

SENATE AMENDMENTS TO SENATE BILL 725

By COMMITTEE ON JUDICIARY

April 24

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the line and delete line 3
2 and insert “181A.195, 181A.200, 181A.400, 181A.875, 443.004 and 703.090 and section 42, chapter 837,
3 Oregon Laws 2009.”.

4 Delete lines 5 through 30 and delete page 2.

5 On page 3, delete lines 1 through 10 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 subject individual is not entitled to a fitness determination under subsection (11)**
30 **of this section, and the subject individual may not hold a position, provide services, be em-**
31 **ployed or be granted a license, certification, registration or permit, in the following circum-**
32 **stances:**

33 “(a) **A person who has been convicted for any crime listed in ORS 443.004 (3) or (5) may**
34 **not be employed in any capacity having contact with a recipient of support services or a**
35 **resident of a residential facility or adult foster home as provided in ORS 443.004 (1).**

36 “(b)(A) **A person with a conviction described in subparagraph (C) of this paragraph may**
37 **not be approved, licensed, certified, employed or hold a position:**

38 “(i) **Described in ORS 418.016; or**

39 “(ii) **In a child-caring agency, as defined in ORS 418.205.**

40 “(B) **A person with a conviction described in subparagraph (C) of this paragraph, or who**
41 **has a household member with a conviction described in subparagraph (C) of this paragraph,**
42 **may not be approved, licensed, certified, employed or hold a position:**

43 “(i) **As a proctor foster parent; or**

44 “(ii) **As an adoptive parent.**

45 “(C) **Paragraph (b) of this subsection applies to:**

1 “(i) A felony conviction involving child abuse or neglect or any other crime against a
2 child, spousal abuse or a crime involving violence, including rape, sexual assault or homicide
3 but excluding physical assault or battery.

4 “(ii) A felony conviction, within five years of the date of the request for a criminal re-
5 cords check, involving physical assault or battery.

6 “[(10)(a)] (11)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223,
7 443.735, 475B.785 to 475B.949 and 703.090 and [paragraph (d) of this subsection] **subsection (10) of**
8 **this section**, an authorized agency, using the rules adopted by the Oregon Department of Adminis-
9 trative Services under ORS 181A.215, shall determine whether a subject individual is fit to hold a
10 position, provide services, be employed or be granted a license, certification, registration or permit.
11 If a subject individual is determined to be unfit, then the individual may not hold the position, pro-
12 vide services, be employed or be granted a license, certification, registration or permit.

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

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

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

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

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

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

26 “(A) The nature of the crime;

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

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

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

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

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

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

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

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

40 “(vi) The recommendation of an employer.

41 “[(d) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
42 is not entitled to a determination of fitness as a subject individual under this subsection.]

43 “(d) **In making the fitness determination under this subsection, the authorized agency**
44 **may not consider:**

45 “(A) **Convictions that are more than 10 years old, except as provided in subsection (10)**

1 of this section;

2 **“(B) Charges or arrests for which there was no conviction, unless the subject individual**
3 **is an individual described in ORS 443.004 (1) and the charge or arrest was for a crime listed**
4 **in ORS 443.004 (3) or (5);**

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

7 **“(D) A conviction under ORS 813.010, if the conviction occurred more than five years**
8 **prior to the date of the criminal records check;**

9 **“(E) A deferred sentence, conditional discharge or participation in a diversion program**
10 **for any crime, except as provided in subsection (10) of this section; or**

11 **“(F) A pending indictment for a crime, unless the subject individual is an individual de-**
12 **scribed in ORS 443.004 (1) and the pending indictment is for a crime listed in ORS 443.004 (3)**
13 **or (5).**

14 “[11] (12) Criminal offender information is confidential. Authorized agencies and the Depart-
15 ment of State Police shall adopt rules to restrict dissemination of information received under this
16 section to persons with a demonstrated and legitimate need to know the information.

17 “[12] (13) If a subject individual refuses to consent to the criminal records check or refuses to
18 be fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or
19 deny any applicable position, authority to provide services, license, certification, registration or
20 permit.

21 “[13] (14) If an authorized agency requires a criminal records check of employees, prospective
22 employees, contractors, vendors or volunteers or applicants for a license, certification, registration
23 or permit, the application forms of the authorized agency must contain a notice that the person is
24 subject to fingerprinting and a criminal records check.”.

25 On page 5, line 36, after “(1)” insert “(a)”.

26 In line 37, delete the boldfaced material.

27 In line 38, delete “(a)” and insert “(A)”.

28 In line 39, delete “(b)” and insert “(B)”.

29 In line 42, delete “(c)” and insert “(C)”.

30 After line 43, insert:

31 “(b) The department or the authority shall complete the criminal records check under paragraph
32 (a) of this subsection not more than once during a two-year period unless the department or the
33 authority:

34 “(A) Receives credible evidence of a new criminal conviction;

35 “(B) Receives credible evidence to substantiate a complaint of abuse or neglect;

36 “(C) Is required by federal law to conduct more frequent criminal records checks; or

37 “(D) Is notified that a subject individual has changed positions or duties for which there are
38 different criminal records check requirements.”.

39 On page 6, line 42, delete “(10)” and insert “(11)”.

40 On page 7, line 19, after “(1)” insert “(a)”.

41 In line 20, delete the boldfaced material.

42 In line 21, delete “(a)” and insert “(A)”.

43 In line 22, delete “(b)” and insert “(B)”.

44 In line 25, delete “(c)” and insert “(C)”.

45 After line 26, insert:

1 “(b) The department or the authority shall complete the criminal records check under paragraph
2 (a) of this subsection not more than once during a two-year period unless the department or the
3 authority:

4 “(A) Receives credible evidence of a new criminal conviction;

5 “(B) Receives credible evidence to substantiate a complaint of abuse or neglect;

6 “(C) Is required by federal law to conduct more frequent criminal records checks; or

7 “(D) Is notified that a subject individual has changed positions or duties for which there are
8 different criminal records check requirements.”.

9 On page 8, line 25, delete “(10)” and insert “(11)”.

10 On page 9, after line 6, insert:

11 “**SECTION 6.** ORS 181A.400 is amended to read:

12 “181A.400. (1) For the purpose of requesting a state or nationwide criminal records check under
13 ORS 181A.195, the Department of Public Safety Standards and Training may require the fingerprints
14 of a person who:

15 “(a) Is employed or applying for employment by the department;

16 “(b) Provides services or seeks to provide services to the department as a contractor, vendor
17 or volunteer; or

18 “(c) Is applying to be certified as a public safety officer, is applying to be reissued certification
19 as a public safety officer or is an applicant or public safety officer who is under investigation by the
20 department.

21 “(2) Notwithstanding ORS 181A.195 (5) and (6), the Department of State Police shall maintain
22 in the department’s files the fingerprint cards used to conduct a criminal records check on persons
23 described in subsection (1)(c) of this section.

24 “(3) ORS 181A.195 [(10)] (11) does not apply to the Department of Public Safety Standards and
25 Training when the department makes denial or revocation decisions regarding persons described in
26 subsection (1)(c) of this section.

27 “(4) The department and an employee of the department acting within the course and scope of
28 employment are immune from any civil liability that might otherwise be incurred or imposed for
29 making denial or revocation decisions regarding persons described in subsection (1)(c) of this sec-
30 tion. The department, an employee of the department acting within the course and scope of em-
31 ployment and an employer or employer’s agent who in good faith comply with the requirements of
32 ORS 181A.640, any rules adopted by the department and the decision of the department or employee
33 of the department acting within the course and scope of employment are not liable for
34 employment-related decisions based on decisions made under ORS 181A.640. The department or an
35 employee of the department acting within the course and scope of employment is not liable for
36 defamation or invasion of privacy in connection with the lawful dissemination of information law-
37 fully obtained under ORS 181A.195.

38 “**SECTION 7.** ORS 181A.875 is amended to read:

39 “181A.875. (1) A license or certificate issued by the Department of Public Safety Standards and
40 Training under ORS 181A.870 expires two years following the date of issuance or on the assigned
41 renewal date.

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

45 “(3) Upon receipt of an application for certification or licensure under ORS 181A.860, the de-

1 partment shall forward a complete set of the applicant's fingerprints to the Department of State
2 Police and request that the Department of State Police conduct a nationwide criminal records check
3 of the applicant as provided in ORS 181A.195.

4 "(4) ORS 181A.195 [(10)] (11) does not apply to the Department of Public Safety Standards and
5 Training when the department makes a denial or revocation decision as a result of information re-
6 ceived pursuant to subsection (3) this section.

7 "(5) The department and an employee of the department acting within the course and scope of
8 employment are immune from any civil liability that might otherwise be incurred or imposed for
9 making a denial or revocation decision regarding an applicant pursuant to subsection (3) of this
10 section. The department, an employee of the department acting within the course and scope of em-
11 ployment and an employer or employer's agent who in good faith comply with the requirements of
12 ORS 181A.855 or 181A.860, any rules adopted by the department and the decision of the department
13 or employee of the department acting within the course and scope of employment are not liable for
14 employment-related decisions based on decisions made under ORS 181A.855 or 181A.860. The de-
15 partment or an employee of the department acting within the course and scope of employment is
16 not liable for defamation or invasion of privacy in connection with the lawful dissemination of in-
17 formation lawfully obtained under ORS 181A.195.

18 "**SECTION 8.** ORS 703.090 is amended to read:

19 "703.090. (1) All of the following requirements apply to an applicant for a license as a general
20 polygraph examiner. The applicant must:

21 "(a) Be at least 18 years of age.

22 "(b) Be a citizen of the United States.

23 "(c) Not have demonstrated, in the preceding 10 years, a course of behavior that indicates a high
24 degree of probability that the applicant will be unlikely to perform the duties of a polygraph exam-
25 iner in a manner that would serve the interests of the public.

26 "(d) If previously convicted for a criminal offense, provide information, as required by the De-
27 partment of Public Safety Standards and Training, relating to the circumstances of the conviction.
28 ORS 670.280 is applicable when the department considers information provided under this paragraph.

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

31 "(B) Have graduated from high school or have been awarded a certificate for passing an ap-
32 proved high school equivalency test such as the General Educational Development (GED) test, and
33 have at least five years of active investigative experience before the date of application.

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

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

41 "(2) An applicant meets the requirements of subsection (1)(e) or (f) of this section if the applicant
42 provides the department with documentation of military training or experience that the department
43 determines is substantially equivalent to the education or experience required by subsection (1)(e)
44 or (f) of this section.

45 "(3) For the purpose of requesting a state or nationwide criminal records check under ORS

1 181A.195, the department shall require each applicant to be fingerprinted as part of the licensing
2 procedure.

3 “(4) When the department refuses to issue a license based upon an applicant’s failure to meet
4 the requirements of subsection (1)(c) of this section, the department shall prepare a concise, specific
5 written statement of the facts supporting the department’s conclusion that there is a high degree
6 of probability that the applicant will be unlikely to perform required duties in a manner that would
7 serve the interests of the public. A copy of the statement must be given to the applicant. ORS
8 181A.195 [(10)] (11) does not apply to the department when the department refuses to issue a license
9 under this subsection.

10 “(5) The department and an employee of the department acting within the course and scope of
11 employment are immune from any civil liability that might otherwise be incurred or imposed for
12 refusing to issue a license under subsection (4) of this section. The department, an employee of the
13 department acting within the course and scope of employment and an employer or employer’s agent
14 who in good faith comply with the requirements of this section, any rules adopted by the department
15 and the decision of the department or employee of the department acting within the course and
16 scope of employment are not liable for employment-related decisions based on decisions made under
17 this section. The department or an employee of the department acting within the course and scope
18 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
19 semination of information lawfully obtained under ORS 181A.195.”.

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