

**PROPOSED AMENDMENTS TO  
SENATE BILL 316**

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

3 Delete lines 4 through line 22 and 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**  
6 **subsection,** no person, or agent or representative of such person, shall re-  
7 quire, as a condition for employment or continuation of employment, any  
8 person or employee to take a breathalyzer test, polygraph test or any other  
9 form of a so-called lie detector test. [*However,*]

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

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

1 “(2) For the purposes of this section, an individual is ‘under the influence  
2 of intoxicating liquor’ when the individual’s blood alcohol content exceeds  
3 the amount prescribed in a collective bargaining agreement or the amount  
4 prescribed in the employer’s work rules if there is no applicable collective  
5 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 em-  
8 ployment practice for any employer to subject, directly or indirectly, any  
9 employee or prospective employee to any breathalyzer test, polygraph exam-  
10 ination, psychological stress 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  
13 the body through the use of instrumentation or mechanical devices.

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

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

18 “(d) An individual is ‘under the influence of intoxicating liquor’ when the  
19 individual’s blood alcohol content exceeds the amount prescribed in a col-  
20 lective bargaining agreement or the amount prescribed in the employer’s  
21 work rules if there is no applicable collective bargaining provision.

22 “(3) Nothing in subsection (1) of this section shall be construed to pro-  
23 hibit the administration of a polygraph examination to:

24 **“(a)** An individual, if the individual consents to the examination, during  
25 the course of criminal or civil judicial proceedings in which the individual  
26 is a party or witness or during the course of a criminal investigation con-  
27 ducted by a law enforcement agency, as defined in ORS 181.010, a district  
28 attorney or the Attorney General[.]; **or**

29 **“(b) An applicant for a position as a law enforcement officer in this**  
30 **state as a pre-employment screening measure before the applicant’s**

1 **initial date of hire as a law enforcement officer.**

2 “(4) Nothing in subsection (1) of this section shall be construed to pro-  
3 hibit the administration of a breathalyzer test to an individual if the indi-  
4 vidual consents to the test. If the employer has reasonable grounds to believe  
5 that the individual is under the influence of intoxicating liquor, the employer  
6 may require, as a condition for employment or continuation of employment,  
7 the administration of a blood alcohol content test by a third party or a  
8 breathalyzer test. The employer shall not require the employee to pay the  
9 cost of administering any such test.

10 “(5) Subsection (1) of this section does not prohibit the administration of  
11 a genetic test to an individual if the individual or the individual’s represen-  
12 tative grants informed consent in the manner provided by ORS 192.535, and  
13 the genetic test is administered solely to determine a bona fide occupational  
14 qualification.

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

16 “192.502. The following public records are exempt from disclosure under  
17 ORS 192.410 to 192.505:

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

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

1 “(3) Public body employee or volunteer addresses, Social Security num-  
2 bers, dates of birth and telephone numbers contained in personnel records  
3 maintained by the public body that is the employer or the recipient of vol-  
4 unteer services. This exemption:

5 “(a) Does not apply to the addresses, dates of birth and telephone numbers  
6 of employees or volunteers who are elected officials, except that a judge or  
7 district attorney subject to election may seek to exempt the judge’s or dis-  
8 trict attorney’s address or telephone number, or both, under the terms of  
9 ORS 192.445;

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

13 “(c) Does not apply to a substitute teacher as defined in ORS 342.815  
14 when requested by a professional education association of which the substi-  
15 tute teacher may be a member; and

16 “(d) Does not relieve a public employer of any duty under ORS 243.650 to  
17 243.782.

18 “(4) Information submitted to a public body in confidence and not other-  
19 wise required by law to be submitted, where such information should rea-  
20 sonably be considered confidential, the public body has obliged itself in good  
21 faith not to disclose the information, and when the public interest would  
22 suffer by the disclosure.

23 “(5) Information or records of the Department of Corrections, including  
24 the State Board of Parole and Post-Prison Supervision, to the extent that  
25 disclosure would interfere with the rehabilitation of a person in custody of  
26 the department or substantially prejudice or prevent the carrying out of the  
27 functions of the department, if the public interest in confidentiality clearly  
28 outweighs the public interest in disclosure.

29 “(6) Records, reports and other information received or compiled by the  
30 Director of the Department of Consumer and Business Services in the ad-

1 ministration of ORS chapters 723 and 725 not otherwise required by law to  
2 be made public, to the extent that the interests of lending institutions, their  
3 officers, employees and customers in preserving the confidentiality of such  
4 information outweighs the public interest in disclosure.

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

6 “(8) Any public records or information the disclosure of which is prohib-  
7 ited by federal law or regulations.

8 “(9)(a) Public records or information the disclosure of which is prohibited  
9 or restricted or otherwise made confidential or privileged under Oregon law.

10 “(b) Subject to ORS 192.423, paragraph (a) of this subsection does not  
11 apply to factual information compiled in a public record when:

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

13 “(B) The factual information is not prohibited from disclosure under any  
14 applicable state or federal law, regulation or court order and is not other-  
15 wise exempt from disclosure under ORS 192.410 to 192.505;

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

19 “(D) The factual information was not compiled in preparation for liti-  
20 gation, arbitration or an administrative proceeding that was reasonably  
21 likely to be initiated or that has been initiated by or against the public body;  
22 and

23 “(E) The holder of the privilege under ORS 40.225 has made or authorized  
24 a public statement characterizing or partially disclosing the factual infor-  
25 mation compiled by or at the attorney’s direction.

26 “(10) Public records or information described in this section, furnished  
27 by the public body originally compiling, preparing or receiving them to any  
28 other public officer or public body in connection with performance of the  
29 duties of the recipient, if the considerations originally giving rise to the  
30 confidential or exempt nature of the public records or information remain

1 applicable.

2 “(11) Records of the Energy Facility Siting Council concerning the review  
3 or approval of security programs pursuant to ORS 469.530.

4 “(12) Employee and retiree address, telephone number and other nonfi-  
5 nancial membership records and employee financial records maintained by  
6 the Public Employees Retirement System pursuant to ORS chapters 238 and  
7 238A.

8 “(13) Records of or submitted to the State Treasurer, the Oregon Invest-  
9 ment Council or the agents of the treasurer or the council relating to active  
10 or proposed publicly traded investments under ORS chapter 293, including  
11 but not limited to records regarding the acquisition, exchange or liquidation  
12 of the investments. For the purposes of this subsection:

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

14 “(A) Information in investment records solely related to the amount paid  
15 directly into an investment by, or returned from the investment directly to,  
16 the treasurer or council; or

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

19 “(b) An investment in a publicly traded investment is no longer active  
20 when acquisition, exchange or liquidation of the investment has been con-  
21 cluded.

22 “(14)(a) Records of or submitted to the State Treasurer, the Oregon In-  
23 vestment Council, the Oregon Growth Board or the agents of the treasurer,  
24 council or board relating to actual or proposed investments under ORS  
25 chapter 293 or 348 in a privately placed investment fund or a private asset  
26 including but not limited to records regarding the solicitation, acquisition,  
27 deployment, exchange or liquidation of the investments including but not  
28 limited to:

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

1       “(B) Financial statements of an investment fund, an asset ownership or  
2 their respective investment vehicles.

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

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

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

10       “(F) Investment agreements and related documents.

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

12       “(A) The name, address and vintage year of each privately placed invest-  
13 ment fund.

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

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

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

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

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

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

30       “(H) The dollar amount of the total management fees and costs paid on

1 an annual fiscal year-end basis to each privately placed investment fund.

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

4 “(15) The monthly reports prepared and submitted under ORS 293.761 and  
5 293.766 concerning the Public Employees Retirement Fund and the Industrial  
6 Accident Fund may be uniformly treated as exempt from disclosure for a  
7 period of up to 90 days after the end of the calendar quarter.

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

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

18 “(A) Personal financial statements.

19 “(B) Financial statements of applicants.

20 “(C) Customer lists.

21 “(D) Information of an applicant pertaining to litigation to which the  
22 applicant is a party if the complaint has been filed, or if the complaint has  
23 not been filed, if the applicant shows that such litigation is reasonably likely  
24 to occur; this exemption does not apply to litigation which has been con-  
25 cluded, and nothing in this subparagraph shall limit any right or opportunity  
26 granted by discovery or deposition statutes to a party to litigation or po-  
27 tential litigation.

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

29 “(F) Marketing strategy information that relates to applicant’s plan to  
30 address specific markets and applicant’s strategy regarding specific compet-



1 itors.

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

5 “(A) Personal financial statements.

6 “(B) Financial statements of applicants.

7 “(C) Customer lists.

8 “(D) Information of an applicant pertaining to litigation to which the  
9 applicant is a party if the complaint has been filed, or if the complaint has  
10 not been filed, if the applicant shows that such litigation is reasonably likely  
11 to occur; this exemption does not apply to litigation which has been con-  
12 cluded, and nothing in this subparagraph shall limit any right or opportunity  
13 granted by discovery or deposition statutes to a party to litigation or po-  
14 tential litigation.

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

16 “(F) Marketing strategy information that relates to applicant’s plan to  
17 address specific markets and applicant’s strategy regarding specific compet-  
18 itors.

19 “(18) Records, reports or returns submitted by private concerns or enter-  
20 prises required by law to be submitted to or inspected by a governmental  
21 body to allow it to determine the amount of any transient lodging tax pay-  
22 able and the amounts of such tax payable or paid, to the extent that such  
23 information is in a form which would permit identification of the individual  
24 concern or enterprise. Nothing in this subsection shall limit the use which  
25 can be made of such information for regulatory purposes or its admissibility  
26 in any enforcement proceedings. The public body shall notify the taxpayer  
27 of the delinquency immediately by certified mail. However, in the event that  
28 the payment or delivery of transient lodging taxes otherwise due to a public  
29 body is delinquent by over 60 days, the public body shall disclose, upon the  
30 request of any person, the following information:

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

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

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

5       “(19) All information supplied by a person under ORS 151.485 for the  
6 purpose of requesting appointed counsel, and all information supplied to the  
7 court from whatever source for the purpose of verifying the financial eligi-  
8 bility of a person pursuant to ORS 151.485.

9       “(20) Workers’ compensation claim records of the Department of Con-  
10 sumer and Business Services, except in accordance with rules adopted by the  
11 Director of the Department of Consumer and Business Services, in any of the  
12 following circumstances:

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

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

17       “(c) When the disclosure is made in such a manner that the disclosed in-  
18 formation cannot be used to identify any worker who is the subject of a  
19 claim.

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

22       “(21) Sensitive business records or financial or commercial information  
23 of the Oregon Health and Science University that is not customarily pro-  
24 vided to business competitors.

25       “(22) Records of Oregon Health and Science University regarding candi-  
26 dates for the position of president of the university.

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

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

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

1 number of the patron; and

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

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

7 “(a) Personal and corporate financial statements and information, in-  
8 cluding tax returns.

9 “(b) Credit reports.

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

14 “(d) Market studies and analyses.

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

17 “(f) Commitment letters.

18 “(g) Project pro forma statements.

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

20 “(i) Audits.

21 “(j) Project tenant correspondence.

22 “(k) Personal information about a tenant.

23 “(L) Housing assistance payments.

24 “(25) Raster geographic information system (GIS) digital databases, pro-  
25 vided by private forestland owners or their representatives, voluntarily and  
26 in confidence to the State Forestry Department, that is not otherwise re-  
27 quired by law to be submitted.

28 “(26) Sensitive business, commercial or financial information furnished to  
29 or developed by a public body engaged in the business of providing electricity  
30 or electricity services, if the information is directly related to a transaction

1 described in ORS 261.348, or if the information is directly related to a bid,  
2 proposal or negotiations for the sale or purchase of electricity or electricity  
3 services, and disclosure of the information would cause a competitive disad-  
4 vantage for the public body or its retail electricity customers. This sub-  
5 section does not apply to cost-of-service studies used in the development or  
6 review of generally applicable rate schedules.

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

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

1    establishment and management of customer accounts or in the event such ac-  
2    counts are delinquent.

3       “(29) A record of the street and number of an employee’s address submit-  
4    ted to a special district to obtain assistance in promoting an alternative to  
5    single occupant motor vehicle transportation.

6       “(30) Sensitive business records, capital development plans or financial  
7    or commercial information of Oregon Corrections Enterprises that is not  
8    customarily provided to business competitors.

9       “(31) Documents, materials or other information submitted to the Director  
10   of the Department of Consumer and Business Services in confidence by a  
11   state, federal, foreign or international regulatory or law enforcement agency  
12   or by the National Association of Insurance Commissioners, its affiliates or  
13   subsidiaries under ORS 86A.095 to 86A.198, 697.005 to 697.095, 697.602 to  
14   697.842, 705.137, 717.200 to 717.320, 717.900 or 717.905, ORS chapter 59, 723,  
15   725 or 726, the Bank Act or the Insurance Code when:

16       “(a) The document, material or other information is received upon notice  
17   or with an understanding that it is confidential or privileged under the laws  
18   of the jurisdiction that is the source of the document, material or other in-  
19   formation; and

20       “(b) The director has obligated the Department of Consumer and Business  
21   Services not to disclose the document, material or other information.

22       “(32) A county elections security plan developed and filed under ORS  
23   254.074.

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

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

27       “(A) Electricity;

28       “(B) Gas in liquefied or gaseous form;

29       “(C) Hazardous substances as defined in ORS 453.005 (7)(a), (b) and (d);

30       “(D) Petroleum products;

1 “(E) Sewage; or

2 “(F) Water.

3 “(b) Telecommunication systems, including cellular, wireless or radio  
4 systems.

5 “(c) Data transmissions by whatever means provided.

6 “(34) The information specified in ORS 25.020 (8) if the Chief Justice of  
7 the Supreme Court designates the information as confidential by rule under  
8 ORS 1.002.

9 “(35)(a) Employer account records of the State Accident Insurance Fund  
10 Corporation.

11 “(b) As used in this subsection, ‘employer account records’ means all re-  
12 cords maintained in any form that are specifically related to the account of  
13 any employer insured, previously insured or under consideration to be in-  
14 sured by the State Accident Insurance Fund Corporation and any informa-  
15 tion obtained or developed by the corporation in connection with providing,  
16 offering to provide or declining to provide insurance to a specific employer.  
17 ‘Employer account records’ includes, but is not limited to, an employer’s  
18 payroll records, premium payment history, payroll classifications, employee  
19 names and identification information, experience modification factors, loss  
20 experience and dividend payment history.

21 “(c) The exemption provided by this subsection may not serve as the basis  
22 for opposition to the discovery documents in litigation pursuant to applicable  
23 rules of civil procedure.

24 “(36)(a) Claimant files of the State Accident Insurance Fund Corporation.

25 “(b) As used in this subsection, ‘claimant files’ includes, but is not limited  
26 to, all records held by the corporation pertaining to a person who has made  
27 a claim, as defined in ORS 656.005, and all records pertaining to such a  
28 claim.

29 “(c) The exemption provided by this subsection may not serve as the basis  
30 for opposition to the discovery documents in litigation pursuant to applicable

1 rules of civil procedure.

2 “(37) Except as authorized by ORS 408.425, records that certify or verify  
3 an individual’s discharge or other separation from military service.

4 “(38) Records of or submitted to a domestic violence service or resource  
5 center that relate to the name or personal information of an individual who  
6 visits a center for service, including the date of service, the type of service  
7 received, referrals or contact information or personal information of a family  
8 member of the individual. As used in this subsection, ‘domestic violence  
9 service or resource center’ means an entity, the primary purpose of which is  
10 to assist persons affected by domestic or sexual violence by providing refer-  
11 rals, resource information or other assistance specifically of benefit to do-  
12 mestic or sexual violence victims.

13 “(39) Information reported to the Oregon Health Authority under ORS  
14 431.964, except as provided in ORS 431.964 (2)(c) information disclosed by the  
15 authority under ORS 431.966 and any information related to disclosures made  
16 by the authority under ORS 431.966, including information identifying the  
17 recipient of the information.

18 “(40)(a) Electronic mail addresses in the possession or custody of an  
19 agency or subdivision of the executive department, as defined in ORS 174.112,  
20 a local government or local service district, as defined in ORS 174.116, or a  
21 special government body, as defined in ORS 174.117.

22 “(b) This subsection does not apply to electronic mail addresses assigned  
23 by a public body to public employees for use by the employees in the ordi-  
24 nary course of their employment.

25 “(41) **Polygraph tests administered to applicants for positions in law**  
26 **enforcement under ORS 659.840. Documents, materials and other in-**  
27 **formation relating to polygraph tests administered under ORS 659.840**  
28 **shall be treated as exempt from disclosure under ORS 192.505.” .**

29