administration of a blood alcohol content test by a third party or a breathalyzer test. The employer
22 shall not require the employee to pay the cost of administering any such test.

23 (5) Subsection (1) of this section does not prohibit the administration of a genetic test to an in-
24 dividual if the individual or the individual's representative grants informed consent in the manner
25 provided by ORS 192.535, and the genetic test is administered solely to determine a bona fide oc-
26 cupational qualification.

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