

## SENATE AMENDMENTS TO SENATE BILL 316

By COMMITTEE ON JUDICIARY

April 23

1 On page 1 of the printed bill, line 2, after “privacy;” delete the rest of the line and insert  
2 “amending ORS 192.502, 659.840 and 659A.300.”.

3 Delete lines 4 through 22 and delete pages 2 through 5 and insert:

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

5 “659.840. (1) **Except as provided in paragraphs (a) and (b) of this subsection**, no person, or  
6 agent or representative of such person, shall require, as a condition for employment or continuation  
7 of employment, any person or employee to take a breathalyzer test, polygraph test or any other form  
8 of a so-called lie detector test. [*However,*]

9 “(a) Nothing in this section shall be construed to prohibit the administration of a breathalyzer  
10 test to an individual if the individual consents to the test. If the employer has reasonable grounds  
11 to believe that the individual is under the influence of intoxicating liquor, the employer may require,  
12 as a condition for employment or continuation of employment, the administration of a blood alcohol  
13 content test by a third party or a breathalyzer test. The employer shall not require the employee  
14 to pay the cost of administering any such test.

15 “(b) **Nothing in this section shall be construed to prohibit the administration of a**  
16 **polygraph test to an applicant for a position as a law enforcement officer in this state. This**  
17 **paragraph applies to pre-employment screening only and does not apply to law enforcement**  
18 **officers during their employment.**

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

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

24 “659A.300. (1) Except as provided in this section, it is an unlawful employment practice for any  
25 employer to subject, directly or indirectly, any employee or prospective employee to any  
26 breathalyzer test, polygraph examination, psychological stress test, genetic test or brain-wave test.

27 “(2) As used in this section:

28 “(a) ‘Breathalyzer test’ means a test to detect the presence of alcohol in the body through the  
29 use of instrumentation or mechanical devices.

30 “(b) ‘Genetic test’ has the meaning given in ORS 192.531.

31 “(c) ‘Polygraph examination or psychological stress test’ means a test to detect deception or to  
32 verify the truth of statements through the use of instrumentation or mechanical devices.

33 “(d) An individual is ‘under the influence of intoxicating liquor’ when the individual’s blood al-  
34cohol content exceeds the amount prescribed in a collective bargaining agreement or the amount  
35prescribed in the employer’s work rules if there is no applicable collective bargaining provision.

1 “(3) Nothing in subsection (1) of this section shall be construed to prohibit the administration  
2 of a polygraph examination to:

3 “(a) An individual, if the individual consents to the examination, during the course of criminal  
4 or civil judicial proceedings in which the individual is a party or witness or during the course of a  
5 criminal investigation conducted by a law enforcement agency, as defined in ORS 181.010, a district  
6 attorney or the Attorney General[.]; or

7 “(b) **An applicant for a position as a law enforcement officer in this state as a pre-**  
8 **employment screening measure before the applicant’s initial date of hire as a law enforce-**  
9 **ment officer.**

10 “(4) Nothing in subsection (1) of this section shall be construed to prohibit the administration  
11 of a breathalyzer test to an individual if the individual consents to the test. If the employer has  
12 reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the  
13 employer may require, as a condition for employment or continuation of employment, the adminis-  
14 tration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall  
15 not require the employee to pay the cost of administering any such test.

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

20 “**SECTION 3.** ORS 192.502 is amended to read:

21 “192.502. The following public records are exempt from disclosure under ORS 192.410 to 192.505:

22 “(1) Communications within a public body or between public bodies of an advisory nature to the  
23 extent that they cover other than purely factual materials and are preliminary to any final agency  
24 determination of policy or action. This exemption shall not apply unless the public body shows that  
25 in the particular instance the public interest in encouraging frank communication between officials  
26 and employees of public bodies clearly outweighs the public interest in disclosure.

27 “(2) Information of a personal nature such as but not limited to that kept in a personal, medical  
28 or similar file, if public disclosure would constitute an unreasonable invasion of privacy, unless the  
29 public interest by clear and convincing evidence requires disclosure in the particular instance. The  
30 party seeking disclosure shall have the burden of showing that public disclosure would not consti-  
31 tute an unreasonable invasion of privacy.

32 “(3) Public body employee or volunteer addresses, Social Security numbers, dates of birth and  
33 telephone numbers contained in personnel records maintained by the public body that is the em-  
34 ployer or the recipient of volunteer services. This exemption:

35 “(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or  
36 volunteers who are elected officials, except that a judge or district attorney subject to election may  
37 seek to exempt the judge’s or district attorney’s address or telephone number, or both, under the  
38 terms of ORS 192.445;

39 “(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure  
40 shows by clear and convincing evidence that the public interest requires disclosure in a particular  
41 instance;

42 “(c) Does not apply to a substitute teacher as defined in ORS 342.815 when requested by a  
43 professional education association of which the substitute teacher may be a member; and

44 “(d) Does not relieve a public employer of any duty under ORS 243.650 to 243.782.

45 “(4) Information submitted to a public body in confidence and not otherwise required by law to

1 be submitted, where such information should reasonably be considered confidential, the public body  
2 has obliged itself in good faith not to disclose the information, and when the public interest would  
3 suffer by the disclosure.

4 “(5) Information or records of the Department of Corrections, including the State Board of  
5 Parole and Post-Prison Supervision, to the extent that disclosure would interfere with the rehabili-  
6 tation of a person in custody of the department or substantially prejudice or prevent the carrying  
7 out of the functions of the department, if the public interest in confidentiality clearly outweighs the  
8 public interest in disclosure.

9 “(6) Records, reports and other information received or compiled by the Director of the De-  
10 partment of Consumer and Business Services in the administration of ORS chapters 723 and 725 not  
11 otherwise required by law to be made public, to the extent that the interests of lending institutions,  
12 their officers, employees and customers in preserving the confidentiality of such information out-  
13 weighs the public interest in disclosure.

14 “(7) Reports made to or filed with the court under ORS 137.077 or 137.530.

15 “(8) Any public records or information the disclosure of which is prohibited by federal law or  
16 regulations.

17 “(9)(a) Public records or information the disclosure of which is prohibited or restricted or oth-  
18 erwise made confidential or privileged under Oregon law.

19 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not apply to factual informa-  
20 tion compiled in a public record when:

21 “(A) The basis for the claim of exemption is ORS 40.225;

22 “(B) The factual information is not prohibited from disclosure under any applicable state or  
23 federal law, regulation or court order and is not otherwise exempt from disclosure under ORS  
24 192.410 to 192.505;

25 “(C) The factual information was compiled by or at the direction of an attorney as part of an  
26 investigation on behalf of the public body in response to information of possible wrongdoing by the  
27 public body;

28 “(D) The factual information was not compiled in preparation for litigation, arbitration or an  
29 administrative proceeding that was reasonably likely to be initiated or that has been initiated by  
30 or against the public body; and

31 “(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement  
32 characterizing or partially disclosing the factual information compiled by or at the attorney’s di-  
33 rection.

34 “(10) Public records or information described in this section, furnished by the public body ori-  
35 ginally compiling, preparing or receiving them to any other public officer or public body in con-  
36 nection with performance of the duties of the recipient, if the considerations originally giving rise  
37 to the confidential or exempt nature of the public records or information remain applicable.

38 “(11) Records of the Energy Facility Siting Council concerning the review or approval of secu-  
39 rity programs pursuant to ORS 469.530.

40 “(12) Employee and retiree address, telephone number and other nonfinancial membership re-  
41 cords and employee financial records maintained by the Public Employees Retirement System pur-  
42 suant to ORS chapters 238 and 238A.

43 “(13) Records of or submitted to the State Treasurer, the Oregon Investment Council or the  
44 agents of the treasurer or the council relating to active or proposed publicly traded investments  
45 under ORS chapter 293, including but not limited to records regarding the acquisition, exchange or

1 liquidation of the investments. For the purposes of this subsection:

2 “(a) The exemption does not apply to:

3 “(A) Information in investment records solely related to the amount paid directly into an in-  
4 vestment by, or returned from the investment directly to, the treasurer or council; or

5 “(B) The identity of the entity to which the amount was paid directly or from which the amount  
6 was received directly.

7 “(b) An investment in a publicly traded investment is no longer active when acquisition, ex-  
8 change or liquidation of the investment has been concluded.

9 “(14)(a) Records of or submitted to the State Treasurer, the Oregon Investment Council, the  
10 Oregon Growth Board or the agents of the treasurer, council or board relating to actual or proposed  
11 investments under ORS chapter 293 or 348 in a privately placed investment fund or a private asset  
12 including but not limited to records regarding the solicitation, acquisition, deployment, exchange or  
13 liquidation of the investments including but not limited to:

14 “(A) Due diligence materials that are proprietary to an investment fund, to an asset ownership  
15 or to their respective investment vehicles.

16 “(B) Financial statements of an investment fund, an asset ownership or their respective invest-  
17 ment vehicles.

18 “(C) Meeting materials of an investment fund, an asset ownership or their respective investment  
19 vehicles.

20 “(D) Records containing information regarding the portfolio positions in which an investment  
21 fund, an asset ownership or their respective investment vehicles invest.

22 “(E) Capital call and distribution notices of an investment fund, an asset ownership or their  
23 respective investment vehicles.

24 “(F) Investment agreements and related documents.

25 “(b) The exemption under this subsection does not apply to:

26 “(A) The name, address and vintage year of each privately placed investment fund.

27 “(B) The dollar amount of the commitment made to each privately placed investment fund since  
28 inception of the fund.

29 “(C) The dollar amount of cash contributions made to each privately placed investment fund  
30 since inception of the fund.

31 “(D) The dollar amount, on a fiscal year-end basis, of cash distributions received by the State  
32 Treasurer, the Oregon Investment Council, the Oregon Growth Board or the agents of the treasurer,  
33 council or board from each privately placed investment fund.

34 “(E) The dollar amount, on a fiscal year-end basis, of the remaining value of assets in a privately  
35 placed investment fund attributable to an investment by the State Treasurer, the Oregon Investment  
36 Council, the Oregon Growth Board or the agents of the treasurer, council or board.

37 “(F) The net internal rate of return of each privately placed investment fund since inception of  
38 the fund.

39 “(G) The investment multiple of each privately placed investment fund since inception of the  
40 fund.

41 “(H) The dollar amount of the total management fees and costs paid on an annual fiscal year-end  
42 basis to each privately placed investment fund.

43 “(I) The dollar amount of cash profit received from each privately placed investment fund on a  
44 fiscal year-end basis.

45 “(15) The monthly reports prepared and submitted under ORS 293.761 and 293.766 concerning

1 the Public Employees Retirement Fund and the Industrial Accident Fund may be uniformly treated  
2 as exempt from disclosure for a period of up to 90 days after the end of the calendar quarter.

3 “(16) Reports of unclaimed property filed by the holders of such property to the extent permitted  
4 by ORS 98.352.

5 “(17)(a) The following records, communications and information submitted to the Oregon Busi-  
6 ness Development Commission, the Oregon Business Development Department, the State Department  
7 of Agriculture, the Oregon Growth Board, the Port of Portland or other ports as defined in ORS  
8 777.005, or a county or city governing body and any board, department, commission, council or  
9 agency thereof, by applicants for investment funds, grants, loans, services or economic development  
10 moneys, support or assistance including, but not limited to, those described in ORS 285A.224:

11 “(A) Personal financial statements.

12 “(B) Financial statements of applicants.

13 “(C) Customer lists.

14 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
15 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
16 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
17 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
18 ery or deposition statutes to a party to litigation or potential litigation.

19 “(E) Production, sales and cost data.

20 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets  
21 and applicant’s strategy regarding specific competitors.

22 “(b) The following records, communications and information submitted to the State Department  
23 of Energy by applicants for tax credits or for grants awarded under ORS 469B.256:

24 “(A) Personal financial statements.

25 “(B) Financial statements of applicants.

26 “(C) Customer lists.

27 “(D) Information of an applicant pertaining to litigation to which the applicant is a party if the  
28 complaint has been filed, or if the complaint has not been filed, if the applicant shows that such  
29 litigation is reasonably likely to occur; this exemption does not apply to litigation which has been  
30 concluded, and nothing in this subparagraph shall limit any right or opportunity granted by discov-  
31 ery or deposition statutes to a party to litigation or potential litigation.

32 “(E) Production, sales and cost data.

33 “(F) Marketing strategy information that relates to applicant’s plan to address specific markets  
34 and applicant’s strategy regarding specific competitors.

35 “(18) Records, reports or returns submitted by private concerns or enterprises required by law  
36 to be submitted to or inspected by a governmental body to allow it to determine the amount of any  
37 transient lodging tax payable and the amounts of such tax payable or paid, to the extent that such  
38 information is in a form which would permit identification of the individual concern or enterprise.  
39 Nothing in this subsection shall limit the use which can be made of such information for regulatory  
40 purposes or its admissibility in any enforcement proceedings. The public body shall notify the tax-  
41 payer of the delinquency immediately by certified mail. However, in the event that the payment or  
42 delivery of transient lodging taxes otherwise due to a public body is delinquent by over 60 days, the  
43 public body shall disclose, upon the request of any person, the following information:

44 “(a) The identity of the individual concern or enterprise that is delinquent over 60 days in the  
45 payment or delivery of the taxes.

1       “(b) The period for which the taxes are delinquent.

2       “(c) The actual, or estimated, amount of the delinquency.

3       “(19) All information supplied by a person under ORS 151.485 for the purpose of requesting ap-  
4       pointed counsel, and all information supplied to the court from whatever source for the purpose of  
5       verifying the financial eligibility of a person pursuant to ORS 151.485.

6       “(20) Workers’ compensation claim records of the Department of Consumer and Business Ser-  
7       vices, except in accordance with rules adopted by the Director of the Department of Consumer and  
8       Business Services, in any of the following circumstances:

9       “(a) When necessary for insurers, self-insured employers and third party claim administrators to  
10      process workers’ compensation claims.

11      “(b) When necessary for the director, other governmental agencies of this state or the United  
12      States to carry out their duties, functions or powers.

13      “(c) When the disclosure is made in such a manner that the disclosed information cannot be used  
14      to identify any worker who is the subject of a claim.

15      “(d) When a worker or the worker’s representative requests review of the worker’s claim record.

16      “(21) Sensitive business records or financial or commercial information of the Oregon Health  
17      and Science University that is not customarily provided to business competitors.

18      “(22) Records of Oregon Health and Science University regarding candidates for the position of  
19      president of the university.

20      “(23) The records of a library, including:

21      “(a) Circulation records, showing use of specific library material by a named person;

22      “(b) The name of a library patron together with the address or telephone number of the patron;

23      and

24      “(c) The electronic mail address of a patron.

25      “(24) The following records, communications and information obtained by the Housing and  
26      Community Services Department in connection with the department’s monitoring or administration  
27      of financial assistance or of housing or other developments:

28      “(a) Personal and corporate financial statements and information, including tax returns.

29      “(b) Credit reports.

30      “(c) Project appraisals, excluding appraisals obtained in the course of transactions involving an  
31      interest in real estate that is acquired, leased, rented, exchanged, transferred or otherwise disposed  
32      of as part of the project, but only after the transactions have closed and are concluded.

33      “(d) Market studies and analyses.

34      “(e) Articles of incorporation, partnership agreements and operating agreements.

35      “(f) Commitment letters.

36      “(g) Project pro forma statements.

37      “(h) Project cost certifications and cost data.

38      “(i) Audits.

39      “(j) Project tenant correspondence.

40      “(k) Personal information about a tenant.

41      “(L) Housing assistance payments.

42      “(25) Raster geographic information system (GIS) digital databases, provided by private  
43      forestland owners or their representatives, voluntarily and in confidence to the State Forestry De-  
44      partment, that is not otherwise required by law to be submitted.

45      “(26) Sensitive business, commercial or financial information furnished to or developed by a

1 public body engaged in the business of providing electricity or electricity services, if the information  
2 is directly related to a transaction described in ORS 261.348, or if the information is directly related  
3 to a bid, proposal or negotiations for the sale or purchase of electricity or electricity services, and  
4 disclosure of the information would cause a competitive disadvantage for the public body or its re-  
5 tail electricity customers. This subsection does not apply to cost-of-service studies used in the de-  
6 velopment or review of generally applicable rate schedules.

7 “(27) Sensitive business, commercial or financial information furnished to or developed by the  
8 City of Klamath Falls, acting solely in connection with the ownership and operation of the Klamath  
9 Cogeneration Project, if the information is directly related to a transaction described in ORS 225.085  
10 and disclosure of the information would cause a competitive disadvantage for the Klamath  
11 Cogeneration Project. This subsection does not apply to cost-of-service studies used in the develop-  
12 ment or review of generally applicable rate schedules.

13 “(28) Personally identifiable information about customers of a municipal electric utility or a  
14 people’s utility district or the names, dates of birth, driver license numbers, telephone numbers,  
15 electronic mail addresses or Social Security numbers of customers who receive water, sewer or  
16 storm drain services from a public body as defined in ORS 174.109. The utility or district may re-  
17 lease personally identifiable information about a customer, and a public body providing water, sewer  
18 or storm drain services may release the name, date of birth, driver license number, telephone num-  
19 ber, electronic mail address or Social Security number of a customer, if the customer consents in  
20 writing or electronically, if the disclosure is necessary for the utility, district or other public body  
21 to render services to the customer, if the disclosure is required pursuant to a court order or if the  
22 disclosure is otherwise required by federal or state law. The utility, district or other public body  
23 may charge as appropriate for the costs of providing such information. The utility, district or other  
24 public body may make customer records available to third party credit agencies on a regular basis  
25 in connection with the establishment and management of customer accounts or in the event such  
26 accounts are delinquent.

27 “(29) A record of the street and number of an employee’s address submitted to a special district  
28 to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

29 “(30) Sensitive business records, capital development plans or financial or commercial informa-  
30 tion of Oregon Corrections Enterprises that is not customarily provided to business competitors.

31 “(31) Documents, materials or other information submitted to the Director of the Department  
32 of Consumer and Business Services in confidence by a state, federal, foreign or international regu-  
33 latory or law enforcement agency or by the National Association of Insurance Commissioners, its  
34 affiliates or subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to 697.842,  
35 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723, 725 or 726, the Bank Act or the  
36 Insurance Code when:

37 “(a) The document, material or other information is received upon notice or with an under-  
38 standing that it is confidential or privileged under the laws of the jurisdiction that is the source of  
39 the document, material or other information; and

40 “(b) The director has obligated the Department of Consumer and Business Services not to dis-  
41 close the document, material or other information.

42 “(32) A county elections security plan developed and filed under ORS 254.074.

43 “(33) Information about review or approval of programs relating to the security of:

44 “(a) Generation, storage or conveyance of:

45 “(A) Electricity;

1 “(B) Gas in liquefied or gaseous form;  
2 “(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);  
3 “(D) Petroleum products;  
4 “(E) Sewage; or  
5 “(F) Water.  
6 “(b) Telecommunication systems, including cellular, wireless or radio systems.  
7 “(c) Data transmissions by whatever means provided.  
8 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of the Supreme Court  
9 designates the information as confidential by rule under ORS 1.002.  
10 “(35)(a) Employer account records of the State Accident Insurance Fund Corporation.  
11 “(b) As used in this subsection, ‘employer account records’ means all records maintained in any  
12 form that are specifically related to the account of any employer insured, previously insured or un-  
13 der consideration to be insured by the State Accident Insurance Fund Corporation and any infor-  
14 mation obtained or developed by the corporation in connection with providing, offering to provide  
15 or declining to provide insurance to a specific employer. ‘Employer account records’ includes, but  
16 is not limited to, an employer’s payroll records, premium payment history, payroll classifications,  
17 employee names and identification information, experience modification factors, loss experience and  
18 dividend payment history.  
19 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the  
20 discovery documents in litigation pursuant to applicable rules of civil procedure.  
21 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.  
22 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited to, all records held  
23 by the corporation pertaining to a person who has made a claim, as defined in ORS 656.005, and all  
24 records pertaining to such a claim.  
25 “(c) The exemption provided by this subsection may not serve as the basis for opposition to the  
26 discovery documents in litigation pursuant to applicable rules of civil procedure.  
27 “(37) Except as authorized by ORS 408.425, records that certify or verify an individual’s dis-  
28 charge or other separation from military service.  
29 “(38) Records of or submitted to a domestic violence service or resource center that relate to  
30 the name or personal information of an individual who visits a center for service, including the date  
31 of service, the type of service received, referrals or contact information or personal information of  
32 a family member of the individual. As used in this subsection, ‘domestic violence service or resource  
33 center’ means an entity, the primary purpose of which is to assist persons affected by domestic or  
34 sexual violence by providing referrals, resource information or other assistance specifically of ben-  
35 efit to domestic or sexual violence victims.  
36 “(39) Information reported to the Oregon Health Authority under ORS 431.964, except as pro-  
37 vided in ORS 431.964 (2)(c) information disclosed by the authority under ORS 431.966 and any in-  
38 formation related to disclosures made by the authority under ORS 431.966, including information  
39 identifying the recipient of the information.  
40 “(40)(a) Electronic mail addresses in the possession or custody of an agency or subdivision of  
41 the executive department, as defined in ORS 174.112, a local government or local service district,  
42 as defined in ORS 174.116, or a special government body, as defined in ORS 174.117.  
43 “(b) This subsection does not apply to electronic mail addresses assigned by a public body to  
44 public employees for use by the employees in the ordinary course of their employment.  
45 “(41) **Polygraph tests administered to applicants for positions in law enforcement under**



1 **ORS 659.840. Documents, materials and other information relating to polygraph tests ad-**  
2 **ministered under ORS 659.840 shall be treated as exempt from disclosure under ORS**  
3 **192.505.”.**

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