

FISCAL IMPACT OF PROPOSED LEGISLATION

Measure: SB 1512 - A

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 the conditions under which a licensing board, commission, or agency may suspend or deny an occupational or professional license based on an applicant's or licensee's criminal history, moral character, fitness, or similar qualifications.

Government Unit(s) Affected:

Statewide (Licensing Boards, Commissions, Agencies), 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 A-engrossed changes how a licensing board, commission, or agency (licensing authority) is permitted to consider the criminal history of an applicant for an occupational or professional license. With some exceptions, a licensing authority that is authorized or required to consider the criminal history, moral character, fitness, or similar qualifications of an applicant for a license or a licensee may not deny, suspend, or revoke an occupational or professional license solely because the applicant or licensee has been convicted of a crime or subject to a qualifying juvenile adjudication that does not substantially relate to the specific duties and responsibilities for which the license is required. In making such a determination, the measure directs licensing authorities to consider a list of statutory factors on a case by case basis, including any other considerations the licensing authority deems relevant. Licensing authorities may impose discipline on a licensee based on conduct that is substantially related to the licensee’s fitness to engage in the licensed activity, but they may not deny licensure conduct that is 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 determination whether the conviction will prevent the person from receiving an occupational or professional license, for which the licensing authority may charge a reasonable fee. Before making a final determination that a criminal conviction will result in a denial of the license, a licensing authority must notify the applicant or petitioner in writing of the specific conviction that forms a basis for the determination, the reasons the conviction was substantially related to the specific duties and responsibilities for which the license is required, and provide the petitioner an opportunity to submit additional evidence, within 30 days of the notice date. The licensing authority must issue in writing any final determination that a criminal conviction will result in denial of a license. The written determination must also include a notice of the petitioner or applicant’s right to appeal, notice of the earliest date on which the petitioner or applicant can reapply for a determination or apply for a license. 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, the statutory considerations the licensing must consider, and the right to a submit a petition for determination before submitting a completed license

application. An applicant or petitioner's criminal history that a licensing authority obtains and uses to make a determination is exempt under disclosure under the Oregon Public Records Law.

With some exceptions, the measure prohibits an employer or licensing authority from requiring an applicant for employment, licensing, or admission to answer any questions regarding the existence or contents of a record that was created or maintained under the jurisdiction of a juvenile court. An employer or licensing authority is further prohibited from inquiring about juvenile records in connection with an application for employment, licensing, or admission or from barring, discharging, refusing to hire, or denying, revoking or suspending a license because of the existence of a juvenile record. However, an employer or licensing authority may still obtain an applicant or licensee's juvenile adjudication history if they are required or authorized to consider the applicant or licensee's background. The measure also limits disclosure of certain basic information about a youth in delinquency cases and youths in custody to victims only, rather than the public, and makes disclosure discretionary to and among law enforcement and mandatory only for the alleged victim. Subject to limited exceptions, only a juvenile court, district attorney, 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, Commission, Agencies)

There are significant implementation requirements for all licensing authorities subject to this measure, in preparation for and beginning on its effect 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 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 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 determination process, and on how many 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 determination petition process would be applied and how it would change agency processes, including what a licensing authority may consider to be "substantially related" to the license duties and responsibilities; whether agency staff or appointed licensing authority members decide the outcome of a determination; what kind of evidence may be gathered for a determination; whether determination petitions and evidence gathered for them are considered public records subject to disclosure upon request; whether 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; and whether convictions in other states may be considered; and to what extent a 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, though it could be significant. Licensing authorities may require later budgetary adjustments, including increases in expenditure limitation and approval of new 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.