

IN THE 73RD LEGISLATIVE SESSION OF THE OREGON LEGISLATIVE ASSEMBLY

Note: (+ New text is indicated by being enclosed in parentheses and begins and ends

with +)

(- Deleted old text is indicated by being enclosed in parentheses and begins and ends with -)

WHEREAS it is important to the safety and well-being of the citizens of the State of Oregon that the laws regarding controlled substances and the arrest and punishment for violations thereof be administered by impartial law enforcement officers and judges who are indisputably and demonstrably beyond reproach of being in any way compromised in the pursuit and fulfillment of their duties,

The Legislature Enacts the Following:

This bill shall be referred to as the Judicial and Law Enforcement Drug Testing Law.

1.001 State policy for courts. The Legislative Assembly hereby declares that, as a matter of statewide concern, it is in the best interests of the people of this state that the judicial branch of state government, including the appellate, tax and circuit courts, be funded and operated at the state level. The Legislative Assembly finds that state funding and operation of the judicial branch can provide for best statewide allocation of governmental resources according to the actual needs of the people and of the judicial branch by establishing an accountable, equitably funded and uniformly administered system of justice for all the people of this state. (+ The Legislative Assembly also declares that it is important to the safety and well-being of the citizens of the State of Oregon that the laws regarding controlled substances and the arrest and punishment for violations thereof be administered by impartial law enforcement officers and judges who are indisputably and demonstrably beyond reproach of being in any way compromised in the pursuit and fulfillment of their duties. +)

(+ 1.304 Removal of Judicial Officers for Failing or Refusal to Submit to Drug Testing. (1) All Judicial officers, as defined by ORS 1.210, except as otherwise stated in this section, including all sitting judges of the

Oregon Supreme Court, the Oregon Court of Appeals all Circuit Courts, and all Municipal Courts, but excluding Oregon Tax Court judges (the “testable judicial officers”) shall submit to drug screening tests on a random basis, but not less than once every five years.

(2) There is hereby created a Judicial Drug Testing Commission, composed of seven members. The Chief Justice of the Supreme Court, the Governor of the State of Oregon, the President of the Oregon State Bar Association and the Majority and Minority Leaders of each chamber of the legislature (or, in the event of a tie in a chamber, the Secretary of State) shall each appoint one member of this commission.

(3) This commission shall be given by the Chief Justice each year, no later than January 10th, a list of each sitting judicial officer subject to drug testing by this section. The members of the commission shall hire a retired judge from another state, who has never resided in Oregon, to be the manager of the Judicial Drug Testing Program. This manager shall, utilizing the annual list from the Chief Justice, arrange for and ensure the participation in and submission of necessary urine samples by, one-fifth of all the then-sitting testable judicial officers within the state of Oregon. The manager shall utilize the routine and customary test collection, identification, handling, transfer to testing laboratory, reporting and destruction of samples utilized by reputable private drug testing companies in Oregon, and may contract with such companies for the performance of these tasks. The manager shall ensure that each testable judicial officer shall be tested at least one time within each five year-long testing period.

(4) The first five year-long testing period for purposes of this section shall commence January 1, 2006, or, if this bill should become effective after that date, January 1, 2007. Each subsequent five year-long testing period shall commence on the January 1 that is five years after the January 1 date that began the previous five year-long testing period.

(5) The manager may utilize any selection procedure he may design or select, so long as the selection procedure ensures (a) that the tests are roughly staggered across the 12 months of each year so that one-fifth of the testable judicial officers sitting at the start of that year undergo the drug testing, and (b) that no testable judicial officer may serve for more than five years without submitting to such testing. The selection of testable judicial officers for testing in each year shall be random. No testable judicial officer shall be tested more than once in a five-year period. For those testable judicial officers who have not been tested in the preceding four years, for whom such testing becomes, by this statute,

required, the fact that their selection is not random, in that the testing will take place predictably in that year, shall not prevent the testing. For those testable judicial officers who have not been tested in the preceding four years and eleven months, for whom such testing becomes, by this statute, required, the fact that their selection is not random, in that the testing will take place predictably in that month, shall not prevent the testing.

(6) Any testable judicial officer who refuses to submit to the drug testing mandated by this section shall be deemed to have failed the test, and be immediately subject to subsections (8) and (9) of this section.

(7) The drugs to be tested for shall be marijuana, heroin, cocaine, hashish, and methamphetamines, and any other illegal narcotic or drug conventionally tested in most or all commercial drug screening programs available in the state of Oregon.

(8) If a testable judicial officer should test positive in his or her testing, that judicial officer shall be given 30 days notice of termination of employment, and the presiding or administering judge of his or her court (or if the judicial officer proving positive is a presiding or administering judge, the Chief Justice of the Supreme Court) shall appoint a replacement judge. If a replacement judge cannot be found and sworn in within that time period, the presiding or administering judge may petition the Chief Justice for an extension; the petition shall state the reasons for the difficulty in finding and seating the replacement judicial officer, and the period of time by which the 30 day period should be extended. During that extension, the judicial officer who failed the test shall continue to sit and perform the duties of his or her office, except that he or she shall not hear cases involving violation of the controlled substances laws.

(9) Any judicial officer who tests positive in his or her testing shall not be eligible for appointment to any testable judicial officer position.

(10) The fact of a judicial officer having failed a drug test mandated under this section shall be deemed and treated as confidential and not to be disclosed by any person, except, should he or she so wish, by the judicial officer who failed the drug test. +)

(+ 475.350 Termination of Employment of Law Enforcement Officers for Failing or Refusal to Submit to Drug Testing.

(1) All law enforcement officers, including Oregon State Police, County

Sheriff' s Department, and Municipal or City police department officers, who have the legal authority to arrest a citizen of the state of Oregon, (the "testable law enforcement officers") shall submit to drug screening tests on a random basis, but not less than once every five years.

(2) There is hereby created a Law Enforcement Drug Testing Commission, composed of seven members. The Chief Justice of the Supreme Court, the Governor of the State of Oregon, the District Attorney for the County of Multnomah, and the Majority and Minority Leaders of each chamber of the legislature (or, in the event of a tie in a chamber, the Secretary of State) shall each appoint one member of this commission.

(3) This commission shall be given each year, no later than January 10, a list of each law enforcement officer employed by Oregon State Police, each County Sheriff' s Department, and each Municipal or City police department in Oregon, from the commanding officer or each such law enforcement entity. The members of the commission shall hire three retired city, county or state police chiefs from another state, who have never resided in Oregon, to be the manager of one section of the Law Enforcement Drug Testing Program. There shall be three such sections, one for the Willamette Valley area including Multnomah, Washington, Yamhill, Clackamas, Marion, Linn and Lane counties; one for the Oregon Coast and southern Oregon including Clatsop, Columbia, Tillamook, Lincoln, Coos, Curry, Douglas, Josephine and Jackson counties; and one for central and eastern Oregon, that is, the remaining counties. Each manager shall, utilizing the annual list he receives, arrange for and ensure the participation in and submission of necessary urine samples by, one-fifth of all the then-employed testable law enforcement officers within the state of Oregon. Each manager shall manage one section office, and may manage a second section office, reasonably distant from the first, to enhance convenience and managerial control and reduce work time by testable law enforcement officers lost to travel. Each manager shall utilize the routine and customary test collection, identification, handling, transfer to testing laboratory, reporting and destruction of samples utilized by reputable private drug testing companies in Oregon, and may contract with such companies for the performance of these tasks. Each manager shall ensure that each testable law enforcement officer shall be tested at least one time within each five year-long testing period.

(4) The first five year-long testing period for purposes of this section shall commence January 1, 2006, or, if this bill should become effective after that date, January 1, 2007. Each subsequent five year-long testing period shall commence on the January 1 that is five years after the January 1 date that began the previous five year-long testing period.

(5) Each manager may utilize any selection procedure he may design or select, so long as the selection procedure ensures (a) that the tests are roughly staggered across the 12 months of each year so that one-fifth of the testable law enforcement officers sitting at the start of that year undergo the drug testing, and (b) that no testable law enforcement officer may serve for more than five years without submitting to such testing. The selection of testable law enforcement officers for testing in each year shall be random. No law enforcement officer shall be tested more than once in a five-year period. For those testable law enforcement officers who have not been tested in the preceding four years, for whom such testing becomes, by this statute, required, the fact that their selection is not random, in that the testing will take place predictably in that year, shall not prevent the testing. For those judicial officers who have not been tested in the preceding four years and eleven months, for whom such testing becomes, by this statute, required, the fact that their selection is not random, in that the testing will take place predictably in that month, shall not prevent the testing.

(6) Any law enforcement officer who refuses to submit to the drug testing mandated by this section shall be deemed to have failed the test, and be immediately subject to subsections (8), (9) and (10) of this section.

(7) The drugs to be tested for shall be marijuana, heroin, cocaine, hashish, and methamphetamines, and any other illegal narcotic or drug conventionally tested in most or all commercial drug screening programs available in the state of Oregon.

(8) If a law enforcement officer should test positive in his or her testing, that law enforcement officer shall be given 60 days notice of termination of employment, and his or her commanding officer (or, if the law enforcement officer to be terminated from his or her employment is a commanding officer, the governor, county commissioners or mayor, as appropriate) shall hire a replacement law enforcement officer. If a replacement officer cannot be found and sworn in within that time period, the commanding officer may extend the terminated officer's employment by not more than 30 additional days. During that extension, the law enforcement officer who failed the test shall continue to perform the duties of his or her office, except that he or she shall not hear cases involving violation of the controlled substances laws.

(9) Any law enforcement officer who tests positive in his or her testing shall not be eligible for employment in any testable law enforcement officer position.

(10) The fact of a law enforcement officer having failed a drug test mandated under this section shall not be deemed or treated as confidential.
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