

Senate Bill 665

Sponsored by COMMITTEE ON JUDICIARY

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 police officer applicants and reserve officer applicants.

Provides that decision by employer to disqualify applicant solely on basis of polygraph examination is unlawful employment practice.

A BILL FOR AN ACT

1
2 Relating to employment practices; 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 determine blood alcohol content.**

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

8 (c) **“Police officer applicant” means a person who applies to be an officer of a law**
9 **enforcement unit commissioned by a city, port, school district, mass transit district, county**
10 **or county service district authorized to provide law enforcement services under ORS 451.010.**

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

14 (e) **“Reserve officer applicant” means a person who applies to be an officer of a law**
15 **enforcement unit and who, as a reserve officer, will:**

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

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

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

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

26 [(1)] (2) Except as provided in this section, it is an unlawful employment practice for [any] **an**
27 employer to subject, directly or indirectly, [any] **an** employee or prospective employee to [any
28 *breathalyzer*] **a breath** test, polygraph examination, psychological stress test, genetic test or brain-
29 wave test.

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

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

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

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

6 [(d) An individual is “under the influence of intoxicating liquor” when the individual’s blood al-
7cohol content exceeds the amount prescribed in a collective bargaining agreement or the amount pre-
8scribed in the employer’s work rules if there is no applicable collective bargaining provision.]

9 (3) [Nothing in subsection (1) of this section shall be construed to] **Subsection (2) of this section**
10 **does not** prohibit the administration of a polygraph examination to an individual[,];

11 (a) If the individual consents to the examination[,];

12 (b) During the course of criminal or civil judicial proceedings in which the individual is a party
13 or witness; or

14 (c) During the course of a criminal investigation conducted by a law enforcement agency[,], as
15 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 a police officer applicant or reserve officer applicant. An applicant may not be**
18 **disqualified solely on the basis of the results of a polygraph examination. A decision to dis-**
19 **qualify an applicant based solely on the results of a polygraph examination is an unlawful**
20 **employment practice.**

21 [(4)] (5) [Nothing in subsection (1) of this section shall be construed to] **Subsection (2) of this**
22 **section does not** prohibit the administration of a [breathalyzer] **breath** test to an individual if the
23 individual consents to the test. If the employer has reasonable grounds to believe that the individual
24 is under the influence of intoxicating liquor, the employer may require, as a condition for employ-
25ment or continuation of employment, the administration of a blood alcohol content test by a third
26 party or a [breathalyzer] **breath** test. The employer [shall] **may** not require the employee to pay the
27 cost of administering [any such] **the** test.

28 [(5)] (6) Subsection [(1)] (2) of this section does not prohibit the administration of a genetic test
29 to an individual if the individual or the individual’s representative grants informed consent in the
30 manner provided by ORS 192.535, and the genetic test is administered solely to determine a bona
31 fide occupational qualification.

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

33 659.840. (1) **As used in this section:**

34 (a) **“Breath test” means a test to determine blood alcohol content.**

35 (b) **“Police officer applicant” means a person who applies to be an officer of a law**
36 **enforcement unit commissioned by a city, port, school district, mass transit district, county**
37 **or county service district authorized to provide law enforcement services under ORS 451.010.**

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

40 (d) **“Reserve officer applicant” means a person who applies to be an officer of a law**
41 **enforcement unit and who, as a reserve officer, will:**

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

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

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

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

7 [(1)] (2) [No] Except as provided in this section, a person, or agent or representative of such
8 person, [shall] may not require, as a condition for employment or continuation of employment, any
9 person or employee to take a [breathalyzer] breath test, polygraph [test] examination or any other
10 form of a so-called lie detector test. [However, nothing in this section shall be construed to]

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

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

21 (4) Subsection (2) of this section does not prohibit the administration of a polygraph ex-
22 amination to a police officer applicant or reserve officer applicant. An applicant may not be
23 disqualified solely on the basis of the results of a polygraph examination. A decision to dis-
24 qualify an applicant based solely on the results of the polygraph examination is an unlawful
25 employment practice.

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