

# D R A F T

## SUMMARY

Allows polygraph test as condition of employment for preemployment screening of law enforcement officers. Exempts polygraph test from disclosure under public records law.

### A BILL FOR AN ACT

Relating to polygraph tests; amending ORS 192.502, 659.840 and 659A.300.

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

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

659.840. (1) **Except as provided in paragraphs (a) and (b) of this subsection,** no person, or agent or representative of such person, shall require, as a condition for employment or continuation of employment, any person or employee to take a breathalyzer test, polygraph test or any other form of a so-called lie detector test. [*However,*]

(2) Nothing in this section shall be construed to prohibit the administration of a breathalyzer test to an individual if the individual consents to the test. If the employer has reasonable grounds to believe that the individual is under the influence of intoxicating liquor, the employer may require, as a condition for employment or continuation of employment, the administration of a blood alcohol content test by a third party or a breathalyzer test. The employer shall not require the employee to pay the cost of administering any such test.

(3) **Nothing in this section shall be construed to prohibit the administration of a polygraph test to an applicant for a position as a law enforcement officer in this state. This subsection applies to preem-**

**ployment screening only and does not apply to law enforcement officers during their employment.**

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

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

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

(2) As used in this section:

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

(b) “Genetic test” has the meaning given in ORS 192.531.

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

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

(3) Nothing in subsection (1) of this section shall be construed to prohibit the administration of a polygraph examination to:

(a) An individual, if the individual consents to the examination, during the course of criminal or civil judicial proceedings in which the individual is a party or witness or during the course of a criminal investigation conducted by a law enforcement agency, as defined in ORS 181A.010, a district attorney or the Attorney General[.]; **or**

**(b) An applicant for a position as a law enforcement officer in this**

**state as a preemployment screening measure before the applicant's initial date of hire as a law enforcement officer.**

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

(5) Subsection (1) of this section does not prohibit the administration of a genetic test to an individual if the individual or the individual's representative grants informed consent in the manner provided by ORS 192.535, and the genetic test is administered solely to determine a bona fide occupational qualification.

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

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

(1) Communications within a public body or between public bodies of an advisory nature to the extent that they cover other than purely factual materials and are preliminary to any final agency determination of policy or action. This exemption shall not apply unless the public body shows that in the particular instance the public interest in encouraging frank communication between officials and employees of public bodies clearly outweighs the public interest in disclosure.

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

(3) Upon compliance with ORS 192.437, public body employee or volunteer residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, employer-issued identification card numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers contained in personnel records maintained by the public body that is the employer or the recipient of volunteer services. This exemption:

(a) Does not apply to the addresses, dates of birth and telephone numbers of employees or volunteers who are elected officials, except that a judge or district attorney subject to election may seek to exempt the judge's or district attorney's address or telephone number, or both, under the terms of ORS 192.445;

(b) Does not apply to employees or volunteers to the extent that the party seeking disclosure shows by clear and convincing evidence that the public interest requires disclosure in a particular instance pursuant to ORS 192.437;

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

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

(4) Information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

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

(6) Records, reports and other information received or compiled by the Director of the Department of Consumer and Business Services in the administration of ORS chapters 723 and 725 not otherwise required by law to be made public, to the extent that the interests of lending institutions, their officers, employees and customers in preserving the confidentiality of such information outweighs the public interest in disclosure.

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

(8) Any public records or information the disclosure of which is prohibited by federal law or regulations.

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

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

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

(B) The factual information is not prohibited from disclosure under any applicable state or federal law, regulation or court order and is not otherwise exempt from disclosure under ORS 192.410 to 192.505;

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

(D) The factual information was not compiled in preparation for litigation, arbitration or an administrative proceeding that was reasonably likely to be initiated or that has been initiated by or against the public body; and

(E) The holder of the privilege under ORS 40.225 has made or authorized a public statement characterizing or partially disclosing the factual information compiled by or at the attorney's direction.

(10) Public records or information described in this section, furnished by the public body originally compiling, preparing or receiving them to any other public officer or public body in connection with performance of the duties of the recipient, if the considerations originally giving rise to the

1 confidential or exempt nature of the public records or information remain  
2 applicable.

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

5 (12) Employee and retiree address, telephone number and other nonfinan-  
6 cial membership records and employee financial records maintained by the  
7 Public Employees Retirement System pursuant to ORS chapters 238 and  
8 238A.

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

14 (a) The exemption does not apply to:

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

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

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

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

30 (A) Due diligence materials that are proprietary to an investment fund,  
31 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 placed  
17 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  
31 an annual fiscal year-end basis to each privately placed investment fund.

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

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

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

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

17 (A) Personal financial statements.

18 (B) Financial statements of applicants.

19 (C) Customer lists.

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

27 (E) Production, sales and cost data.

28 (F) Marketing strategy information that relates to applicant's plan to  
29 address specific markets and applicant's strategy regarding specific compet-  
30 itors.

31 (b) The following records, communications and information submitted to



1 the State Department of Energy by applicants for tax credits or for grants  
2 awarded under ORS 469B.256:

3 (A) Personal financial statements.

4 (B) Financial statements of applicants.

5 (C) Customer lists.

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

13 (E) Production, sales and cost data.

14 (F) Marketing strategy information that relates to applicant's plan to  
15 address specific markets and applicant's strategy regarding specific compet-  
16 itors.

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

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

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

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

(19) All information supplied by a person under ORS 151.485 for the purpose of requesting appointed counsel, and all information supplied to the court from whatever source for the purpose of verifying the financial eligibility of a person pursuant to ORS 151.485.

(20) Workers' compensation claim records of the Department of Consumer and Business Services, except in accordance with rules adopted by the Director of the Department of Consumer and Business Services, in any of the following circumstances:

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

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

(c) When the disclosure is made in such a manner that the disclosed information cannot be used to identify any worker who is the subject of a claim.

(d) When a worker or the worker's representative requests review of the worker's claim record.

(21) Sensitive business records or financial or commercial information of the Oregon Health and Science University that is not customarily provided to business competitors.

(22) Records of Oregon Health and Science University regarding candidates for the position of president of the university.

(23) The records of a library, including:

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

(b) The name of a library patron together with the address or telephone number of the patron; and

(c) The electronic mail address of a patron.

(24) The following records, communications and information obtained by the Housing and Community Services Department in connection with the

1 department's monitoring or administration of financial assistance or of  
2 housing or other developments:

3 (a) Personal and corporate financial statements and information, includ-  
4 ing tax returns.

5 (b) Credit reports.

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

10 (d) Market studies and analyses.

11 (e) Articles of incorporation, partnership agreements and operating  
12 agreements.

13 (f) Commitment letters.

14 (g) Project pro forma statements.

15 (h) Project cost certifications and cost data.

16 (i) Audits.

17 (j) Project tenant correspondence.

18 (k) Personal information about a tenant.

19 (L) Housing assistance payments.

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

24 (26) Sensitive business, commercial or financial information furnished to  
25 or developed by a public body engaged in the business of providing electricity  
26 or electricity services, if the information is directly related to a transaction  
27 described in ORS 261.348, or if the information is directly related to a bid,  
28 proposal or negotiations for the sale or purchase of electricity or electricity  
29 services, and disclosure of the information would cause a competitive disad-  
30 vantage for the public body or its retail electricity customers. This sub-  
31 section does not apply to cost-of-service studies used in the development or

review of generally applicable rate schedules.

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

(28) Personally identifiable information about customers of a municipal electric utility or a people's utility district or the names, dates of birth, driver license numbers, telephone numbers, electronic mail addresses or Social Security numbers of customers who receive water, sewer or storm drain services from a public body as defined in ORS 174.109. The utility or district may release personally identifiable information about a customer, and a public body providing water, sewer or storm drain services may release the name, date of birth, driver license number, telephone number, electronic mail address or Social Security number of a customer, if the customer consents in writing or electronically, if the disclosure is necessary for the utility, district or other public body to render services to the customer, if the disclosure is required pursuant to a court order or if the disclosure is otherwise required by federal or state law. The utility, district or other public body may charge as appropriate for the costs of providing such information. The utility, district or other public body may make customer records available to third party credit agencies on a regular basis in connection with the establishment and management of customer accounts or in the event such accounts are delinquent.

(29) A record of the street and number of an employee's address submitted to a special district to obtain assistance in promoting an alternative to single occupant motor vehicle transportation.

(30) Sensitive business records, capital development plans or financial or

commercial information of Oregon Corrections Enterprises that is not customarily provided to business competitors.

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

(a) The document, material or other information is received upon notice or with an understanding that it is confidential or privileged under the laws of the jurisdiction that is the source of the document, material or other information; and

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

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

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

(a) Generation, storage or conveyance of:

(A) Electricity;

(B) Gas in liquefied or gaseous form;

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

(D) Petroleum products;

(E) Sewage; or

(F) Water.

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

(c) Data transmissions by whatever means provided.

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

1 1.002.

2 (35)(a) Employer account records of the State Accident Insurance Fund  
3 Corporation.

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

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

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

18 (b) As used in this subsection, “claimant files” includes, but is not limited  
19 to, all records held by the corporation pertaining to a person who has made  
20 a claim, as defined in ORS 656.005, and all records pertaining to such a  
21 claim.

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

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

27 (38) Records of or submitted to a domestic violence service or resource  
28 center that relate to the name or personal information of an individual who  
29 visits a center for service, including the date of service, the type of service  
30 received, referrals or contact information or personal information of a family  
31 member of the individual. As used in this subsection, “domestic violence

service or resource center” means an entity, the primary purpose of which is to assist persons affected by domestic or sexual violence by providing referrals, resource information or other assistance specifically of benefit to domestic or sexual violence victims.

(39) Information reported to the Oregon Health Authority under ORS 431A.860, except as provided in ORS 431A.860 (2)(b) information disclosed by the authority under ORS 431A.865 and any information related to disclosures made by the authority under ORS 431A.865, including information identifying the recipient of the information.

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

(b) This subsection does not apply to electronic mail addresses assigned by a public body to public employees for use by the employees in the ordinary course of their employment.

(41) Residential addresses, residential telephone numbers, personal cellular telephone numbers, personal electronic mail addresses, driver license numbers, emergency contact information, Social Security numbers, dates of birth and other telephone numbers of individuals currently or previously certified or licensed by the Department of Public Safety Standards and Training contained in the records maintained by the department.

(42) Personally identifiable information and contact information of veterans as defined in ORS 408.225 and of persons serving on active duty or as reserve members with the Armed Forces of the United States, National Guard or other reserve component that was obtained by the Department of Veterans’ Affairs in the course of performing its duties and functions, including but not limited to names, residential and employment addresses, dates of birth, driver license numbers, telephone numbers, electronic mail addresses, Social Security numbers, marital status, dependents, the character of discharge from military service, military rating or rank, that the person

1 is a veteran or has provided military service, information relating to an ap-  
2 plication for or receipt of federal or state benefits, information relating to  
3 the basis for receipt or denial of federal or state benefits and information  
4 relating to a home loan or grant application, including but not limited to  
5 financial information provided in connection with the application.

6 **(43) Polygraph tests administered to applicants for positions in law**  
7 **enforcement under ORS 659.840 and documents, materials and other**  
8 **information relating to polygraph tests administered under ORS**  
9 **659.840.**

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