

HB 2936-2
(LC 949)
3/15/21 (MNJ/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Janelle Bynum)

**PROPOSED AMENDMENTS TO
HOUSE BILL 2936**

1 On page 1 of the printed bill, line 2, before the period insert “; creating
2 new provisions; and amending ORS 181A.485 and 659A.330 and section 4,
3 chapter 7, Oregon Laws 2020 (first special session)”.

4 Delete lines 4 through 27 and delete page 2 and insert:

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

7 **“SECTION 2. The Legislative Assembly finds that:**

8 **“(1) Racism has no place in public safety.**

9 **“(2) Law enforcement officers hold a unique position in our com-
10 munity and must demonstrate principles of equity, transparency,
11 honesty and trust with all members of society.**

12 **“(3) Membership or participation in hate groups, white supremacist
13 organizations or militant groups erodes public trust in law enforce-
14 ment officers and community safety.**

15 **“(4) Participation in racist organizations and displays of symbols
16 of racism or white supremacy are at odds with the position of trust
17 and authority law enforcement officers occupy in our community.**

18 **“SECTION 3. (1) As used in this section:**

19 **“(a) ‘Hate group’ means an organization advocating or inciting,
20 based on the perception of another person’s or group’s race, color,
21 religion, gender identity, sexual orientation, disability, or national or-**

1 **igin:**

2 **“(A) Offensive physical contact with the other person or group;**

3 **“(B) Interference with the property of the other person or group;**

4 **“(C) Subjecting the other person or a member of the other person’s**
5 **family to alarm by threatening to inflict serious physical injury on the**
6 **person;**

7 **“(D) Commission of a felony affecting the person or group; or**

8 **“(E) Threatening to cause substantial damage to the property of the**
9 **other person or group.**

10 **“(b)(A) ‘Militant group’ means an organization or group of people**
11 **that:**

12 **“(i) Attempts or advocates for insurrection or the overthrow of a**
13 **public body through use of force; or**

14 **“(ii) Uses threats of physical force or intimidation to enforce com-**
15 **pliance with laws without lawful authority to do so.**

16 **“(B) ‘Militant group’ does not include individuals serving in the**
17 **organized militia of this state as described in ORS 396.105, individuals**
18 **participating in historical reenactments or individuals following lawful**
19 **directions of law enforcement officers or effecting lawful citizen ar-**
20 **rests.**

21 **“(c) ‘White supremacist’ means a person or group that believes that**
22 **white people are inherently superior to people of other races or**
23 **ethnicity.**

24 **“(2) A police officer, certified reserve officer or reserve officer may**
25 **not participate, whether on or off duty and whether in or out of uni-**
26 **form, in any activity or organization that demonstrates racial bias or**
27 **erodes public trust in law enforcement officers and community safety,**
28 **including but not limited to:**

29 **“(a) Participation or membership in white supremacist organiza-**
30 **tions or other organizations that promote racism or white supremacy;**

1 **“(b) Participation or membership in hate groups or organizations**
2 **supporting hate speech or bias crimes;**

3 **“(c) Participation or membership in militant groups; or**

4 **“(d) Display or wearing of racist, white supremacist or militant**
5 **group patches, insignia or tattoos.**

6 **“(3) The Department of Public Safety Standards and Training shall**
7 **adopt rules implementing this section.**

8 **“(4) The department shall include instruction on this section and**
9 **the rules adopted under this section in the first week of minimum**
10 **training required for basic certification as a police officer under ORS**
11 **181A.490.**

12 **“SECTION 4. (1) As used in this section, ‘law enforcement agency’**
13 **has the meaning given that term in ORS 181A.775.**

14 **“(2) The Department of Public Safety Standards and Training shall**
15 **adopt minimum requirements for investigations performed by law**
16 **enforcement agencies in hiring applicants for police officer and reserve**
17 **officer positions. The rules must require, but need not be limited to:**

18 **“(a) A racial bias and sympathy test.**

19 **“(b) The psychological evaluation required under ORS 181A.485.**

20 **“(c) Investigation into the applicant’s previous employment, as set**
21 **forth in section 4, chapter 7, Oregon Laws 2020 (first special session).**

22 **“(d) A list of commendations or awards granted to the applicant.**

23 **“(3) The department shall adopt rules establishing a standardized**
24 **background check form that law enforcement agencies may use in**
25 **hiring applicants for police officer and reserve officer positions. The**
26 **form must include, but need not be limited to:**

27 **“(a) Identifying information about the applicant.**

28 **“(b) A number generated by the department to identify the appli-**
29 **cant.**

30 **“(c) The results of the racial bias and sympathy test.**

1 “(d) The results of the psychological evaluation required under ORS
2 181A.485.

3 “(e) Information obtained in the investigation into the applicant’s
4 previous employment, as set forth in section 4, chapter 7, Oregon Laws
5 2020 (first special session).

6 “(f) A list of commendations or awards granted to the applicant.

7 “(g) A release from the applicant allowing the background check
8 information to be shared with other law enforcement agencies.

9 “(4) The department shall establish and maintain a statewide online
10 database that identifies the existence of background checks of appli-
11 cants for police officer and reserve officer positions. The database
12 must be accessible to law enforcement agencies and must be
13 searchable by applicant name and by an identification number as-
14 signed by the department.

15 “(5) A law enforcement agency shall notify the department within
16 72 hours after:

17 “(a) Completing a background check on an applicant for a police
18 officer or reserve officer position.

19 “(b) Closing a background check on an applicant for a police officer
20 or reserve officer position before the background check is complete.

21 “(6) A law enforcement agency shall provide completed or closed
22 background check information for an applicant to another law
23 enforcement agency upon request.

24 “(7)(a) A law enforcement agency that receives background check
25 information under subsection (6) of this section is immune from civil
26 liability for any harm to an applicant arising from relying on back-
27 ground check information received under subsection (6) of this section.

28 “(b) A law enforcement agency that provides background check in-
29 formation under subsection (6) of this section is immune from civil
30 liability for any harm arising from providing background check infor-

1 **mation under subsection (6) of this section.**

2 **“(c) This subsection does not limit the liability of a law enforcement**
3 **agency for negligent hiring.**

4 **“(d) An employer relationship is not created by creation or main-**
5 **tenance of the database and the department is immune from civil li-**
6 **ability for harm based on hiring determinations resulting from**
7 **background check records.**

8 **“SECTION 5.** Section 4, chapter 7, Oregon Laws 2020 (first special ses-
9 sion) is amended to read:

10 **“Sec. 4. (1) As used in this section:**

11 **“(a) ‘Employment information’ includes written information in**
12 **connection with job applications, performance evaluations, attendance**
13 **records, disciplinary actions, eligibility for rehire and other informa-**
14 **tion relevant to the performance of the applicant, except information**
15 **prohibited from disclosure by any other state or federal law or regu-**
16 **lation.**

17 **“[(a)] (b) ‘Law enforcement agency’ has the meaning given that term in**
18 **ORS 181A.775.**

19 **“[(b)] (c) ‘Law enforcement personnel records’ means the entire person-**
20 **nel file of a police officer or reserve officer, including but not limited to**
21 **records of complaints and disciplinary action against the officer.**

22 **“(2)(a) Before extending an offer of employment to an applicant for a**
23 **police officer or reserve officer position, a law enforcement agency shall re-**
24 **quest and review the applicant’s law enforcement personnel records from**
25 **all law enforcement agencies in any jurisdiction at which the applicant was**
26 **formerly employed.**

27 **“[(3)] (b) A law enforcement agency shall provide the law enforcement**
28 **personnel records of a police officer or reserve officer who was employed by**
29 **the law enforcement agency at any time to another law enforcement agency**
30 **that requests the records for review under subsection (2) of this section.**

1 **“(3)(a) Before extending an offer of employment for a police officer**
2 **or reserve officer position to an applicant who has never been em-**
3 **ployed by a law enforcement agency, a law enforcement agency shall**
4 **request and review the applicant’s employment information from each**
5 **former employer of the applicant. Each request for employment in-**
6 **formation must be:**

7 **“(A) In writing;**

8 **“(B) Accompanied by a signed authorization by the applicant re-**
9 **leasing the employer of liability; and**

10 **“(C) Presented to the employer by an authorized representative of**
11 **the law enforcement agency.**

12 **“(b) An employer may charge reasonable fees to cover actual costs**
13 **incurred in copying and furnishing documents to law enforcement**
14 **agencies as required by this section.**

15 **“(4) A law enforcement agency shall retain the law enforcement per-**
16 **sonnel records of a police officer or reserve officer employed by the agency**
17 **for at least 10 years after the officer leaves employment with the agency.**

18 **“(5) Except as provided in this subsection, employment information**
19 **disclosed by an employer to an initial requesting law enforcement**
20 **agency is confidential and not subject to disclosure under ORS 192.311**
21 **to 192.478. The initial requesting law enforcement agency may disclose**
22 **employment information to another law enforcement agency that is**
23 **also conducting a background investigation into an applicant for em-**
24 **ployment with the agency. If employment information is disclosed to**
25 **another law enforcement agency under this subsection, the receiving**
26 **agency shall use the information for investigative leads only and the**
27 **agency shall independently verify the employment information.**

28 **“[(5)(a)] (6)(a) A law enforcement agency that complies with subsection**
29 **(2) or (3) of this section is immune from civil liability for any harm arising**
30 **from relying on law enforcement personnel records or employment in-**

1 **formation** received under subsection (2) **or** (3) of this section.

2 “(b) A law enforcement agency **or employer** that complies with sub-
3 section (2) **or** (3) of this section is immune from civil liability for any harm
4 arising from providing **law enforcement** personnel records **or employment**
5 **information** under subsection (2) **or** (3) of this section.

6 “(c) This subsection does not limit the liability of a law enforcement
7 agency that fails to request, provide or retain records as required by sub-
8 sections (2) to (4) of this section.

9 “(d) This subsection does not limit the liability of a law enforcement
10 agency for negligent hiring.

11 **“SECTION 6.** ORS 181A.485 is amended to read:

12 “181A.485. (1) As used in this section:

13 “(a) ‘Law enforcement agency’ means a public body, as defined in ORS
14 174.109, that employs law enforcement officers to enforce criminal laws.

15 “(b) ‘Law enforcement officer’ means a police officer, reserve officer or
16 certified reserve officer, as those terms are defined in ORS 181A.355.

17 “(2) A law enforcement agency may not employ a person as a law
18 enforcement officer unless the person has completed a psychological screen-
19 ing to determine the person’s fitness to serve as a law enforcement officer.

20 “(3) The psychological screening required by subsection (2) of this section
21 must be conducted by a licensed mental health professional who meets the
22 qualifications and training requirements established by the Board on Public
23 Safety Standards and Training by rule.

24 “(4) The board shall establish by rule:

25 “(a) The qualifications and training necessary for a licensed mental
26 health professional to conduct a psychological screening under this section,
27 **which must include training on detecting implicit and explicit bias and**
28 **sympathies;** and

29 “(b) Standards and procedures for conducting a psychological screening
30 under this section.

1 “(5) The board shall adopt rules requiring a law enforcement agency
2 to use more than one licensed mental health professional or entity to
3 conduct psychological screenings required under this section.

4 “**SECTION 7.** ORS 659A.330 is amended to read:

5 “659A.330. (1) It is an unlawful employment practice for an employer to:

6 “(a) Require or request an employee or an applicant for employment to
7 establish or maintain a personal social media account, or to disclose or to
8 provide access through the employee’s or applicant’s user name and pass-
9 word, password or other means of authentication that provides access to a
10 personal social media account;

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

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

17 “(d) Except as provided in [*subsection (4)(b)*] **subsections (4)(b) and (7)**
18 of this section, compel an employee or applicant for employment to access
19 a personal social media account in the presence of the employer and in a
20 manner that enables the employer to view the contents of the personal social
21 media account that are visible only when the personal social media account
22 is accessed by the account holder’s user name and password, password or
23 other means of authentication;

24 “(e) Take, or threaten to take, any action to discharge, discipline or oth-
25 erwise penalize an employee for the employee’s refusal to:

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

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

30 “(C) Add the employer to the employee’s list of contacts associated with

1 a social media website; or

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

4 “(f) **Except as provided in subsection (7) of this section**, fail or refuse
5 to hire an applicant for employment because the applicant refused to:

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

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

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

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

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

17 “(3) An employer may not be held liable for the failure to request or re-
18 quire an employee or applicant to disclose the information specified in sub-
19 section (1)(a) of this section.

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

21 “(a) Conducting an investigation, without requiring an employee to pro-
22 vide a user name and password, password or other means of authentication
23 that provides access to a personal social media account of the employee, for
24 the purpose of ensuring compliance with applicable laws, regulatory re-
25 quirements or prohibitions against work-related employee misconduct based
26 on receipt by the employer of specific information about activity of the em-
27 ployee on a personal online account or service.

28 “(b) Conducting an investigation permitted under this subsection that re-
29 quires an employee, without providing a user name and password, password
30 or other means of authentication that provides access to a personal social

1 media account of the employee, to share content that has been reported to
2 the employer that is necessary for the employer to make a factual determi-
3 nation about the matter.

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

6 “(5) Nothing in this section prohibits an employer from accessing infor-
7 mation available to the public about the employee or applicant that is ac-
8 cessible through an online account.

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

16 “(7) **A law enforcement agency conducting a background check as**
17 **provided in section 4 of this 2021 Act may require an applicant for a**
18 **police officer or reserve officer position to disclose the existence of and**
19 **content of all personal social media accounts.**

20 “[7] (8) As used in this section:

21 “(a) ‘Personal social media account’ means a social media account that
22 is used by an employee or applicant for employment exclusively for personal
23 purposes unrelated to any business purpose of the employer or prospective
24 employer and that is not provided by or paid for by the employer or pro-
25 spective employer.

26 “(b) ‘Social media’ means an electronic medium that allows users to cre-
27 ate, share and view user-generated content, including, but not limited to,
28 uploading or downloading videos, still photographs, blogs, video blogs,
29 podcasts, instant messages, electronic mail or Internet website profiles or
30 locations.”.

