

## HOUSE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2545

By COMMITTEE ON RULES

May 12

1 On page 1 of the printed A-engrossed bill, line 2, delete “creating new provisions;” and after  
2 “and” insert “703.335.”.

3 Delete line 3.

4 Delete lines 5 through 22 and delete pages 2 through 6 and insert:

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

6 “659.840. (1)(a) **As used in this section, ‘deception detection examination’ means use of an**  
7 **instrument or mechanical device to question or test an individual for the purpose of detect-**  
8 **ing deception or verifying the truth 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 test.**

12 “(2) [No] A person, or agent or representative of [such] the person, [shall] **may not** require, as  
13 a condition for employment or continuation of employment, any person or employee to take a  
14 breathalyzer test, **deception detection examination**, polygraph test or any other form of a so-called  
15 lie detector test.

16 “(3) However, nothing in this section shall be construed to prohibit the administration of a  
17 breathalyzer test to an individual if the individual consents to the test. If the employer has reason-  
18 able grounds to believe that the individual is under the influence of intoxicating liquor, the employer  
19 may require, as a condition for employment or continuation of employment, the administration of a  
20 blood alcohol content test by a third party or a breathalyzer test. The employer [shall] **may not**  
21 require the employee to pay the cost of administering [any such] **a blood alcohol content test or**  
22 **breathalyzer** test.

23 “[2] (4) For the purposes of this section, an individual is ‘under the influence of intoxicating  
24 liquor’ when the individual’s blood alcohol content exceeds the amount prescribed in a collective  
25 bargaining agreement or the amount prescribed in the employer’s work rules if there is no applica-  
26 ble collective bargaining provision.

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

28 “659A.300. (1) Except as provided in this section, it is an unlawful employment practice for any  
29 employer to subject, directly or indirectly, any employee or prospective employee to any  
30 breathalyzer test, **deception detection examination**, polygraph examination, psychological stress  
31 test, genetic test or brain-wave test.

32 “(2) As used in this section:

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

35 “(b)(A) **‘Deception detection examination’ means use of an instrument or mechanical**

1 device to question or test an individual for the purpose of detecting deception or verifying  
2 the truth of statements made by the individual.

3 “(B) ‘Deception detection examination’ includes an ocular motor deception detection ex-  
4 amination.

5 “(C) ‘Deception detection examination’ does not include a polygraph examination.

6 “[*(b)*] (c) ‘Genetic test’ has the meaning given in ORS 192.531.

7 “[*(c)*] (d) ‘Polygraph examination or psychological stress test’ means a test to detect deception  
8 or to verify the truth of statements through the use of instrumentation or mechanical devices.

9 “[*(d)*] (e) An individual is ‘under the influence of intoxicating liquor’ when the individual’s blood  
10 alcohol content exceeds the amount prescribed in a collective bargaining agreement or the amount  
11 prescribed in the employer’s work rules if there is no applicable collective bargaining provision.

12 “(3) Nothing in subsection (1) of this section shall be construed to prohibit the administration  
13 of a polygraph examination to an individual, if the individual consents to the examination, during  
14 the course of criminal or civil judicial proceedings in which the individual is a party or witness or  
15 during the course of a criminal investigation conducted by a law enforcement agency, as defined in  
16 ORS 181A.010, a district attorney or the Attorney General.

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

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

28 “**SECTION 3.** ORS 703.335 is amended to read:

29 “703.335. A **corrections officer, a parole and probation officer or a police officer**, as **those**  
30 **terms are** defined in ORS [243.005] **181A.355**, may use an instrument or mechanical device that does  
31 not comply with the minimum requirements under ORS 703.310 (1) to test or question an individual  
32 for the purpose of detecting deception or verifying the truth of statements made by the individual  
33 if the **corrections officer, parole and probation officer or police officer**:

34 “(1) Uses the instrument or mechanical device in the course of the officer’s official duties  
35 while:

36 “(a) Investigating a crime;

37 “(b) **Conducting an investigation into misconduct involving individuals arrested for or**  
38 **convicted of a crime and who are confined in a place of incarceration or detention other than**  
39 **a place of incarceration or detention of juveniles; or**

40 “(c) **Providing community protection by controlling, investigating, supervising or provid-**  
41 **ing or making referrals to reformative services for adult parolees or probationers or**  
42 **offenders on post-prison supervision; and**

43 “(2) Is [*certified*] **authorized** to use the instrument or mechanical device by the agency that  
44 employs the officer.”.