

Senate Bill 732

Sponsored by COMMITTEE ON JUDICIARY (at the request of Oregon Association Chiefs of Police)

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**.

Permits administration of polygraph examination to individual who applies for peace officer position. Prohibits disqualifying peace officer applicant based solely on results of polygraph examination. Provides that decision to disqualify peace officer applicant based solely on results of polygraph examination is unlawful employment practice.

A BILL FOR AN ACT

1
2 Relating to peace officer applicants; amending ORS 659.840 and 659A.300.

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

4 **SECTION 1.** ORS 659A.300 is amended to read:

5 659A.300. (1) **As used in this section:**

6 (a) **"Breath test" means a test to detect the presence of alcohol in the body through the**
7 **use of instrumentation or mechanical devices.**

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

9 (c) **"Police officer applicant" means a person who applies to be an officer, member or**
10 **employee of a law enforcement unit and be commissioned by a city, port, school district,**
11 **mass transit district, county or county service district authorized to provide law enforce-**
12 **ment services under ORS 451.010.**

13 (d) **"Polygraph examination" or "psychological stress test" means a test to detect de-**
14 **ception or to verify the truth of statements through the use of instrumentation or mechan-**
15 **ical devices.**

16 (e) **"Reserve officer applicant" means a person who applies to be an officer or member**
17 **of a law enforcement unit and as a reserve officer will:**

18 (A) **Volunteer as a peace officer commissioned by a city, port, school district, mass**
19 **transit district, county or county service district authorized to provide law enforcement**
20 **services under ORS 451.010;**

21 (B) **Be armed with a firearm; and**

22 (C) **Be responsible for enforcing the criminal laws and traffic laws of this state or the**
23 **laws and ordinances relating to airport security.**

24 (f) **An individual is "under the influence of intoxicating liquor" when the individual's**
25 **blood alcohol content exceeds the amount prescribed in a collective bargaining agreement**
26 **or the amount prescribed in the employer's work rules if there is no applicable collective**
27 **bargaining provision.**

28 [(1)] (2) **Except as provided in this section, it is an unlawful employment practice for any em-**
29 **ployer to subject, directly or indirectly, any employee or prospective employee to any**
30 **[breathalyzer] breath test, polygraph examination, psychological stress test, genetic test or brain-**

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 wave test.

2 [(2) *As used in this section:*]

3 [(a) *“Breathalyzer test” means a test to detect the presence of alcohol in the body through the use*
4 *of instrumentation or mechanical devices.*]

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

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

8 [(d) *An individual is “under the influence of intoxicating liquor” when the individual’s blood al-*
9 *cohol content exceeds the amount prescribed in a collective bargaining agreement or the amount pre-*
10 *scribed in the employer’s work rules if there is no applicable collective bargaining provision.*]

11 (3) *[Nothing in Subsection (1) of this section shall be construed to]* **Subsection (2) of this section**
12 **does not** prohibit the administration of a polygraph examination to an individual, if the individual
13 consents to the examination, during the course of criminal or civil judicial proceedings in which the
14 individual is a party or witness or during the course of a criminal investigation conducted by a law
15 enforcement agency, as defined in ORS 181.010, a district attorney or the Attorney General.

16 (4) **Subsection (2) of this section does not prohibit the administration of a polygraph ex-**
17 **amination to an individual who applies for a police officer or reserve officer position. A police**
18 **officer applicant or reserve officer applicant may not be disqualified based solely on the re-**
19 **sults of the polygraph examination. A decision to disqualify a police officer applicant or re-**
20 **serve officer applicant based solely on the results of the polygraph examination is an**
21 **unlawful employment practice.**

22 [(4)] (5) *[Nothing in Subsection (1) of this section shall be construed to]* **Subsection (2) of this**
23 **section does not** prohibit the administration of a *[breathalyzer]* **breath** test to an individual if the
24 individual consents to the test. If the employer has reasonable grounds to believe that the individual
25 is under the influence of intoxicating liquor, the employer may require, as a condition for employ-
26 ment or continuation of employment, the administration of a blood alcohol content test by a third
27 party or a *[breathalyzer]* **breath** test. The employer *[shall]* **may** not require the employee to pay the
28 cost of administering *[any such]* **the** test.

29 [(5)] (6) Subsection [(1)] (2) of this section does not prohibit the administration of a genetic test
30 to an individual if the individual or the individual’s representative grants informed consent in the
31 manner provided by ORS 192.535, and the genetic test is administered solely to determine a bona
32 fide occupational qualification.

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

34 659.840. (1) **As used in this section:**

35 (a) **“Breath test” means a test to detect the presence of alcohol in the body through the**
36 **use of instrumentation or mechanical devices.**

37 (b) **“Police officer applicant” means a person who applies to be an officer, member or**
38 **employee of a law enforcement unit and be commissioned by a city, port, school district,**
39 **mass transit district, county or county service district authorized to provide law enforce-**
40 **ment services under ORS 451.010.**

41 (c) **“Polygraph examination” means a test to detect deception or to verify the truth of**
42 **statements through the use of instrumentation or mechanical devices.**

43 (d) **“Reserve officer applicant” means a person who applies to be an officer or member**
44 **of a law enforcement unit and as a reserve officer will:**

45 (A) **Volunteer as a peace officer commissioned by a city, port, school district, mass**

1 transit district, county or county service district authorized to provide law enforcement
 2 services under ORS 451.010;

3 (B) Be armed with a firearm; and

4 (C) Be responsible for enforcing the criminal laws and traffic laws of this state or the
 5 laws and ordinances relating to airport security.

6 (e) An individual is “under the influence of intoxicating liquor” when the individual’s
 7 blood alcohol content exceeds the amount prescribed in a collective bargaining agreement
 8 or the amount prescribed in the employer’s work rules if there is no applicable collective
 9 bargaining provision.

10 [(1)] (2) [No] **Except as provided in this section**, a person, or agent or representative of such
 11 person, [shall] **may not** require, as a condition for employment or continuation of employment, any
 12 person or employee to take a [breathalyzer] **breath** test, polygraph [test] **examination** or any other
 13 form of a so-called lie detector test. [However, nothing in this section shall be construed to]

14 (3) **Subsection (2) of this section does not** prohibit the administration of a [breathalyzer]
 15 **breath** test to an individual if the individual consents to the test. If the employer has reasonable
 16 grounds to believe that the individual is under the influence of intoxicating liquor, the employer
 17 may require, as a condition for employment or continuation of employment, the administration of a
 18 blood alcohol content test by a third party or a [breathalyzer] **breath** test. The employer [shall]
 19 **may not** require the employee to pay the cost of administering [any such] **the** test.

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

24 (4) **Subsection (2) of this section does not prohibit the administration of a polygraph ex-**
 25 **amination to an individual who applies for a police officer or reserve officer position. A police**
 26 **officer applicant or reserve officer applicant may not be disqualified based solely on the re-**
 27 **sults of the polygraph examination. A decision to disqualify a police officer applicant or re-**
 28 **serve officer applicant based solely on the results of the polygraph examination is an**
 29 **unlawful employment practice.**

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