

Senate Bill 593

Sponsored by Senator ATKINSON

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 administration of polygraph examination to applicants for position as police officer or reserve officer. Prohibits disqualification of applicant solely on basis of results of polygraph examination. Makes such disqualification unlawful employment practice.

A BILL FOR AN ACT

1
2 Relating to polygraph examinations for applicants for certain law enforcement positions; amending
3 ORS 659.840 and 659A.300.

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

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

6 659A.300. (1) Except as provided in this section, it is an unlawful employment practice for any
7 employer to subject, directly or indirectly, any employee or prospective employee to any
8 breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test.

9 (2) As used in this section:

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

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

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

15 (d) An individual is "under the influence of intoxicating liquor" when the individual's blood al-
16cohol content exceeds the amount prescribed in a collective bargaining agreement or the amount
17prescribed in the employer's work rules if there is no applicable collective bargaining provision.

18 (3) Nothing in subsection (1) of this section shall be construed to prohibit the administration of
19 a polygraph examination to an individual, if the individual consents to the examination, during the
20 course of criminal or civil judicial proceedings in which the individual is a party or witness or
21 during the course of a criminal investigation conducted by a law enforcement agency, as defined in
22 ORS 181.010, a district attorney or the Attorney General.

23 **(4)(a) Subsection (1) of this section does not prohibit the administration of a polygraph**
24 **examination to an applicant for a position as a police officer or a reserve officer. An appli-**
25 **cant may not be disqualified from employment or volunteer service solely on the basis of the**
26 **results of a polygraph examination. A decision to disqualify an applicant from employment**
27 **or volunteer service solely on the basis of the results of a polygraph examination is an un-**
28 **lawful employment practice under ORS chapter 659A.**

29 **(b) As used in this subsection, "police officer" and "reserve officer" have the meanings**
30 **given those terms in ORS 181.610.**

31 [(4)] (5) Nothing in subsection (1) of this section shall be construed to prohibit the adminis-

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 tration of a breathalyzer test to an individual if the individual consents to the test. If the employer
2 has reasonable grounds to believe that the individual is under the influence of intoxicating liquor,
3 the employer may require, as a condition for employment or continuation of employment, the ad-
4 ministration of a blood alcohol content test by a third party or a breathalyzer test. The employer
5 shall not require the employee to pay the cost of administering any such test.

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

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

11 659.840. (1) No person, or agent or representative of such person, shall require, as a condition
12 for employment or continuation of employment, any person or employee to take a breathalyzer test,
13 polygraph test or any other form of a so-called lie detector test. However, nothing in this section
14 shall be construed to prohibit the administration of a breathalyzer test to an individual if the indi-
15 vidual consents to the test. If the employer has reasonable grounds to believe that the individual is
16 under the influence of intoxicating liquor, the employer may require, as a condition for employment
17 or continuation of employment, the administration of a blood alcohol content test by a third party
18 or a breathalyzer test. The employer shall not require the employee to pay the cost of administering
19 any such test.

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

24 (3)(a) **Subsection (1) of this section does not prohibit the administration of a polygraph
25 examination to an applicant for a position as a police officer or a reserve officer. An appli-
26 cant may not be disqualified from employment or volunteer service solely on the basis of the
27 results of a polygraph examination. A decision to disqualify an applicant from employment
28 or volunteer service solely on the basis of the results of a polygraph examination is an un-
29 lawful employment practice under ORS chapter 659A.**

30 (b) **As used in this subsection, "police officer" and "reserve officer" have the meanings
31 given those terms in ORS 181.610.**

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