

Enrolled
House Bill 2936

Sponsored by Representative BYNUM, Senator MANNING JR; Representatives ALONSO LEON, CAMPOŠ, DEXTER, GRAYBER, KOTEK, KROPF, MARSH, NOBLE, NOSSE, PHAM, POWER, PRUSAK, REYNOLDS, RUIZ, SANCHEZ, SCHOUTEN, SOLLMAN, VALDERRAMA, Senators FREDERICK, RILEY (Presession filed.)

CHAPTER

AN ACT

Relating to law enforcement officers; creating new provisions; and amending ORS 659A.330.

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

SECTION 1. Sections 2 to 4 of this 2021 Act are added to and made a part of ORS 181A.355 to 181A.670.

SECTION 2. The Legislative Assembly finds that:

- (1) Racism has no place in public safety.
- (2) Law enforcement officers hold a unique position in our community and must demonstrate principles of equity, transparency, honesty and trust with all members of society.
- (3) Membership or participation in hate groups, racial supremacist organizations or militant groups erodes public trust in law enforcement officers and community safety.
- (4) Participation in racist organizations and displays of symbols of racism or racial supremacy are at odds with the position of trust and authority law enforcement officers occupy in our community.

SECTION 3. The Department of Public Safety Standards and Training shall create a uniform background checklist and a standardized personal history questionnaire for use by law enforcement units in hiring applicants to be public safety officers. The checklist must include a description of the law enforcement unit’s investigation of the applicant, including but not limited to:

- (1) Information about a psychiatric or psychological evaluation of the applicant, including the evaluator’s name and license number and an assessment of the applicant’s tendencies, feelings and opinions toward diverse cultures, races and ethnicities and differing social, political, economic and life statuses;
- (2) Investigation of the applicant’s finances; and
- (3) Identification of at least three references provided by the applicant that are interviewed by the law enforcement unit.

SECTION 4. A law enforcement unit that employs police officers or reserve officers shall adopt policies that set standards for speech and expression by officers in and outside the course and scope of employment. The policies must apply to all forms of speech and expression, including but not limited to film, video, print media, public and private speech and use of Internet services including but not limited to electronic mail, file transfer, remote computer access, news services, social networking, social media, instant messaging, blogs,

forums and video and other file-sharing sites. The policies may not violate the constitutional rights to free speech and expression.

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

(a) "Employment information" means written information in connection with job applications, performance evaluations, attendance records, disciplinary actions, eligibility for re-hire and other information relevant to the performance of a public safety officer.

(b) "Law enforcement unit" has the meaning given that term in ORS 181A.355.

(c) "Public safety officer" has the meaning given that term in ORS 181A.355.

(2) When an employer receives a request for employment information from a law enforcement unit for the purpose of hiring an applicant to be a public safety officer, the employer shall provide the employment information to the law enforcement unit if:

(a) The request is made in writing; and

(b) The request is accompanied by a notarized authorization by the applicant releasing the employer of liability.

(3) An employer may charge reasonable fees to cover actual costs incurred in disclosing employment information under this section.

(4) An employer is not subject to civil liability arising out of the disclosure of employment information under this section.

(5) A law enforcement unit may bring an action for an injunction in circuit court to compel an employer to disclose employment information under this section.

(6) Employment information disclosed to a law enforcement unit under this section is confidential as provided in ORS 192.355 (4) and may not be further disclosed by the law enforcement unit, except to another law enforcement unit conducting a background check for the purpose of hiring the applicant. A law enforcement unit that receives employment information from another law enforcement unit under this subsection may use the information only for investigative leads and shall independently verify the information.

SECTION 6. ORS 659A.330 is amended to read:

659A.330. (1) It is an unlawful employment practice for an employer to:

(a) Require or request an employee or an applicant for employment to establish or maintain a personal social media account, or to disclose or to provide access through the employee's or applicant's user name and password, password or other means of authentication that provides access to a personal social media account;

(b) Require an employee or an applicant for employment to authorize the employer to advertise on the personal social media account of the employee or applicant;

(c) Compel an employee or applicant for employment to add the employer or an employment agency to the employee's or applicant's list of contacts associated with a social media website;

(d) Except as provided in subsection (4)(b) of this section, compel an employee or applicant for employment to access a personal social media account in the presence of the employer and in a manner that enables the employer to view the contents of the personal social media account that are visible only when the personal social media account is accessed by the account holder's user name and password, password or other means of authentication;

(e) Take, or threaten to take, any action to discharge, discipline or otherwise penalize an employee for the employee's refusal to:

(A) Establish or maintain a personal social media account;

(B) Disclose, or provide access through, the employee's user name and password, password or other means of authentication that is associated with a personal social media account;

(C) Add the employer to the employee's list of contacts associated with a social media website;

or

(D) Access a personal social media account as described in paragraph (d) of this subsection; or

(f) Fail or refuse to hire an applicant for employment because the applicant refused to:

(A) Establish or maintain a personal social media account;

(B) Disclose, or provide access through, the applicant's user name and password, password or other means of authentication that is associated with a personal social media account;

(C) Add the employer to the applicant's list of contacts associated with a social media website; or

(D) Access a personal social media account as described in paragraph (d) of this subsection.

(2) An employer may require an employee to disclose any user name and password, password or other means for accessing an account provided by, or on behalf of, the employer or to be used on behalf of the employer.

(3) An employer may not be held liable for the failure to request or require an employee or applicant to disclose the information specified in subsection (1)(a) of this section.

(4) Nothing in this section prevents an employer from:

(a) Conducting an investigation, without requiring an employee to provide a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, for the purpose of ensuring compliance with applicable laws, regulatory requirements or prohibitions against work-related employee misconduct based on receipt by the employer of specific information about activity of the employee on a personal online account or service.

(b) Conducting an investigation permitted under this subsection that requires an employee, without providing a user name and password, password or other means of authentication that provides access to a personal social media account of the employee, to share content that has been reported to the employer that is necessary for the employer to make a factual determination about the matter.

(c) Complying with state and federal laws, rules and regulations and the rules of self-regulatory organizations.

(5) Nothing in this section prohibits an employer from accessing information available to the public about the employee or applicant that is accessible through an online account.

(6) If an employer inadvertently receives the user name and password, password or other means of authentication that provides access to a personal social media account of an employee through the use of an electronic device or program that monitors usage of the employer's network or employer-provided devices, the employer is not liable for having the information but may not use the information to access the personal social media account of the employee.

(7) This section does not apply to an employer that is a law enforcement unit as defined in ORS 181A.355.

[(7)] (8) As used in this section:

(a) "Personal social media account" means a social media account that is used by an employee or applicant for employment exclusively for personal purposes unrelated to any business purpose of the employer or prospective employer and that is not provided by or paid for by the employer or prospective employer.

(b) "Social media" means an electronic medium that allows users to create, share and view user-generated content, including, but not limited to, uploading or downloading videos, still photographs, blogs, video blogs, podcasts, instant messages, electronic mail or Internet website profiles or locations.

SECTION 7. A law enforcement unit may not be required to use the uniform background checklist and standardized personal history questionnaire developed under section 3 of this 2021 Act for purposes of hiring corrections officers until July 1, 2023.

Passed by House April 26, 2021

Repassed by House June 7, 2021

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Timothy G. Sekerak, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate June 3, 2021

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Peter Courtney, President of Senate

Received by Governor:

.....M.,....., 2021

Approved:

.....M.,....., 2021

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Kate Brown, Governor

Filed in Office of Secretary of State:

.....M.,....., 2021

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Shemia Fagan, Secretary of State