

House Bill 2495

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Consumer Protection and Government Accountability)

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 **as introduced**.

Requires authorized agency to request criminal records check through Federal Bureau of Investigation if nationwide criminal records check of subject individual is necessary.

A BILL FOR AN ACT

1
2 Relating to criminal records checks; amending ORS 181.534.

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

4 **SECTION 1.** ORS 181.534 is amended to read:

5 181.534. (1) As used in this section:

6 (a) "Authorized agency" means state government as defined in ORS 174.111 and the Oregon
7 State Bar. "Authorized agency" does not include:

8 (A) The Oregon State Lottery Commission or the Oregon State Lottery; or

9 (B) A criminal justice agency, as defined in ORS 181.010, that is authorized by federal law to
10 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

11 (b) "Subject individual" means a person from whom an authorized agency may require finger-
12 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
13 nationwide criminal records check.

14 (2) An authorized agency may request that the Department of State Police conduct a criminal
15 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
16 records check of a subject individual is necessary, the authorized agency [*may*] **shall** request that
17 the Department of State Police conduct the check, including fingerprint identification, through the
18 Federal Bureau of Investigation.

19 (3) The Department of State Police shall provide the results of a criminal records check con-
20 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

21 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
22 conduct the criminal records check and may not keep any record of the fingerprints. If the federal
23 bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department
24 of State Police shall cease to send the cards to the federal bureau but shall continue to process the
25 information through other available resources.

26 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
27 State Police, the department shall destroy the fingerprint cards and [*shall*] **may** retain no facsimiles
28 or other material from which a fingerprint can be reproduced.

29 (6) If only a state criminal records check is conducted, the Department of State Police shall
30 destroy the fingerprint cards after the criminal records check is completed and the results of the
31 criminal records check provided to the authorized agency and [*shall*] **may** retain no facsimiles or

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 other material from which a fingerprint can be reproduced.

2 (7) An authorized agency may conduct criminal records checks on subject individuals through
3 the Law Enforcement Data System maintained by the Department of State Police in accordance with
4 rules adopted, and procedures established, by the Department of State Police.

5 (8) An authorized agency and the Department of State Police shall permit a subject individual
6 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own
7 state and national criminal offender records and, if requested by the subject individual, provide the
8 individual with a copy of the individual's own state and national criminal offender records.

9 (9) Each authorized agency, in consultation with the Department of State Police, shall adopt
10 rules to implement this section and other statutes relating to criminal offender information obtained
11 through fingerprint-based criminal records checks. The rules shall include [*but need not be limited*
12 *to*]:

13 (a) Specifying categories of subject individuals who are subject to criminal records checks.

14 (b) Specifying the information that may be required from a subject individual to permit a crim-
15 inal records check.

16 (c) Specifying which programs or services are subject to this section.

17 (d) Specifying the types of crimes that may be considered in reviewing criminal offender infor-
18 mation of a subject individual.

19 (e) Specifying when a nationwide fingerprint-based criminal records check must be conducted.
20 An authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based
21 criminal records check when adopting rules under this subsection.

22 (f) If the authorized agency uses criminal records checks for agency employment purposes:

23 (A) Determining when and under what conditions a subject individual may be hired on a pre-
24 liminary basis pending a criminal records check; and

25 (B) Defining the conditions under which a subject individual may participate in training, orien-
26 tation and work activities pending completion of a criminal records check.

27 (g) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
28 criminal offender information.

29 (10) The Department of State Police shall verify that an authorized agency has adopted the rules
30 required by subsection (9) of this section.

31 (11) Except as otherwise provided in ORS 181.612, an authorized agency, using the rules adopted
32 under subsection (9) of this section, shall determine whether a subject individual is fit to hold a
33 position, provide services, be employed or be granted a license, certification, registration or permit,
34 based on the criminal records check obtained pursuant to this section, on any false statements made
35 by the individual regarding the criminal history of the individual and on any refusal to submit or
36 consent to a criminal records check including fingerprint identification. If a subject individual is
37 determined to be unfit, then the individual may not hold the position, provide services, be employed
38 or be granted a license, certification, registration or permit.

39 (12) Except as otherwise provided in ORS 181.612, in making the fitness determination under
40 subsection (11) of this section, the authorized agency shall consider:

41 (a) The nature of the crime;

42 (b) The facts that support the conviction or pending indictment or that indicate the making of
43 the false statement;

44 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
45 subject individual's present or proposed position, services, employment, license, certification or reg-

1 istration; and

2 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
3 services, employment, license, certification, registration or permit. Intervening circumstances in-
4 clude but are not limited to:

- 5 (A) The passage of time since the commission of the crime;
- 6 (B) The age of the subject individual at the time of the crime;
- 7 (C) The likelihood of a repetition of offenses or of the commission of another crime;
- 8 (D) The subsequent commission of another relevant crime;
- 9 (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and
- 10 (F) A recommendation of an employer.

11 (13) An authorized agency and an employee of an authorized agency acting within the course
12 and scope of employment are immune from any civil liability that might otherwise be incurred or
13 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
14 or not fit to hold a position, provide services, be employed or be granted a license, certification,
15 registration or permit. An authorized agency and an employee of an authorized agency acting within
16 the course and scope of employment who in good faith comply with this section are not liable for
17 employment-related decisions based on determinations made under subsection (11) of this section.
18 An authorized agency or an employee of an authorized agency acting within the course and scope
19 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
20 semination of information lawfully obtained under this section.

21 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
22 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
23 provide services, be employed or be granted a license, certification, registration or permit on the
24 basis of information obtained as the result of a criminal records check conducted pursuant to this
25 section. Challenges to the accuracy or completeness of information provided by the Department of
26 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
27 partment of State Police or Federal Bureau of Investigation must be made through the Department
28 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
29 case process required by this paragraph.

30 (b) A subject individual who is employed by an authorized agency and who is determined not to
31 be fit for a position on the basis of information obtained as the result of a criminal records check
32 conducted pursuant to this section may appeal the determination through the contested case process
33 adopted under this subsection or applicable personnel rules, policies and collective bargaining pro-
34 visions. An individual's decision to appeal a determination through personnel rules, policies and
35 collective bargaining provisions is an election of remedies as to the rights of the individual with
36 respect to the fitness determination and is a waiver of the contested case process.

37 (15) Criminal offender information is confidential. Authorized agencies and the Department of
38 State Police shall adopt rules to restrict dissemination of information received under this section to
39 persons with a demonstrated and legitimate need to know the information.

40 (16) If a subject individual refuses to consent to the criminal records check or refuses to be
41 fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or deny
42 any applicable position, authority to provide services, license, certification, registration or permit.

43 (17) If an authorized agency requires a criminal records check of employees, prospective em-
44 ployees, contractors, vendors or volunteers or applicants for a license, certification, registration or
45 permit, the application forms of the authorized agency must contain a notice that the person is

1 subject to fingerprinting and a criminal records check.

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