

Requested by HOUSE COMMITTEE ON RULES

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2545**

1 On page 1 of the printed A-engrossed bill, line 2, delete “creating new
2 provisions;” and after “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 exam-**
7 **ination’ means use of an instrument or mechanical device to question**
8 **or test an individual for the purpose of detecting deception or verifying**
9 **the truth of statements made 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 **test.**

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

19 **“(3)** However, nothing in this section shall be construed to prohibit the
20 administration of a breathalyzer test to an individual if the individual con-
21 sents to the test. If the employer has reasonable grounds to believe that the

1 individual is under the influence of intoxicating liquor, the employer may
2 require, as a condition for employment or continuation of employment, the
3 administration of a blood alcohol content test by a third party or a
4 breathalyzer test. The employer [*shall*] **may** not require the employee to pay
5 the cost of administering [*any such*] **a blood alcohol content test or**
6 **breathalyzer** test.

7 “[~~(2)~~] **(4)** For the purposes of this section, an individual is ‘under the in-
8 fluence of intoxicating liquor’ when the individual’s blood alcohol content
9 exceeds the amount prescribed in a collective bargaining agreement or the
10 amount prescribed in the employer’s work rules if there is no applicable
11 collective bargaining provision.

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

13 “659A.300. (1) Except as provided in this section, it is an unlawful em-
14 ployment practice for any employer to subject, directly or indirectly, any
15 employee or prospective employee to any breathalyzer test, **deception de-**
16 **tection examination**, polygraph examination, psychological stress test, ge-
17 netic test or brain-wave test.

18 “(2) As used in this section:

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

21 “**(b)(A) ‘Deception detection examination’ means use of an instru-**
22 **ment or mechanical device to question or test an individual for the**
23 **purpose of detecting deception or verifying the truth of statements**
24 **made by the individual.**

25 “**(B) ‘Deception detection examination’ includes an ocular motor**
26 **deception detection examination.**

27 “**(C) ‘Deception detection examination’ does not include a polygraph**
28 **examination.**

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

30 “[~~(c)~~] **(d)** ‘Polygraph examination or psychological stress test’ means a

1 test to detect deception or to verify the truth of statements through the use
2 of instrumentation or mechanical devices.

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

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

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

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

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

30 **“703.335. A corrections officer, a parole and probation officer or a**

1 police officer, as **those terms are** defined in ORS [243.005] **181A.355**, may
2 use an instrument or mechanical device that does not comply with the min-
3 imum requirements under ORS 703.310 (1) to test or question an individual
4 for the purpose of detecting deception or verifying the truth of statements
5 made by the individual if the **corrections officer, parole and probation**
6 **officer or** police officer:

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

9 “(a) Investigating a crime;

10 “(b) **Conducting an investigation into misconduct involving indi-**
11 **viduals arrested for or convicted of a crime and who are confined in**
12 **a place of incarceration or detention other than a place of incarcer-**
13 **ation or detention of juveniles; or**

14 “(c) **Providing community protection by controlling, investigating,**
15 **supervising or providing or making referrals to reformative services**
16 **for adult parolees or probationers or offenders on post-prison super-**
17 **vision; and**

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

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