

B-Engrossed
House Bill 2545

Ordered by the House May 12
Including House Amendments dated April 27 and May 12

Sponsored by Representatives HACK, BARKER; Representative WHISNANT (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.

[Allows Department of Public Safety Standards and Training to issue deception detection examination administrator license to qualified applicant. Prohibits unlicensed administration of deception detection examination or use of "deception detection examination administrator" title. Provides that person who falsifies materials in application for licensure commits crime. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Provides that person who practices as deception detection examination administrator without license commits crime. Punishes by maximum of six months' imprisonment, \$2,500 fine, or both.]

Prohibits employer from requiring as condition of hiring or continued employment that person take deception detection examination.

Creates unlawful employment practice of subjecting prospective or current employee to deception detection examination.

Allows corrections officer, parole and probation officer or police officer to use certain deception detection instruments in course of official duties while conducting investigation or providing community protection.

[Takes effect on 91st day following adjournment sine die.]

A BILL FOR AN ACT

1
2 Relating to deception detection; amending ORS 659.840, 659A.300 and 703.335.

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

4 **SECTION 1.** ORS 659.840 is amended to read:

5 659.840. (1)(a) **As used in this section, "deception detection examination" means use of an**
6 **instrument or mechanical device to question or test an individual for the purpose of detect-**
7 **ing deception or verifying the truth of statements made by the individual.**

8 **(b) "Deception detection examination" includes an ocular motor deception detection ex-**
9 **amination.**

10 **(c) "Deception detection examination" does not include a polygraph test.**

11 **(2) [No] A person, or agent or representative of [such] the person, [shall] may not** require, as
12 a condition for employment or continuation of employment, any person or employee to take a
13 breathalyzer test, **deception detection examination**, polygraph test or any other form of a so-called
14 lie detector test.

15 **(3)** However, nothing in this section shall be construed to prohibit the administration of a
16 breathalyzer test to an individual if the individual consents to the test. If the employer has reason-
17 able grounds to believe that the individual is under the influence of intoxicating liquor, the employer
18 may require, as a condition for employment or continuation of employment, the administration of a
19 blood alcohol content test by a third party or a breathalyzer test. The employer *[shall]* **may not**
20 require the employee to pay the cost of administering *[any such]* **a blood alcohol content test or**

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 **breathalyzer** test.

2 [(2)] (4) For the purposes of this section, an individual is “under the influence of intoxicating
3 liquor” when the individual’s blood alcohol content exceeds the amount prescribed in a collective
4 bargaining agreement or the amount prescribed in the employer’s work rules if there is no applica-
5 ble collective bargaining provision.

6 **SECTION 2.** ORS 659A.300 is amended to read:

7 659A.300. (1) Except as provided in this section, it is an unlawful employment practice for any
8 employer to subject, directly or indirectly, any employee or prospective employee to any
9 breathalyzer test, **deception detection examination**, polygraph examination, psychological stress
10 test, genetic test or brain-wave test.

11 (2) As used in this section:

12 (a) “Breathalyzer test” means a test to detect the presence of alcohol in the body through the
13 use of instrumentation or mechanical devices.

14 **(b)(A) “Deception detection examination” means use of an instrument or mechanical de-**
15 **vice to question or test an individual for the purpose of detecting deception or verifying the**
16 **truth of statements made by the individual.**

17 **(B) “Deception detection examination” includes an ocular motor deception detection ex-**
18 **amination.**

19 **(C) “Deception detection examination” does not include a polygraph examination.**

20 [(b)] (c) “Genetic test” has the meaning given in ORS 192.531.

21 [(c)] (d) “Polygraph examination or psychological stress test” means a test to detect deception
22 or to verify the truth of statements through the use of instrumentation or mechanical devices.

23 [(d)] (e) An individual is “under the influence of intoxicating liquor” when the individual’s blood
24 alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount
25 prescribed in the employer’s work rules if there is no applicable collective bargaining provision.

26 (3) Nothing in subsection (1) of this section shall be construed to prohibit the administration of
27 a polygraph examination to an individual, if the individual consents to the examination, during the
28 course of criminal or civil judicial proceedings in which the individual is a party or witness or
29 during the course of a criminal investigation conducted by a law enforcement agency, as defined in
30 ORS 181A.010, a district attorney or the Attorney General.

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

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

42 **SECTION 3.** ORS 703.335 is amended to read:

43 703.335. A **corrections officer, a parole and probation officer or a police officer, as those**
44 **terms are** defined in ORS [243.005] **181A.355**, may use an instrument or mechanical device that does
45 not comply with the minimum requirements under ORS 703.310 (1) to test or question an individual

1 for the purpose of detecting deception or verifying the truth of statements made by the individual
2 if the **corrections officer, parole and probation officer or** police officer:

3 (1) Uses the instrument or mechanical device in the course of the officer's official duties
4 while:

5 (a) Investigating a crime;

6 (b) **Conducting an investigation into misconduct involving individuals arrested for or**
7 **convicted of a crime and who are confined in a place of incarceration or detention other than**
8 **a place of incarceration or detention of juveniles; or**

9 (c) **Providing community protection by controlling, investigating, supervising or providing**
10 **or making referrals to reformative services for adult parolees or probationers or offenders**
11 **on post-prison supervision; and**

12 (2) Is [*certified*] **authorized** to use the instrument or mechanical device by the agency that em-
13 ploys the officer.

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