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SENATE COMMITTEE ON
LABOR
335 State Capitol
Salem, Oregon 97310
(503) 378-8083

May 19, 1987

Mr. Dean Kunihiro
U.S. Nuclear Regulatory Commission
1450 Maria Lane
Suite 210
Walnut Creek, CA 94596

Mr. Kunihiro:

Enclosed please find a copy of the drug testing amendments HB 2316-8. These amendments were adopted by the Senate Labor Committee and the bill was reported out on May 19, 1987.

If you would like any further information, please feel free to contact me.

Sincerely,

Craig C. Kuhn
Committee Assistant

CCK:jb

Enclosure

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PDR STPRG ESGOR
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Legislative Counsel
HB 2316-8
(LC 1378)
5/19/87 (ky)

PROPOSED AMENDMENTS TO HOUSE BILL 2316

Delete the printed House amendments dated March 30.

On page 1 of the printed bill, delete lines 4 through 32 and delete page 2 and insert:

"SECTION 1. ORS 659.227 is amended to read:

"659.227. (1) It is an unlawful employment practice for any employer to subject, directly or indirectly, any employe or prospective employe to any breathalyzer test, polygraph examination or psychological stress test.

"(2) Subject to subsections (7) and (8) of this section, it is an unlawful employment practice for an employer to subject, directly or indirectly, any employe or prospective employe to any toxicological test.

"[(2)] (3) Complaints may be filed by employes, and this section shall be enforced by the Commissioner of the Bureau of Labor and Industries in the same manner as provided in ORS 659.040 to 659.110 and 659.121 for the enforcement of an unlawful employment practice. Violation of subsection (1) or (2) of this section subjects the violator to the same civil and criminal remedies and penalties as provided in ORS 659.010 to 659.110 and 659.121.

"[(3)] (4) As used in this section:

"(a) '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.

1 "(b) 'Breathalyzer test' means a test to detect the presence of
2 alcohol in the body through the use of instrumentation or
3 mechanical devices.
4 "[(c) An individual is 'under the influence of intoxicating liquor' when
5 the individual's blood alcohol content exceeds the amount prescribed in a
6 collective bargaining agreement or the amount prescribed in the employer's work
7 rules if there is no applicable collective bargaining provision.]
8 "(c) 'Toxicological test' means a test, examination or analysis
9 on materials derived from the human body for the purpose of
10 detecting substances of abuse in the body.
11 "(d) 'Reasonable suspicion' means that an employer has specific
12 objective facts based on observations of an employe's on-the-job
13 conduct from which a reasonable person would conclude that the
14 employe's ability to perform the job is impaired by the use of
15 alcohol or a substance of abuse.
16 "[(4)] (5) Nothing in subsection (1) of this section shall be
17 construed to prohibit the administration of a polygraph examination
18 to an individual, if the individual consents to the examination,
19 during the course of criminal or civil judicial proceedings in
20 which the individual is a party or witness or during the course of
21 a criminal investigation conducted by a law enforcement agency, as
22 defined in ORS 181.010, a district attorney or the Attorney
23 General.
24 "[(5)] (6) Nothing in subsection (1) of this section shall be
25 construed to prohibit the administration of a breathalyzer test to
26 an individual if the individual consents to the test. If the
27 employer has reasonable suspicion [grounds to believe that the individual
28 is under the influence of intoxicating liquor], the employer may require,

1 as a condition for employment or continuation of employment, the
2 administration [of a blood alcohol content test] by a third party [or] of
3 a breathalyzer test. The employer shall not require the employe to
4 pay the cost of administering any such test.
5 "(7) Notwithstanding subsection (2) of this section, if the
6 employer has reasonable suspicion, the employer may require, as a
7 condition for continuation of employment, the administration of a
8 toxicological test by a third party authorized to perform the test
9 under chapter _____, Oregon Laws 1987 (Enrolled Senate Bill 478),
10 provided that the employer abides by the requirements of
11 subsections (9) to (13) of this section.
12 "(8) Notwithstanding subsection (2) of this section, nothing in
13 this section is intended to prohibit the administration of
14 toxicological tests to prospective employes by a third party
15 authorized to perform the test under chapter _____, Oregon Laws
16 1987 (Enrolled Senate Bill 478), provided that the employer abides
17 by the requirements of subsections (9) to (13) of this section.
18 "(9) The employer shall not require the employe or prospective
19 employe to pay the cost of administering the test.
20 "(10) At least 30 days before any employer may require any
21 employe or prospective employe to be subjected to any toxicological
22 test, the employer shall post a written notice, in the location or
23 locations where notices to employes and prospective employes are
24 normally posted, describing the employer's alcohol and drug testing
25 policies and procedures and the potential consequences of a
26 positive test result. The employer shall provide a copy of the
27 written notice to:

1 "(a) Each prospective employe at the time application for
2 employment is made; and
3 "(b) Each employe required to be tested before the
4 administration of the test.
5 "(11) An employer must establish a reasonable system to prevent
6 mislabeling or mishandling of specimens and insure confidentiality
7 of test results.
8 "(12) Upon the receipt of the employe's or prospective
9 employe's toxicological test results, the employer shall provide a
10 copy of the results, including the dates the tests were performed
11 and the identity of the laboratory that performed the tests, to the
12 employe or prospective employe. Within five working days after the
13 receipt of the test results, the employe may request a retest of
14 the original specimen. If the retest is negative, no adverse
15 personnel action based on the original test may be taken against
16 the employe.
17 "(13) No employer shall release or disclose any information
18 pertaining to a toxicological test or test result of an employe or
19 prospective employe to any other persons, including other employers
20 and law enforcement agencies, unless the release or disclosure is
21 made in the course of proceedings for revocation of certification
22 of a police officer, corrections officer or parole and probation
23 officer pursuant to ORS 181.661 to 181.664 or pursuant to a court
24 order or as otherwise required by law. However, the privilege
25 against disclosure is waived in any court proceedings, arbitration
26 or other dispute resolution mechanism initiated by the employe
27 where the results of the test or of previous tests are relevant to
28 the proceeding or where the proceeding involves the validity of any

1 disciplinary action taken against the subject of the test based on
2 the test results.
3 "(14) Nothing in this section is intended to prohibit the
4 administration of a toxicological test, on a prescheduled annual
5 basis, to a person who has unescorted access to a nuclear fueled
6 thermal power plant.
7 "(15)(a) Notwithstanding the reasonable suspicion requirement
8 of subsections (6) and (7) of this section, an employer may
9 require, as a condition of continuation of employment, the
10 administration of a toxicological test to an employe who is a
11 police officer, a deputy district attorney appointed under ORS
12 8.780 or a person who has unescorted access to the vital areas of a
13 nuclear fueled thermal power plant if the employer has reasonable
14 suspicion based on specific objective facts based on observations
15 of an employe from which a reasonable person would conclude that
16 the employe's ability to perform the job is impaired by the use of
17 alcohol or a substance of abuse. Subsections (9) to (13) of this
18 section apply to such tests.
19 "(b) For purposes of this subsection, 'police officers' include
20 police chiefs and police officers of a city, the Port of Portland
21 or a mass transit district formed under ORS 267.010 to 267.390, who
22 are classified as police officers by the council or other governing
23 body of the employing entity; those deputy sheriffs whose duties,
24 as classified by the county governing body, are the regular duties
25 of police officers; employes of the Department of State Police who
26 are classified as police officers by the Superintendent of State
27 Police; and employes of the Corrections Division whose duties, as
28 assigned by the superintendent of a penal or correctional

1 institution, include the custody of persons committed to the
2 custody of or transferred to the penal or correctional institution.
3 The term does not include volunteer or reserve police officers or
4 persons considered by the respective governing bodies to be civil
5 deputies or clerical personnel.
6 "(16) Nothing in this section is intended to prohibit any test
7 otherwise regulated by this section if the test is required by
8 federal law or regulation.

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