

D R A F T

SUMMARY

Requires Department of State Police to establish program through which department retains fingerprint cards or creates facsimiles of fingerprints received from Federal Bureau of Investigation or created during state criminal records check for purpose of notifying authorized agencies or districts that subscribe to program of receipt of fingerprints or other identifying information by department for purposes related to administration of criminal justice.

A BILL FOR AN ACT

Relating to retention of fingerprint information; creating new provisions; amending ORS 181.533, 181.534, 181.880, 267.237, 480.235, 703.090 and 703.425.

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

SECTION 1. (1) The Department of State Police shall establish a program through which the department retains fingerprint cards or creates facsimiles of fingerprints received from the Federal Bureau of Investigation or created during a state criminal records check under ORS 181.533, 181.534, 181.537 or 267.237 for the purpose of making notifications described in subsection (3) of this section.

(2) When the department receives forms containing a person's fingerprints and other identifying information under ORS 181.511 or for any other purpose related to the administration of criminal justice, the department shall determine whether the person was the subject of a criminal records check conducted by the department under ORS 181.533, 181.534, 181.537 or 267.237.

(3) If an authorized agency, as defined in ORS 181.534, or a district,

as defined in ORS 267.237, subscribes to the program established by the department under this section, the department shall notify the authorized agency or the district when the department receives information described in subsection (2) of this section that is related to a subject individual, as defined in ORS 181.534 or 267.237, on whom the department conducted a criminal records check for the subscribing agency or district.

(4) Information retained under this section is exempt from public disclosure under ORS 192.410 to 192.505, and the department may not otherwise disclose the information.

(5) The department:

(a) Shall adopt rules for the administration of this section; and

(b) May adopt a fee that an authorized agency or district must pay to subscribe to the program.

SECTION 2. ORS 181.533 is amended to read:

181.533. (1) As used in this section:

(a) "Authorized agency" means the Department of State Police or other governmental agency designated by the State of Oregon to report, receive or disseminate criminal offender information.

(b) "Qualified entity" means a business or organization that:

(A) Provides care or placement services, or licenses or certifies others to provide care or placement services, for children, elderly persons or dependent persons;

(B) Is not governed by a state regulatory or licensing agency; and

(C) Has been determined by an authorized agency to meet the criteria established by the authorized agency by rule under subsection (9) of this section.

(c) "Subject individual" means a person who is employed or seeks to be employed by a qualified entity or who is providing services or seeks to provide services to a qualified entity on a contractual or volunteer basis.

(2) An entity may request from an authorized agency a criminal records

1 check for purposes of evaluating the fitness of a subject individual as an
2 employee, contractor or volunteer. The authorized agency may access state
3 and federal criminal records under this subsection only through use of the
4 subject individual's fingerprints.

5 (3) Before an authorized agency may conduct a criminal records check
6 under this section:

7 (a) The authorized agency must determine whether the entity requesting
8 the criminal records check is a qualified entity;

9 (b) The qualified entity must establish criteria to be used by the author-
10 ized agency in reviewing the criminal offender information for a final record
11 check determination;

12 (c) The qualified entity must provide the criteria established under para-
13 graph (b) of this subsection to the authorized agency; and

14 (d) The qualified entity must have informed the subject individual that
15 the qualified entity might request a fingerprint-based criminal records check
16 and that the subject individual may obtain a copy of the record check report
17 from, or challenge the accuracy or completeness of the record check report
18 through, the authorized agency or the Federal Bureau of Investigation.

19 (4)(a) Upon receipt of a subject individual's criminal offender information,
20 the authorized agency shall make a final record check determination by
21 comparing the criminal offender information with the criteria provided to the
22 authorized agency by the qualified entity under subsection (3)(c) of this sec-
23 tion. In making the final record check determination, the authorized agency
24 may consider only information that the Department of State Police may dis-
25 close under ORS 181.560.

26 (b) An authorized agency is immune from civil liability that might oth-
27 erwise be incurred or imposed for making the final record check determi-
28 nation under this subsection.

29 (5) An authorized agency may not transfer a fingerprint card used to
30 conduct the criminal records check unless the public agency or person re-
31 ceiving the fingerprint card agrees to destroy or return the fingerprint card

1 to the authorized agency.

2 (6) **Except as provided in section 1 of this 2013 Act**, if the public
3 agency or person returns a fingerprint card to the authorized agency, the
4 authorized agency:

5 (a) Shall destroy the fingerprint card[. *The authorized agency*]; **and**

6 (b) May not keep a record of the fingerprints.

7 (7) The authorized agency shall permit a subject individual to inspect the
8 individual's Oregon and Federal Bureau of Investigation criminal offender
9 information after positive identification has been established based upon
10 fingerprints.

11 (8) Challenges to the accuracy or completeness of information provided
12 by the authorized agency, the Federal Bureau of Investigation and agencies
13 reporting information to the authorized agency or the federal bureau must
14 be made through the authorized agency or the federal bureau.

15 (9) The authorized agency shall adopt rules to implement this section. The
16 rules may include but are not limited to:

17 (a) Criteria to be used by the authorized agency to determine whether an
18 entity is a qualified entity; and

19 (b) Fees to be charged for conducting criminal records checks under this
20 section in amounts not to exceed the actual costs of acquiring and furnishing
21 criminal offender information.

22 **SECTION 3.** ORS 181.534, as amended by section 18, chapter 70, Oregon
23 Laws 2012, is amended to read:

24 181.534. (1) As used in this section:

25 (a) "Authorized agency" means state government as defined in ORS
26 174.111 and the Oregon State Bar. "Authorized agency" does not include:

27 (A) The Oregon State Lottery Commission or the Oregon State Lottery;
28 or

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

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

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

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

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

(5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the department shall [*destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced*] **retain the fingerprint cards or create facsimiles of the fingerprints for the purpose of making notifications under section 1 of this 2013 Act.**

(6) If only a state criminal records check is conducted, the Department of State Police shall destroy [*the fingerprint cards after the criminal records check is completed and*] the results of the criminal records check provided to the authorized agency [*and shall retain no facsimiles or other material from which a fingerprint can be reproduced*], **except that the department shall retain the fingerprint cards or create facsimiles of the fingerprints for the purpose of making notifications under section 1 of this 2013 Act.**

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

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

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

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

(b) Specifying the information that may be required from a subject individual to permit a criminal records check.

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

(d) Specifying the types of crimes that may be considered in reviewing criminal offender information of a subject individual.

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

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

(A) Determining when and under what conditions a subject individual may be hired on a preliminary basis pending a criminal records check; and

(B) Defining the conditions under which a subject individual may participate in training, orientation and work activities pending completion of a

criminal records check.

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

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

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

(b) An individual prohibited from receiving public funds for employment under ORS 443.004 (3) is not entitled to a determination of fitness as a subject individual under paragraph (a) of this subsection.

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

(a) The nature of the crime;

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

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

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification, registration or permit. Intervening circumstances include but are not limited

to:

(A) The passage of time since the commission of the crime;

(B) The age of the subject individual at the time of the crime;

(C) The likelihood of a repetition of offenses or of the commission of another crime;

(D) The subsequent commission of another relevant crime;

(E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

(F) A recommendation of an employer.

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

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

1 Department of State Police, Federal Bureau of Investigation or reporting
2 agency and not through the contested case process required by this para-
3 graph.

4 (b) A subject individual who is employed by an authorized agency and
5 who is determined not to be fit for a position on the basis of information
6 obtained as the result of a criminal records check conducted pursuant to this
7 section may appeal the determination through the contested case process
8 adopted under this subsection or applicable personnel rules, policies and
9 collective bargaining provisions. An individual's decision to appeal a deter-
10 mination through personnel rules, policies and collective bargaining pro-
11 visions is an election of remedies as to the rights of the individual with
12 respect to the fitness determination and is a waiver of the contested case
13 process.

14 (c) An individual prohibited from receiving public funds for employment
15 under ORS 443.004 (3) is not entitled to appeal a determination under para-
16 graph (a) or (b) of this subsection.

17 (15) Criminal offender information is confidential. Authorized agencies
18 and the Department of State Police shall adopt rules to restrict dissem-
19 ination of information received under this section to persons with a demon-
20 strated and legitimate need to know the information.

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

25 (17) If an authorized agency requires a criminal records check of em-
26 ployees, prospective employees, contractors, vendors or volunteers or appli-
27 cants for a license, certification, registration or permit, the application forms
28 of the authorized agency must contain a notice that the person is subject to
29 fingerprinting and a criminal records check.

30 **SECTION 4.** ORS 267.237 is amended to read:

31 267.237. (1) As used in this section:

1 (a) "District" means a mass transit district organized under ORS 267.010
2 to 267.390 or a transportation district organized under ORS 267.510 to
3 267.650.

4 (b) "Qualified entity" means an individual or business or organization,
5 whether public, private, for-profit, nonprofit or voluntary, that, under con-
6 tract with a district, provides individuals to operate motor vehicles for the
7 transportation of passengers in the public transportation system of the dis-
8 trict.

9 (c) "Subject individual" means a person subject to a criminal records
10 check as specified by resolution of a mass transit district or a transportation
11 district.

12 (2) A mass transit district or a transportation district shall request the
13 Department of State Police to conduct criminal records checks of subject
14 individuals if the checks are required in order to protect vulnerable
15 Oregonians:

16 (a) To implement a federal or state statute, executive order or rule that
17 expressly refers to criminal conduct and contains requirements or exclusions
18 expressly based on such conduct;

19 (b) For district employment purposes when hiring individuals to operate
20 motor vehicles of the district; or

21 (c) For the purposes of employment decisions made by a district for
22 qualified entities that, under contracts with the district, employ individuals
23 to operate motor vehicles for the transportation of passengers in the public
24 transportation system of the district.

25 (3) A mass transit district that has a population of more than 500,000 may
26 request the Department of State Police to conduct a criminal records check
27 of a subject individual who is:

28 (a) Seeking employment by the district in a position that provides the
29 individual with access to critical infrastructure or security sensitive facili-
30 ties or information; or

31 (b) Seeking to provide services to the district that will result in the

1 individual's having access to critical infrastructure or security sensitive fa-
2 cilities or information.

3 (4) In order to determine the suitability of the subject individual, a dis-
4 trict shall require the subject individual to furnish to the district a full set
5 of fingerprints to enable a criminal records check to be conducted. The dis-
6 trict shall submit the completed fingerprint cards to the Department of State
7 Police along with the applicable Oregon and Federal Bureau of Investigation
8 processing fees. If no disqualifying record is identified at the state level, the
9 Department of State Police shall forward the fingerprints to the Federal
10 Bureau of Investigation for a national criminal records check.

11 (5) The Federal Bureau of Investigation shall either return or destroy the
12 fingerprint cards used to conduct the criminal records check and shall not
13 keep any record of the fingerprints. However, if the federal bureau policy
14 authorizing return or destruction of the fingerprint cards is changed, a dis-
15 trict shall cease to cause the cards to be sent to the federal bureau but shall
16 continue to process the information through other available resources.

17 (6) If the Federal Bureau of Investigation returns the fingerprint cards
18 to the Department of State Police, the department shall [*destroy the finger-*
19 *print cards and shall retain no facsimiles or other material from which a fin-*
20 *gerprint can be reproduced*] **retain the fingerprint cards or create**
21 **facsimiles of the fingerprints for the purpose of making notifications**
22 **under section 1 of this 2013 Act.**

23 (7) If only a state criminal records check is conducted, the Department
24 of State Police shall destroy [*the fingerprint cards after the criminal records*
25 *check is completed and*] the results of the criminal records check provided to
26 the district [*and shall retain no facsimiles or other material from which a*
27 *fingerprint can be reproduced*], **except that the department shall retain**
28 **the fingerprint cards or create facsimiles of the fingerprints for the**
29 **purpose of making notifications under section 1 of this 2013 Act.**

30 (8) The district and the Department of State Police shall permit a subject
31 individual to inspect the individual's own Oregon and Federal Bureau of

Investigation criminal offender records after positive fingerprint identification has been made.

(9)(a) A district, using guidelines established by a resolution of the district, shall determine under this section whether a subject individual is fit to operate motor vehicles for the transportation of passengers in the public transportation system of the district or to hold a position or provide services that provide the individual with access to critical infrastructure or security sensitive facilities or information, based on the criminal records check obtained pursuant to this section, any false statements made by the individual regarding the criminal history of the individual and any refusal to submit or consent to a criminal records check including fingerprint identification. If a subject individual is determined to be unfit, then that person shall not be allowed to operate motor vehicles for the transportation of passengers in the public transportation system of the district or to hold the position or provide services that provide the individual with access to critical infrastructure or security sensitive facilities or information.

(b) In making the fitness determination, the district shall consider:

(A) The nature of the crime;

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

(C) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual's present or proposed position or employment; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position or employment. Intervening circumstances include but are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(c) A district and an employee of the district are immune from any civil liability that might otherwise be incurred or imposed for actions taken in

determining pursuant to this subsection that a subject individual is fit or not fit to hold a position or be employed. A district, an employee of the district and an employer or employer's agent who in good faith comply with this section and the decision of the district or employee of the district are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the district's or employee's decision. A district and an employee of the district are immune from any civil liability for the lawful dissemination of information obtained under this section when the disclosure is:

(A) For the purpose of providing notice to the subject individual or the employer of the subject individual of a determination of fitness under this section;

(B) Required by law; or

(C) Necessary to support a claim or defense related to denying employment to the subject individual.

(10) A district shall establish by resolution a process by which a subject individual may appeal the determination that the subject individual is disqualified for a position or employment pursuant to this section. Challenges to the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the department or bureau must be made through the department, bureau or agency and not through the appeal process required by this subsection.

(11) A district shall develop a system that maintains information regarding criminal records checks in order to minimize the administrative burden that criminal records check requirements impose upon subject individuals and providers. Records maintained under this subsection for subject individuals are confidential and may not be disseminated except for the purposes of this section and in accordance with the relevant resolutions of the district. Nothing in this subsection permits a district to retain fingerprint cards of subject individuals.

(12) A district, in consultation with the Department of State Police and affected provider groups, shall adopt resolutions to implement this section and other statutes relating to criminal offender information. The resolutions shall include but need not be limited to:

(a) Specifying which employees are authorized to make criminal record inquiries;

(b) Specifying categories of subject individuals who are subject to criminal records checks;

(c) Specifying the information, including fingerprints, that may be required from a subject individual to permit a criminal records check;

(d) Specifying which services or qualified entities are subject to this section;

(e) Specifying which crimes may be considered in reviewing criminal offender information for a subject individual;

(f) Specifying when a nationwide criminal records check shall be conducted on a subject individual through the Department of State Police. The additional cost of obtaining a nationwide criminal records check and the risk to vulnerable Oregonians should be taken into consideration when enacting resolutions under this subsection;

(g) Specifying when a district, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under this section using the information maintained by the district under subsection (11) of this section; and

(h) Determining when a subject individual may be hired on a probationary basis pending a criminal records check. At a minimum, if there is any indication of criminal behavior by the subject individual, the resolution must require that, if the individual is hired, the individual can be hired only on a probationary basis and must be actively supervised at all times when the individual is in contact with children, the elderly or persons with disabilities.

(13) Criminal offender information is confidential. The Department of

1 State Police shall adopt rules to restrict dissemination of information re-
2 ceived under this section to persons with a demonstrated and legitimate need
3 to know the information. Any district receiving information pursuant to this
4 section is bound by the rules of disclosure adopted by the department.

5 (14) If a subject individual refuses to consent to the criminal records
6 check or refuses to be fingerprinted, the district or qualified entity shall
7 deny or terminate the employment of the individual, or revoke or deny any
8 applicable position, authority to provide services or employment.

9 (15) A district shall define by resolution the conditions under which sub-
10 ject individuals may participate in training, orientation and work activities
11 pending completion of a criminal records check through the Law Enforce-
12 ment Data System or nationwide criminal records check. At a minimum,
13 subject individuals shall be actively supervised at all times that they are in
14 contact with children, the elderly and persons with disabilities during such
15 periods of training, orientation and work. Subject individuals may continue
16 probationary employment while awaiting the nationwide criminal records
17 check as long as the individual's criminal records check through the Law
18 Enforcement Data System did not result in disqualification and there are no
19 other indications of criminal behavior.

20 (16) If a district or a qualified entity requires a criminal records check
21 of employees or other persons, the application forms of the district or qual-
22 ified entity must contain a notice that employment is subject to fingerprint-
23 ing and a criminal records check as required by this section.

24 **SECTION 5.** ORS 181.880 is amended to read:

25 181.880. (1) A license or certificate issued by the Department of Public
26 Safety Standards and Training under ORS 181.878 expires two years follow-
27 ing the date of issuance or on the assigned renewal date.

28 (2) The department shall offer certificates or licenses to private security
29 providers in levels and categories as established by the Board on Public
30 Safety Standards and Training in consultation with the department.

31 (3) Upon receipt of an application for certification under ORS 181.876, the

1 Department of **Public Safety Standards and Training** shall forward a
2 complete set of the applicant's fingerprints to the Department of State Police
3 and request that the Department of State Police conduct a nationwide crim-
4 inal records check of the applicant as provided in ORS 181.534. [*Notwith-*
5 *standing ORS 181.534 (5) and (6), the Department of State Police shall*
6 *maintain in the department's files the fingerprint cards used to conduct the*
7 *criminal records check.*] **The Department of Public Safety Standards and**
8 **Training is not required to subscribe to the program established under**
9 **section 1 of this 2013 Act to receive information related to a criminal**
10 **records check conducted by the Department of State Police under ORS**
11 **181.534.**

12 **SECTION 6.** ORS 480.235 is amended to read:

13 480.235. (1) A certificate of possession shall be issued or denied within 45
14 days after the date of the application or the conclusion of the investigation
15 conducted by the issuing authority pursuant to subsection (2) of this section.

16 (2) The issuing authority shall conduct an investigation to ensure that the
17 applicant meets the requirements listed in ORS 480.225 and 480.230. The is-
18 suing authority shall include fingerprinting and photographic identification
19 in the investigation. The issuing authority may use fingerprints obtained
20 under this subsection for the purpose of requesting a state or nationwide
21 criminal records check under ORS 181.534. Unless the issuing authority finds
22 that the applicant is ineligible under ORS 480.225 or 480.230, the authority
23 shall issue a certificate of possession to the applicant. If the issuing au-
24 thority finds that the applicant is ineligible under ORS 480.225 or 480.230,
25 the authority shall issue a notification of denial. The denial is subject to the
26 provisions of ORS 480.275.

27 (3) A certificate of possession is valid for three years from the date of
28 issuance unless suspended or revoked pursuant to ORS 480.270.

29 (4) A certificate of possession may not be assigned or transferred.

30 (5) The holder of a certificate of possession shall maintain a record of the
31 type and quantity of all explosives possessed during the certificate period.

1 The record shall be made available upon demand of the issuing authority, a
2 magistrate or a law enforcement agency, public fire department or fire pro-
3 tection agency of this state.

4 *[(6) Notwithstanding ORS 181.534 (5) and (6), the Department of State Po-*
5 *lice shall maintain in the department's files fingerprint cards submitted to it*
6 *for purposes of conducting a state or nationwide criminal records check under*
7 *ORS 181.534 on applicants for a certificate of possession.]*

8 **(6) An issuing authority is not required to subscribe to the program**
9 **established under section 1 of this 2013 Act to receive information re-**
10 **lated to a criminal records check conducted by the Department of**
11 **State Police under ORS 181.534.**

12 **SECTION 7.** ORS 703.090, as amended by section 28, chapter 43, Oregon
13 Laws 2012, is amended to read:

14 703.090. (1) All of the following requirements apply to an applicant for a
15 license as a general polygraph examiner. The applicant must:

16 (a) Be at least 18 years of age.

17 (b) Be a citizen of the United States.

18 (c) Not have demonstrated, in the preceding 10 years, a course of behavior
19 that indicates a high degree of probability that the applicant will be unlikely
20 to perform the duties of a polygraph examiner in a manner that would serve
21 the interests of the public.

22 (d) If previously convicted for a criminal offense, provide information, as
23 required by the Department of Public Safety Standards and Training, relat-
24 ing to the circumstances of the conviction. ORS 670.280 is applicable when
25 the department considers information provided under this paragraph.

26 (e)(A) Have received a baccalaureate degree from a college or university
27 that is accredited by the American Association of Collegiate Registrars and
28 Admissions Officers; or

29 (B) Have graduated from high school or have been awarded a General
30 Educational Development (GED) certificate, and have at least five years of
31 active investigative experience before the date of application.

(f) Have graduated from a polygraph examiners course approved by the department and conforming to any minimum training standards approved by the Board on Public Safety Standards and Training and have satisfactorily completed at least 200 examinations, or have worked as a polygraph examiner for a period of at least five years for a governmental agency within the State of Oregon and have satisfactorily completed at least 200 examinations.

(g) Have successfully completed an examination conducted by the department to determine, consistent with any standards approved by the board, competency to act as a polygraph examiner.

(2) An applicant meets the requirements of subsection (1)(e) or (f) of this section if the applicant provides the Department of Public Safety Standards and Training with documentation of military training or experience that the department determines is substantially equivalent to the education or experience required by subsection (1)(e) or (f) of this section.

(3) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Public Safety Standards and Training shall require each applicant to be fingerprinted as part of the licensing procedure.

[(4) Notwithstanding ORS 181.534 (5) and (6), the Department of State Police shall maintain in the department's files fingerprint cards submitted to it for purposes of conducting a state or nationwide criminal records check under ORS 181.534 on applicants for a license as a general polygraph examiner.]

(4) The Department of Public Safety Standards and Training is not required to subscribe to the program established under section 1 of this 2013 Act to receive information related to a criminal records check conducted by the Department of State Police under ORS 181.534.

(5) When the Department of Public Safety Standards and Training refuses to issue a license based upon an applicant's failure to meet the requirements of subsection (1)(c) of this section, the department shall prepare a concise, specific written statement of the facts supporting the department's conclusion that there is a high degree of probability that the applicant will be

1 unlikely to perform required duties in a manner that would serve the inter-
2 ests of the public. A copy of the statement must be given to the applicant.

3 **SECTION 8.** ORS 703.425 is amended to read:

4 703.425. (1) An application for a private investigator's license or a provi-
5 sional investigator's license must be in writing on a form prescribed by the
6 Department of Public Safety Standards and Training, stating the applicant's:

- 7 (a) Legal name;
- 8 (b) Birthdate;
- 9 (c) Citizenship;
- 10 (d) Physical description;
- 11 (e) Current residence;
- 12 (f) Residence for the preceding 10 years;
- 13 (g) Current employment;
- 14 (h) Employment for the preceding 10 years;
- 15 (i) Experience qualifications;
- 16 (j) Education;
- 17 (k) Business address, which may be a post office box; and
- 18 (L) Any other information required by the department.

19 (2) The application must be accompanied by:

20 (a) The application fee as prescribed by the Board on Public Safety
21 Standards and Training by rule;

22 (b) Recent photographs of the applicant as prescribed by the board by rule
23 to be used for an identification card and for the files of the department;

24 (c) Complete sets of the applicant's fingerprints as prescribed by the board
25 by rule;

26 (d) Three professional references, none of which may be from a person
27 who is related to the applicant by blood or marriage;

28 (e) Proof of a corporate surety bond, an irrevocable letter of credit issued
29 by an insured institution as defined in ORS 706.008 or such other security
30 as the department may prescribe by rule in the sum of at least \$5,000, or
31 errors and omissions insurance in the sum of at least \$5,000; and

1 (f) Proof of a passing score on the test of investigator competency adopted
2 by the board and administered by the department.

3 (3) All applicants must disclose any acts constituting grounds for denial
4 of an investigator's license and must notify the department if the applicant
5 is charged with a criminal offense. The department shall conduct a special
6 review of any applicant making a disclosure under this subsection.

7 (4) The Department of Public Safety Standards and Training shall forward
8 a complete set of an applicant's fingerprints to the Department of State Po-
9 lice and shall request that the Department of State Police conduct criminal
10 records checks as provided in ORS 181.534. [*Notwithstanding ORS 181.534 (5)*
11 *and (6), the Department of State Police shall maintain in its files the finger-*
12 *print cards used to conduct the state criminal records check.*] **The Depart-**
13 **ment of Public Safety Standards and Training is not required to**
14 **subscribe to the program established under section 1 of this 2013 Act**
15 **to receive information related to a criminal records check conducted**
16 **by the Department of State Police under ORS 181.534.**

17 (5) Employees of or partners in a firm who are covered by the firm's er-
18 rors and omissions insurance meet the requirements of subsection (2)(e) of
19 this section as long as the coverage is at least \$5,000 per investigator.