

Requested by HOUSE COMMITTEE ON JUDICIARY

**PROPOSED AMENDMENTS TO
HOUSE BILL 2545**

1 On page 1 of the printed bill, line 2, after “provisions;” delete the rest
2 of the line and insert “amending ORS 659.840, 659A.300 and 703.310; and
3 prescribing an effective date.”.

4 Delete lines 4 through 31 and delete page 2 and insert:

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

6 **“(1)(a) ‘Deception detection examination’ means an instrument or**
7 **mechanical device used to question or test an individual for the pur-**
8 **pose of detecting deception or verifying the truth of statements made**
9 **by the individual.**

10 **“(b) ‘Deception detection examination’ includes an ocular motor**
11 **deception detection examination.**

12 **“(c) ‘Deception detection examination’ does not include a polygraph**
13 **examination.**

14 **“(2) ‘Deception detection examination administrator’ means a per-**
15 **son licensed under section 2 or 3 of this 2017 Act.**

16 **“(3) ‘Ocular motor deception detection examination’ means a test,**
17 **conducted using a software application, that records the cognitive re-**
18 **sponses, eye behavior, memory recall and other physiological charac-**
19 **teristics of the person to whom the examination is given to determine**
20 **whether the person is truthful or engaged in deception.**

21 **“SECTION 2. (1) The Department of Public Safety Standards and**

1 **Training may issue a deception detection examination administrator**
2 **license to an applicant who:**

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

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

5 **“(c) Has not demonstrated, in the preceding 10 years, a course of**
6 **behavior that indicates a high degree of probability that the applicant**
7 **will be unlikely to perform the duties of a deception detection exam-**
8 **ination administrator in a manner that would serve the interests of**
9 **the public;**

10 **“(d) If previously convicted of a criminal offense, provides infor-**
11 **mation, as required by the department, regarding the circumstances**
12 **of the conviction;**

13 **“(e)(A) Holds a bachelor’s degree; or**

14 **“(B) Holds a high school diploma or General Educational Develop-**
15 **ment (GED) certificate and has at least five years of active investi-**
16 **gative experience;**

17 **“(f) Has satisfactorily completed at least 200 deception detection**
18 **examinations and has:**

19 **“(A) Graduated from a deception detection examination course that**
20 **is approved by the department and that conforms to any minimum**
21 **training standards approved by the Board on Public Safety Standards**
22 **and Training; or**

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

25 **“(g) Has passed an examination conducted by the department to**
26 **determine, consistent with any standards adopted by the board, com-**
27 **petency to practice as a deception detection examination administra-**
28 **tor; and**

29 **“(h) Pays a fee established by the board by rule.**

30 **“(2) An applicant meets the requirements of subsection (1) of this**

1 section if the applicant provides to the department documentation of
2 military experience or training that the department determines is
3 substantially equivalent to the education and experience required by
4 subsection (1) of this section.

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

8 “(b) Notwithstanding ORS 181A.195 (5) and (6), the Department of
9 State Police shall maintain in the department’s files fingerprint cards
10 submitted to the department for the purposes of conducting a state
11 or nationwide criminal background check under ORS 181A.195 on an
12 applicant for a license under this section.

13 “(4) If the Department of Public Safety Standards and Training re-
14 fuses to issue a license based on an applicant’s failure to meet the
15 requirements of subsection (1)(c) of this section, the department shall
16 prepare a concise, specific written statement of the facts supporting
17 the department’s decision and shall provide a copy of the statement
18 to the applicant.

19 **“SECTION 3.** The Department of Public Safety Standards and
20 Training may issue a deception detection examination administrator
21 license by reciprocity to a person who:

22 “(1) Is at least 18 years of age;

23 “(2) Is a citizen of the United States;

24 “(3) Is authorized to administer a deception detection examination
25 in another state or territory;

26 “(4) Is in good standing in the other state or territory from which
27 the person holds authorization; and

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

30 **“SECTION 4.** (1) A license issued under section 2 or 3 of this 2017

1 Act is valid for one year.

2 “(2) The Department of Public Safety Standards and Training may
3 renew a license issued under section 2 or 3 of this 2017 Act, unless the
4 department has previously suspended or revoked the license, if the
5 deception detection examination administrator:

6 “(a) Pays a fee established by the Board on Public Safety Standards
7 and Training by rule; and

8 “(b) Complies with the requirements in section 2 (1)(a) to (f) of this
9 2017 Act for issuance of initial licensure.

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

17 “SECTION 5. A person may not administer a deception detection
18 examination, or assume any titles, words or abbreviations, including
19 the title or designation ‘deception detection examination administra-
20 tor,’ that indicate the person is authorized to administer a deception
21 detection examination unless the person holds a license issued under
22 section 2 or 3 of this 2017 Act.

23 “SECTION 6. (1) A deception detection examination administrator
24 shall display prominently the license issued under section 2 or 3 of this
25 2017 Act in the place of business or employment of the deception de-
26 tection examination administrator.

27 “(2) A deception detection examination administrator shall notify
28 the Department of Public Safety Standards and Training in writing of
29 any change in the principal place of business of the deception de-
30 tection examination administrator not later than 30 days after the date

1 of the change.

2 “(3) The department shall suspend a deception detection examina-
3 tion administrator’s license for failure to comply with this section.

4 **“SECTION 7. In accordance with ORS chapter 183, the Department**
5 **of Public Safety Standards and Training may deny, suspend or revoke**
6 **a deception detection examination administrator license if the**
7 **licensee:**

8 “(1) Failed to inform a person to whom a deception detection ex-
9 amination is administered as to the nature of the deception detection
10 examination or failed to advise the person, or representative of the
11 person, of the results of the deception detection examination;

12 “(2) Failed to inform the person to whom the deception detection
13 examination is administered that the deception detection examination
14 is voluntary;

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

17 “(4) Willfully disregarded or violated a provision of sections 1 to 12
18 of this 2017 Act or a rule adopted under sections 1 to 12 of this 2017
19 Act;

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

23 “(6) Demonstrates inability or incompetency to carry out the duties
24 of a deception detection examination administrator;

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

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

29 “(9) Fails, within a reasonable time, to provide information re-
30 quested by the department after the department receives a complaint

1 **alleging that the person has violated a provision of sections 1 to 12 of**
2 **this 2017 Act or a rule adopted under sections 1 to 12 of this 2017 Act.**

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

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

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

13 **“SECTION 10. The Board on Public Safety Standards and Training**
14 **may adopt rules necessary to carry out the provisions of sections 1 to**
15 **12 of this 2017 Act.**

16 **“SECTION 11. A violation of a provision of sections 1 to 12 of this**
17 **2017 Act, or a rule adopted under sections 1 to 12 of this 2017 Act, is**
18 **a Class A misdemeanor.**

19 **“SECTION 12. (1) A person commits a Class A misdemeanor if the**
20 **person knowingly falsifies the fingerprints, photographs or other data**
21 **pertinent to an application for a deception detection examination ad-**
22 **ministrator license.**

23 **“(2) A person commits a Class B misdemeanor if the person know-**
24 **ingly practices as a deception detection examination administrator**
25 **without a license.**

26 **“SECTION 13. ORS 659.840 is amended to read:**

27 **“659.840. (1) [No] A person, or agent or representative of [such] the per-**
28 **son, [shall] may not require, as a condition for employment or continuation**
29 **of employment, any person or employee to take a breathalyzer test, decep-**
30 **tion detection examination, as defined in section 1 of this 2017 Act,**

1 polygraph test or any other form of a so-called lie detector test.

2 “(2) However, nothing in this section shall be construed to prohibit the
3 administration of a breathalyzer test to an individual if the individual con-
4 sents to the test. If the employer has reasonable grounds to believe that the
5 individual is under the influence of intoxicating liquor, the employer may
6 require, as a condition for employment or continuation of employment, the
7 administration of a blood alcohol content test by a third party or a
8 breathalyzer test. The employer [*shall*] **may** not require the employee to pay
9 the cost of administering [*any such*] **a blood alcohol content test or**
10 **breathalyzer** test.

11 “[2] (3) For the purposes of this section, an individual is ‘under the in-
12 fluence of intoxicating liquor’ when the individual’s blood alcohol content
13 exceeds the amount prescribed in a collective bargaining agreement or the
14 amount prescribed in the employer’s work rules if there is no applicable
15 collective bargaining provision.

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

17 “659A.300. (1) Except as provided in this section, it is an unlawful em-
18 ployment practice for any employer to subject, directly or indirectly, any
19 employee or prospective employee to any breathalyzer test, **deception de-**
20 **tection examination**, polygraph examination, psychological stress test, ge-
21 netic test or brain-wave test.

22 “(2) As used in this section:

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

25 “(b) ‘**Deception detection examination**’ has the meaning given that
26 **term in section 1 of this 2017 Act.**

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

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

1 “[(d)] (e) An individual is ‘under the influence of intoxicating liquor’
2 when the individual’s blood alcohol content exceeds the amount prescribed
3 in a collective bargaining agreement or the amount prescribed in the
4 employer’s work rules if there is no applicable collective bargaining pro-
5 vision.

6 “(3) Nothing in subsection (1) of this section shall be construed to pro-
7 hibit the administration of a polygraph examination to an individual, if the
8 individual consents to the examination, during the course of criminal or civil
9 judicial proceedings in which the individual is a party or witness or during
10 the course of a criminal investigation conducted by a law enforcement
11 agency, as defined in ORS 181A.010, a district attorney or the Attorney
12 General.

13 “(4) Nothing in subsection (1) of this section shall be construed to pro-
14 hibit 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
16 that the individual is under the influence of intoxicating liquor, the employer
17 may require, as a condition for employment or continuation of employment,
18 the administration of a blood alcohol content test by a third party or a
19 breathalyzer test. The employer [*shall*] **may** not require the employee to pay
20 the cost of administering [*any such*] **a blood alcohol content test or**
21 **breathalyzer** test.

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

27 “**SECTION 15.** ORS 703.310 is amended to read:

28 “703.310. (1) All instruments or mechanical devices that are used by
29 polygraph examiners to test or question an individual for the purpose of de-
30 tecting deception or of verifying the truth of statements made by the indi-

1 vidual shall record visually, permanently and simultaneously the
2 cardiovascular pattern, the respiratory pattern and the galvanic skin re-
3 sponse of the individual. The patterns of other physiological changes of the
4 individual also may be recorded.

5 “(2) Except as otherwise provided in ORS 703.335 **and sections 1 to 12**
6 **of this 2017 Act**, a person may not use any instrument or mechanical device
7 to test or question an individual for the purpose of detecting deception or
8 verifying the truth of statements made by the individual that does not com-
9 ply with the minimum requirements for the instrument or device under sub-
10 section (1) of this section. The Department of Public Safety Standards and
11 Training, in consultation with the Board on Public Safety Standards and
12 Training, may, in the name of the State of Oregon, initiate and maintain
13 appropriate judicial proceedings, in the manner provided by law for such
14 proceedings, to enjoin the use by a polygraph examiner of any instrumenta-
15 tion or mechanical device that does not comply with the minimum require-
16 ments specified in subsection (1) of this section.

17 **“SECTION 16. (1) Sections 1 to 12 of this 2017 Act and the amend-**
18 **ments to ORS 659.840, 659A.300 and 703.310 by sections 13 to 15 of this**
19 **2017 Act become operative on January 1, 2018.**

20 **“(2) The Board on Public Safety Standards and Training and the**
21 **Department of Public Safety Standards and Training may take any**
22 **action before the operative date specified in subsection (1) of this sec-**
23 **tion that is necessary to enable the board and the department to ex-**
24 **ercise, on and after the operative date specified in subsection (1) of**
25 **this section, all of the duties, functions and powers conferred on the**
26 **board and the department by sections 1 to 12 of this 2017 Act and the**
27 **amendments to ORS 659.840, 659A.300 and 703.310 by sections 13 to 15**
28 **of this 2017 Act.**

29 **“SECTION 17. This 2017 Act takes effect on the 91st day after the**
30 **date on which the 2017 regular session of the Seventy-ninth Legislative**

1 **Assembly adjourns sine die.”.**

2 _____