

A-Engrossed
House Bill 2545

Ordered by the House April 27
Including House Amendments dated April 27

Sponsored by Representatives HACK, BARKER; Representative WHISNANT (Presession filed.)

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.

[Allows deception detection examination administrator to proctor deception detection examination. Clarifies that deception detection examination and deception detection examination administrator are exempt from provisions related to polygraph examiners.]

Allows Department of Public Safety Standards and Training to issue deception detection examination administrator license to qualified applicant. Prohibits unlicensed administration of deception detection examination or use of "deception detection examination administrator" title. Provides that person who falsifies materials in application for licensure commits crime. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both. Provides that person who practices as deception detection examination administrator without license commits crime. Punishes by maximum of six months' imprisonment, \$2,500 fine, or both. Prohibits employer from requiring as condition of hiring or continued employment that person take deception detection examination.

Takes effect on 91st day following adjournment sine die.

A BILL FOR AN ACT

1
2 Relating to deception detection; creating new provisions; amending ORS 659.840, 659A.300 and
3 703.310; and prescribing an effective date.

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

5 **SECTION 1. As used in sections 1 to 12 of this 2017 Act:**

6 (1)(a) **"Deception detection examination" means an instrument or mechanical device used**
7 **to question or test an individual for the purpose of detecting deception or verifying the truth**
8 **of statements made by the individual.**

9 (b) **"Deception detection examination" includes an ocular motor deception detection ex-**
10 **amination.**

11 (c) **"Deception detection examination" does not include a polygraph examination.**

12 (2) **"Deception detection examination administrator" means a person licensed under sec-**
13 **tion 2 or 3 of this 2017 Act.**

14 (3) **"Ocular motor deception detection examination" means a test, conducted using a**
15 **software application, that records the cognitive responses, eye behavior, memory recall and**
16 **other physiological characteristics of the person to whom the examination is given to de-**
17 **termine whether the person is truthful or engaged in deception.**

18 **SECTION 2. (1) The Department of Public Safety Standards and Training may issue a**
19 **deception detection examination administrator license to an applicant who:**

20 (a) **Is at least 18 years of age;**

21 (b) **Is a citizen of the United States;**

22 (c) **Has not demonstrated, in the preceding 10 years, a course of behavior that indicates**

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 high degree of probability that the applicant will be unlikely to perform the duties of a
2 deception detection examination administrator in a manner that would serve the interests
3 of the public;

4 (d) If previously convicted of a criminal offense, provides information, as required by the
5 department, regarding the circumstances of the conviction;

6 (e)(A) Holds a bachelor's degree; or

7 (B) Holds a high school diploma or General Educational Development (GED) certificate
8 and has at least five years of active investigative experience;

9 (f) Has satisfactorily completed at least 200 deception detection examinations and has:

10 (A) Graduated from a deception detection examination course that is approved by the
11 department and that conforms to any minimum training standards approved by the Board
12 on Public Safety Standards and Training; or

13 (B) At least five years of relevant work experience, as determined by the department,
14 with a governmental agency of this state;

15 (g) Has passed an examination conducted by the department to determine, consistent
16 with any standards adopted by the board, competency to practice as a deception detection
17 examination administrator; and

18 (h) Pays a fee established by the board by rule.

19 (2) An applicant meets the requirements of subsection (1) of this section if the applicant
20 provides to the department documentation of military experience or training that the de-
21 partment determines is substantially equivalent to the education and experience required by
22 subsection (1) of this section.

23 (3)(a) For the purpose of requesting a state or nationwide criminal records check under
24 ORS 181A.195, the department shall require an applicant to be fingerprinted as part of the
25 licensing procedure.

26 (b) Notwithstanding ORS 181A.195 (5) and (6), the Department of State Police shall
27 maintain in the department's files fingerprint cards submitted to the department for the
28 purposes of conducting a state or nationwide criminal background check under ORS 181A.195
29 on an applicant for a license under this section.

30 (4) If the Department of Public Safety Standards and Training refuses to issue a license
31 based on an applicant's failure to meet the requirements of subsection (1)(c) of this section,
32 the department shall prepare a concise, specific written statement of the facts supporting
33 the department's decision and shall provide a copy of the statement to the applicant.

34 **SECTION 3.** The Department of Public Safety Standards and Training may issue a de-
35 ception detection examination administrator license by reciprocity to a person who:

36 (1) Is at least 18 years of age;

37 (2) Is a citizen of the United States;

38 (3) Is authorized to administer a deception detection examination in another state or
39 territory;

40 (4) Is in good standing in the other state or territory from which the person holds au-
41 thorization; and

42 (5) Pays a fee established by the Board on Public Safety Standards and Training by rule.

43 **SECTION 4.** (1) A license issued under section 2 or 3 of this 2017 Act is valid for one year.

44 (2) The Department of Public Safety Standards and Training may renew a license issued
45 under section 2 or 3 of this 2017 Act, unless the department has previously suspended or

1 revoked the license, if the deception detection examination administrator:

2 (a) Pays a fee established by the Board on Public Safety Standards and Training by rule;
3 and

4 (b) Complies with the requirements in section 2 (1)(a) to (f) of this 2017 Act for issuance
5 of initial licensure.

6 (3) If a license is expired for more than two years, the applicant for renewal shall retake
7 and pass the examination required under section 2 (1)(g) of this 2017 Act before the depart-
8 ment may renew the license. This subsection does not apply to a person whose license ex-
9 pired while the person was employed by a federal agency or while the person was on active
10 duty as a member of the Armed Forces of the United States or as a member of the National
11 Guard of this state.

12 **SECTION 5.** A person may not administer a deception detection examination, or assume
13 any titles, words or abbreviations, including the title or designation “deception detection
14 examination administrator,” that indicate the person is authorized to administer a deception
15 detection examination unless the person holds a license issued under section 2 or 3 of this
16 2017 Act.

17 **SECTION 6.** (1) A deception detection examination administrator shall display promi-
18 nently the license issued under section 2 or 3 of this 2017 Act in the place of business or
19 employment of the deception detection examination administrator.

20 (2) A deception detection examination administrator shall notify the Department of
21 Public Safety Standards and Training in writing of any change in the principal place of
22 business of the deception detection examination administrator not later than 30 days after
23 the date of the change.

24 (3) The department shall suspend a deception detection examination administrator’s li-
25 cense for failure to comply with this section.

26 **SECTION 7.** In accordance with ORS chapter 183, the Department of Public Safety
27 Standards and Training may deny, suspend or revoke a deception detection examination ad-
28 ministrator license if the licensee:

29 (1) Failed to inform a person to whom a deception detection examination is administered
30 as to the nature of the deception detection examination or failed to advise the person, or
31 representative of the person, of the results of the deception detection examination;

32 (2) Failed to inform the person to whom the deception detection examination is admin-
33 istered that the deception detection examination is voluntary;

34 (3) Made a material misstatement in application for a license or renewal of a license
35 under section 2 or 3 of this 2017 Act;

36 (4) Willfully disregarded or violated a provision of sections 1 to 12 of this 2017 Act or a
37 rule adopted under sections 1 to 12 of this 2017 Act;

38 (5) Made a willful misrepresentation or used false or misleading advertising in the course
39 of business under sections 1 to 12 of this 2017 Act;

40 (6) Demonstrates inability or incompetency to carry out the duties of a deception de-
41 tection examination administrator;

42 (7) Allows a license granted to the person under section 2 or 3 of this 2017 Act to be used
43 by another person;

44 (8) Wilfully aids or abets a violation of sections 1 to 12 of this 2017 Act or of a rule
45 adopted under sections 1 to 12 of this 2017 Act; or

1 (9) Fails, within a reasonable time, to provide information requested by the department
2 after the department receives a complaint alleging that the person has violated a provision
3 of sections 1 to 12 of this 2017 Act or a rule adopted under sections 1 to 12 of this 2017 Act.

4 **SECTION 8.** (1) Upon written notification of the suspension or revocation of a license
5 issued under section 2 or 3 of this 2017 Act, a deception detection examination administrator
6 shall immediately surrender the license to the Department of Public Safety Standards and
7 Training.

8 (2) The department may restore a license surrendered under this section as the depart-
9 ment determines appropriate.

10 **SECTION 9.** All moneys collected by the Department of Public Safety Standards and
11 Training under sections 1 to 12 of this 2017 Act shall be deposited into the Police Standards
12 and Training Account.

13 **SECTION 10.** The Board on Public Safety Standards and Training may adopt rules nec-
14 essary to carry out the provisions of sections 1 to 12 of this 2017 Act.

15 **SECTION 11.** A violation of a provision of sections 1 to 12 of this 2017 Act, or a rule
16 adopted under sections 1 to 12 of this 2017 Act, is a Class A misdemeanor.

17 **SECTION 12.** (1) A person commits a Class A misdemeanor if the person knowingly fal-
18 sifies the fingerprints, photographs or other data pertinent to an application for a deception
19 detection examination administrator license.

20 (2) A person commits a Class B misdemeanor if the person knowingly practices as a de-
21 ception detection examination administrator without a license.

22 **SECTION 13.** ORS 659.840 is amended to read:

23 659.840. (1) [No] A person, or agent or representative of [such] the person, [shall] **may not** re-
24 quire, as a condition for employment or continuation of employment, any person or employee to take
25 a breathalyzer test, **deception detection examination, as defined in section 1 of this 2017 Act,**
26 polygraph test or any other form of a so-called lie detector test.

27 (2) However, nothing in this section shall be construed to prohibit the administration of a
28 breathalyzer test to an individual if the individual consents to the test. If the employer has reason-
29 able grounds to believe that the individual is under the influence of intoxicating liquor, the employer
30 may require, as a condition for employment or continuation of employment, the administration of a
31 blood alcohol content test by a third party or a breathalyzer test. The employer [shall] **may not**
32 require the employee to pay the cost of administering [any such] **a blood alcohol content test or**
33 **breathalyzer** test.

34 [(2)] (3) For the purposes of this section, an individual is “under the influence of intoxicating
35 liquor” when the individual’s blood alcohol content exceeds the amount prescribed in a collective
36 bargaining agreement or the amount prescribed in the employer’s work rules if there is no applica-
37 ble collective bargaining provision.

38 **SECTION 14.** ORS 659A.300 is amended to read:

39 659A.300. (1) Except as provided in this section, it is an unlawful employment practice for any
40 employer to subject, directly or indirectly, any employee or prospective employee to any
41 breathalyzer test, **deception detection examination,** polygraph examination, psychological stress
42 test, genetic test or brain-wave test.

43 (2) As used in this section:

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

1 **(b) “Deception detection examination” has the meaning given that term in section 1 of**
 2 **this 2017 Act.**

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

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

6 [(d)] (e) An individual is “under the influence of intoxicating liquor” when the individual’s blood
 7 alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount
 8 prescribed 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 prohibit the administration of
 10 a polygraph examination to an individual, if the individual consents to the examination, during the
 11 course of criminal or civil judicial proceedings in which the individual is a party or witness or
 12 during the course of a criminal investigation conducted by a law enforcement agency, as defined in
 13 ORS 181A.010, a district attorney or the Attorney General.

14 (4) Nothing in subsection (1) of this section shall be construed to prohibit the administration of
 15 a breathalyzer test to an individual if the individual consents to the test. If the employer has rea-
 16 sonable grounds to believe that the individual is under the influence of intoxicating liquor, the em-
 17 ployer may require, as a condition for employment or continuation of employment, the
 18 administration of a blood alcohol content test by a third party or a breathalyzer test. The employer
 19 [shall] **may** not require the employee to pay the cost of administering [any such] **a blood alcohol**
 20 **content test or breathalyzer** test.

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

25 **SECTION 15.** ORS 703.310 is amended to read:

26 703.310. (1) All instruments or mechanical devices that are used by polygraph examiners to test
 27 or question an individual for the purpose of detecting deception or of verifying the truth of state-
 28 ments made by the individual shall record visually, permanently and simultaneously the
 29 cardiovascular pattern, the respiratory pattern and the galvanic skin response of the individual. The
 30 patterns of other physiological changes of the individual also may be recorded.

31 (2) Except as otherwise provided in ORS 703.335 **and sections 1 to 12 of this 2017 Act**, a per-
 32 son may not use any instrument or mechanical device to test or question an individual for the pur-
 33 pose of detecting deception or verifying the truth of statements made by the individual that does
 34 not comply with the minimum requirements for the instrument or device under subsection (1) of this
 35 section. The Department of Public Safety Standards and Training, in consultation with the Board
 36 on Public Safety Standards and Training, may, in the name of the State of Oregon, initiate and
 37 maintain appropriate judicial proceedings, in the manner provided by law for such proceedings, to
 38 enjoin the use by a polygraph examiner of any instrumentation or mechanical device that does not
 39 comply with the minimum requirements specified in subsection (1) of this section.

40 **SECTION 16. (1) Sections 1 to 12 of this 2017 Act and the amendments to ORS 659.840,**
 41 **659A.300 and 703.310 by sections 13 to 15 of this 2017 Act become operative on January 1, 2018.**

42 **(2) The Board on Public Safety Standards and Training and the Department of Public**
 43 **Safety Standards and Training may take any action before the operative date specified in**
 44 **subsection (1) of this section that is necessary to enable the board and the department to**
 45 **exercise, on and after the operative date specified in subsection (1) of this section, all of the**

1 **duties, functions and powers conferred on the board and the department by sections 1 to 12**
2 **of this 2017 Act and the amendments to ORS 659.840, 659A.300 and 703.310 by sections 13 to**
3 **15 of this 2017 Act.**

4 **SECTION 17. This 2017 Act takes effect on the 91st day after the date on which the 2017**
5 **regular session of the Seventy-ninth Legislative Assembly adjourns sine die.**

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