

HOUSE AMENDMENTS TO A-ENGROSSED SENATE BILL 725

By COMMITTEE ON JUDICIARY

May 28

- 1 On page 1 of the printed A-engrossed bill, line 2, delete “, 181A.200,”.
- 2 In line 3, delete “181A.400, 181A.875,” and insert “and” and delete “703.090 and” and after
3 “2009” insert “; and prescribing an effective date”.
- 4 Delete lines 5 through 25 and delete pages 2 through 6.
- 5 On page 7, delete lines 1 through 11 and insert:
- 6 **“SECTION 1.** ORS 181A.195 is amended to read:
- 7 “181A.195. (1) As used in this section:
- 8 “(a) ‘Authorized agency’ means state government as defined in ORS 174.111 and the Oregon
9 State Bar. ‘Authorized agency’ does not include:
- 10 “(A) The Oregon State Lottery Commission or the Oregon State Lottery; or
11 “(B) A criminal justice agency, as defined in ORS 181A.010, that is authorized by federal law to
12 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.
- 13 “(b) ‘Subject individual’ means a person from whom an authorized agency may require finger-
14 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
15 nationwide criminal records check.
- 16 “(2) An authorized agency may request that the Department of State Police conduct a criminal
17 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
18 records check of a subject individual is necessary, the authorized agency may request that the De-
19 partment of State Police conduct the check, including fingerprint identification, through the Federal
20 Bureau of Investigation.
- 21 “(3) The Department of State Police shall provide the results of a criminal records check con-
22 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.
- 23 “(4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
24 conduct the criminal records check and may not keep any record of the fingerprints, except that the
25 Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for
26 purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction
27 of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to
28 the federal bureau but shall continue to process the information through other available resources.
- 29 “(5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
30 State Police, the Department of State Police shall destroy the fingerprint cards and may not retain
31 facsimiles or other material from which a fingerprint can be reproduced, except that the Department
32 of State Police may retain the fingerprint cards or create facsimiles for the purpose of providing
33 information under ORS 181A.205.
- 34 “(6) If only a state criminal records check is conducted, after the criminal records check is
35 completed, the Department of State Police shall destroy the fingerprint cards and the results of the

1 criminal records check provided to the authorized agency and may not retain facsimiles or other
2 material from which a fingerprint can be reproduced, except that the Department of State Police
3 may retain the fingerprint cards and results or create facsimiles for the purpose of providing infor-
4 mation under ORS 181A.205.

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

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

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

15 “(a) Identifying applicable categories of subject individuals as specified by the Oregon Depart-
16 ment of Administrative Services under ORS 181A.215 who are subject to criminal records checks
17 by the authorized agency.

18 “(b) Identifying applicable information that may be required from a subject individual to permit
19 a criminal records check as specified by the Oregon Department of Administrative Services under
20 ORS 181A.215.

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

22 “(d) 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, ori-
26 entation and work activities pending completion of a criminal records check.

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

29 “(10)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223, 443.735,
30 475B.785 to 475B.949 and 703.090 and paragraph (d) of this subsection, an authorized agency, using
31 the rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall
32 determine whether a subject individual is fit to hold a position, provide services, be employed or be
33 granted a license, certification, registration or permit. If a subject individual is determined to be
34 unfit, then the individual may not hold the position, provide services, be employed or be granted a
35 license, certification, registration or permit.

36 “(b)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness
37 determination of an individual under this subsection may request results of a previously made fitness
38 determination from an authorized agency that has already made a fitness determination for the in-
39 dividual. An authorized agency that receives a request under this paragraph shall provide the re-
40 quested information.

41 “(B) An authorized agency may make a request under this paragraph only for individuals:

42 “(i) Who are applying to hold a position, provide services, be employed or be granted a license,
43 certification, registration or permit;

44 “(ii) Who are in a category of individuals as specified by the Oregon Department of Adminis-
45 trative Services by rule under ORS 181A.215; and

1 “(iii) For whom a fitness determination has already been made.

2 “(c) Except as otherwise provided in ORS 181A.400, in making the fitness determination under
3 this subsection, the authorized agency shall consider:

4 “(A) The nature of the crime;

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

7 “(C) The relevancy, if any, of the crime or the false statement to the specific requirements of
8 the subject individual’s present or proposed position, services, employment, license, certification or
9 registration; and

10 “(D) Intervening circumstances relevant to the responsibilities and circumstances of the posi-
11 tion, services, employment, license, certification, registration or permit, such as:

12 “(i) The passage of time since the commission of the crime;

13 “(ii) The age of the subject individual at the time of the crime;

14 “(iii) The likelihood of a repetition of offenses or of the commission of another crime;

15 “(iv) The subsequent commission of another relevant crime;

16 “(v) Whether the conviction was set aside and the legal effect of setting aside the conviction;
17 and

18 “(vi) The recommendation of an employer.

19 “(d) *[An individual prohibited from receiving public funds for employment under ORS 443.004 (3)*
20 *is not entitled to a determination of fitness as a subject individual under this subsection]* **A subject**
21 **individual is not entitled to a fitness determination under this subsection if the subject in-**
22 **dividual:**

23 “(A) **Is or seeks to be employed in any capacity having contact with a recipient of support**
24 **services or a resident of a residential facility or adult foster home, as provided in ORS 443.004**
25 **(3), and has been convicted of any crime listed in ORS 443.004 (3) or (5).**

26 “(B) **Is prohibited by federal law from holding a position, providing services, being em-**
27 **ployed or being granted a license, certification, registration or permit for which the fitness**
28 **determination is requested by an authorized agency.**

29 “(11)(a) **In conducting a fitness determination regarding a subject individual other than**
30 **an individual described in paragraph (b) of this subsection, the Department of Human Ser-**
31 **vices or the Oregon Health Authority may not consider:**

32 “(A) **A conviction that is more than 10 years old unless the conviction is for a crime**
33 **listed in ORS 443.004 (3) or (5);**

34 “(B) **A charge or arrest for which there was no conviction unless the charge or arrest**
35 **is for a crime listed in ORS 443.004 (3) or (5);**

36 “(C) **A conviction on a charge relating to marijuana if the charge is no longer a criminal**
37 **offense;**

38 “(D) **A conviction under ORS 813.010, if the subject individual had no more than one**
39 **conviction under ORS 813.010 in the five-year period prior to the date of the criminal records**
40 **check;**

41 “(E) **A deferred sentence, conditional discharge or participation in a diversion program**
42 **for any crime unless the crime is listed in ORS 443.004 (3) and (5); and**

43 “(F) **A pending indictment for a crime unless the crime is listed in ORS 443.004 (3) or (5).**

44 “(b) **The department or the authority may consider a charge, arrest, conviction, deferred**
45 **sentence, conditional discharge, participation in a diversion program or pending indictment**

1 that may not be considered under paragraph (a) of this subsection in making a fitness de-
2 termination for a subject individual who is:

3 “(A) Described in ORS 418.016;

4 “(B) An employee, volunteer, contractor or provider in, or an agent of, a proctor foster
5 home as defined in ORS 418.205 or a child-caring agency as defined in ORS 418.205;

6 “(C) An exempt family child care provider, as defined in ORS 329A.430, the provider’s
7 household members who are 16 years of age or older or a frequent visitor of a provider who
8 is subject to a criminal records check;

9 “(D) An employee or volunteer in a facility that:

10 “(i) Provides care to children and is operated by a school district, as defined in ORS
11 332.002, a political subdivision of this state, a preschool recorded program, as defined in ORS
12 329A.250, or a government agency; and

13 “(ii) Is not required to be certified under ORS 329A.280; or

14 “(E) An emergency medical services provider, as defined in ORS 682.025, for the purpose
15 of determining the fitness of the emergency medical services provider to receive or hold a
16 license under ORS 670.280.

17 “[11] (12) Criminal offender information is confidential. Authorized agencies and the Depart-
18 ment of State Police shall adopt rules to restrict dissemination of information received under this
19 section to persons with a demonstrated and legitimate need to know the information.

20 “[12] (13) If a subject individual refuses to consent to the criminal records check or refuses to
21 be fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or
22 deny any applicable position, authority to provide services, license, certification, registration or
23 permit.

24 “[13] (14) If an authorized agency requires a criminal records check of employees, prospective
25 employees, contractors, vendors or volunteers or applicants for a license, certification, registration
26 or permit, the application forms of the authorized agency must contain a notice that the person is
27 subject to fingerprinting and a criminal records check.”.

28 In line 12, delete “3” and insert “2”.

29 On page 8, line 27, restore the bracketed material and delete the boldfaced material.

30 On page 9, line 2, delete “4” and insert “3”.

31 On page 10, line 18, restore the bracketed material and delete the boldfaced material.

32 In line 39, delete “5” and insert “4”.

33 Delete line 45 and delete pages 11 through 13 and insert:

34 “**SECTION 5. This 2019 Act takes effect on the 91st day after the date on which the 2019**
35 **regular session of the Eightieth Legislative Assembly adjourns sine die.**”.