

A-Engrossed
House Bill 2283

Ordered by the House April 27
Including House Amendments dated April 27

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of Joint Interim Committee on Judiciary for Oregon State Bar Administrative Law Section)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

[Prohibits agency from requiring that licensee take mental or physical examination unless agency has adopted certain rules governing examinations.]

[Provides that agency may not cancel, suspend or refuse to renew license, or discipline licensee, because licensee refuses to take mental or physical examination, unless agency issues order requiring examination. Provides that licensee has right to contested case hearing on order.]

[Prohibits agency from suspending or refusing to renew license without hearing based solely on refusal by licensee to submit to mental or physical examination.]

Provides that agency requiring licensee to submit to mental or physical examination must provide notice of intended action to licensee. Provides that licensee has right to contested case hearing on notice. Limits issue to be decided in hearing.

Applies, with exceptions, to alcohol, drug and psychosexual evaluations in addition to mental and physical examinations.

A BILL FOR AN ACT

Relating to administrative procedure.

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

SECTION 1. Section 2 of this 2005 Act is added to and made a part of ORS 183.440 to 183.460.

SECTION 2. (1) An agency that has authority to require a licensee to submit to a mental or physical examination must issue a notice of intended action pursuant to ORS 183.415 before requiring an examination. An agency that has authority to require a licensee to submit to a mental or physical examination may require an examination only if:

(a) The examination is timely performed by qualified, impartial professionals; and

(b) The examination is performed in a cost-effective manner if the licensee is required to pay for the examination.

(2) A licensee has the right to a contested case hearing on a notice issued under subsection (1) of this section. A request for hearing must be made within 14 days after the notice is served. An agency by rule may provide for a longer period of time for requesting a hearing. If the licensee does not request a hearing, the notice constitutes the agency's final order requiring an examination.

(3) The only issue that may be decided in a hearing conducted under subsection (2) of this section is whether there is substantial evidence to support the agency's requirement for an examination.

(4) Except as provided in subsection (5) of this section, this section applies to alcohol, drug and psychosexual evaluations in addition to mental and physical examinations.

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

- 1 **(5) This section does not apply to:**
2 **(a) Alcohol or drug laboratory screening tests necessary to determine whether the**
3 **licensee is impaired at the time the examination is conducted;**
4 **(b) Any examination required by the Department of Transportation; or**
5 **(c) Any examination required by the Department of Public Safety Standards and Train-**
6 **ing.**
7 **(6) This section does not affect the ability of an agency to suspend or refuse to renew a**
8 **license without a hearing under ORS 183.430 (2).**

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