

FISCAL IMPACT OF PROPOSED LEGISLATION**Measure: SB 1512**81st Oregon Legislative Assembly – 2022 Regular Session
Legislative Fiscal Office***Only Impacts on Original or Engrossed
Versions are Considered Official***

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Measure Description:

Specifies conditions under which licensing board, commission or agency may suspend or deny occupational or professional license on basis of applicant's or licensee's criminal history, moral character or similar qualification.

Government Unit(s) Affected:

Statewide, Cities, Counties, School Districts, Community Colleges, Public Universities, Oregon Judicial Department (OJD), Department of Justice (DOJ), Oregon Youth Authority (OYA)

Summary of Fiscal Impact:

Costs related to the measure are indeterminate at this time - See explanatory analysis.

Analysis:

Senate Bill 1512 changes how licensing authorities are permitted to consider the criminal history of an applicant for an occupational or professional license. With some exceptions, the measure states that a license may not be denied, suspended, or revoked based on a criminal conviction that is not substantially related to the specific duties and responsibilities that the license requires. Licensing authorities may impose discipline based on conduct that is substantially related to the fitness of an applicant to engage in the licensed activity, but they may not deny licensure for conduct outside of the licensed activity. Licensing authorities are prohibited from denying an occupational or professional license if an arrest does not result in a conviction (unless charges are pending), the applicant was adjudicated in the jurisdiction of a juvenile court (unless a law explicitly authorizes the denial), or a conviction was pardoned, sealed, or set aside.

A person who has been convicted of a crime may petition a licensing authority for a pre-determination whether the conviction will prevent them from receiving an occupational or professional license, for which the licensing authority may charge a reasonable fee. Before making a final pre-determination that a criminal conviction will result in a denial of the license, a licensing authority must notify the petitioner in writing of the specific conviction that forms a basis for the pre-determination and provide the petitioner an opportunity to submit additional evidence, within 30 days of the notice date, before making a final pre-determination. The licensing authority must issue in writing any final pre-determination that a criminal conviction will result in a denial of a license and must include a notice of the petitioner's right to appeal. Every licensing authority shall include in any application form for a license, and post on its website, a notice providing information about whether a criminal conviction is a possible basis for license denial and the right to a submit a petition for pre-determination before submitting a completed license application.

With some exceptions, the measure prohibits any employer from requiring an applicant for employment, licensing, or admission to answer any questions regarding the existence or contents of a juvenile record, regardless of whether the record has been expunged. The measure also limits disclosure of certain basic information about adjudicated youth in delinquency cases and youth in custody to victims only, rather than the public, and makes disclosure discretionary in some cases and mandatory only for the alleged victim. Subject to limited exceptions, only a juvenile court, county juvenile department or the Oregon Youth Authority may disclose juvenile records.

The measure takes effect on January 1, 2023.

Statewide - Licensing Authorities (Licensing Boards, Commissions, Agencies)

There are significant implementation requirements for all licensing authorities subject to this measure, in preparation for and beginning on its effective date, January 1, 2023. Because there are no funds allocated to licensing authorities subject to the requirements of this measure, agencies themselves must utilize other funds (i.e., licensing-related fee revenues) to implement these mandates. Because all licensing authorities have a mandate to protect the public in their given professional or occupation, licensing authorities already consider an applicant’s criminal history, moral character, and other considerations when making fitness determinations for professional licensure. The measure, however, allows an individual to petition a licensing authority for a pre-determination qualification for licensure “at any time,” with a separate appeal process that appears to be outside the administrative appeal process, as the petition itself is not a denial of licensure, since the individual may not yet satisfy other qualifications for licensure at the time of the petition.

While the measure provides for costs of this new pre-determination petition process to be paid for by a fee, the fiscal impact of this process cannot be fully determined until the process is implemented. The impact will vary from licensing authority to licensing authority, as it will depend on the size of the licensing authority (licensing board, commission, or agency), the complexity of the pre-determination process, and on how many pre-determination qualification petitions each licensing authority receives; this last variable is particularly challenging to estimate. Licensing authorities are likely to incur additional legal expenses, which could be substantial, depending on the size of the agency. There are a significant number of unanswered questions about how this new pre-determination petition process would be applied and how it would change agency processes, including what a licensing authority may consider to be “closely related” to the license duties and responsibilities; whether agency staff or appointed licensing authority members decide the outcome of a pre-determination; what kind of evidence may be gathered for a pre-determination; whether pre-determination petitions and evidence gathered for them are considered public records subject to disclosure upon request; whether pre-determination decisions and appeals fall outside of the Administrative Procedures Act, and if so, the petitioner’s due process rights and the appellate review process; whether convictions in other states may be considered; and to what extent a pre-determination decision is binding on a subsequent application for licensure before a licensing authority.

Answers to the above questions will determine how the process is implemented and the impact to agency procedures, necessary personnel, and finances. For these reasons, the fiscal impact to licensing authorities is indeterminate and could be significant. Licensing authorities may require later budgetary adjustments, including increases in expenditure limitation and approval of new pre-determination processing fees, to implement the measure.

Oregon Judicial Department, Oregon Youth Authority, Department of Justice

The measure is anticipated to have a minimal fiscal impact on the Oregon Judicial Department, Oregon Youth Authority, and the Department of Justice.

Local Government Bodies - Cities, Counties, School Districts, Community Colleges, Public Universities

The measure is anticipated to have no fiscal impact on cities, counties, school districts, community colleges, and public universities.