

Senate Bill 763

Sponsored by COMMITTEE ON JUDICIARY

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Prohibits employer, state agency or licensing board from taking certain actions on basis of record created or maintained under jurisdiction of juvenile court. Specifies exemptions.

Provides that adjudication that youth is within jurisdiction of juvenile court does not forfeit any right or privilege or operate as disqualification from holding public office or pursuing or engaging in lawful activity, occupation, profession or calling.

Provides that information about act committed by youth or adjudicated youth may be disclosed to victim of act and to and among law enforcement unit, district attorney, county juvenile authority and certain other entities.

A BILL FOR AN ACT

1
2 Relating to the effects on adjudicated persons of adjudications for criminal acts; creating new provisions; and amending ORS 419A.255, 419C.400 and 670.290.

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

5 **SECTION 1.** ORS 670.290 is amended to read:

6 670.290. (1) *[It shall be unlawful for any]* **An employer**, state agency or licensing board, including the Oregon State Bar, *[to]* **may not**:

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8 *[(1)]* **(a)** Require *[that]* an applicant for employment, licensing or admission to answer any questions regarding the existence or contents of a *[juvenile]* record that *[has been expunged pursuant to ORS 419A.260 to 419A.271]* **was created or maintained under the jurisdiction of a juvenile court**;

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12 **(b) Inquire in connection with an application for employment, licensing or admission as to the existence or contents of a record that was created or maintained under the jurisdiction of a juvenile court**;

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15 *[(2)]* **(c)** Bar or discharge from employment or refuse to hire or employ *[such]* **an** individual because of the existence or contents of a *[juvenile]* record that *[has been expunged pursuant to ORS 419A.260 to 419A.271]* **was created or maintained under the jurisdiction of a juvenile court**; or

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18 *[(3)]* **(d)** Deny, revoke or suspend a license because of the existence or contents of a *[juvenile]* record that *[has been expunged pursuant to ORS 419A.260 to 419A.271]* **was created or maintained under the jurisdiction of a juvenile court**.

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21 **(2) This section does not apply to or affect:**

22 **(a) An employer, state agency, licensing board or commission that state or federal law explicitly requires or authorizes to consider the juvenile adjudication history of an applicant;**

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24 **(b) An employer's, state agency's, licensing board's or commission's power or duty to view or consider an applicant's or licensee's juvenile adjudication history for the following offenses, if the employer, state agency, licensing board or commission is authorized or required to consider the applicant's or licensee's criminal history, moral character, fitness or similar qualifications:**
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NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 (A) An act that, if committed by an adult, would constitute a crime under ORS 163.107
 2 or 163.115; or

3 (B) An act that the applicant committed between the ages of 16 and 18 that would con-
 4 stitute a crime under ORS 163.185, 163.375, 163.405 or 163.427;

5 (c) A licensing board's, commission's or state agency's power or duty to view or consider
 6 an applicant's criminal history under ORS 443.004;

7 (d) A license the Department of Human Services issues under ORS 443.410 or a license
 8 that the department or the Oregon Health Authority issues under ORS 443.735;

9 (e) Enrollment in the Central Background Registry under ORS 329A.030; or

10 (f) The authority of a law enforcement unit, as defined in ORS 181A.355, or the Depart-
 11 ment of Public Safety Standards and Training, to consider an applicant's criminal history for
 12 the purpose of evaluating the applicant for employment or certification.

13 **SECTION 2.** ORS 419A.255 is amended to read:

14 419A.255. (1)(a) The clerk of the court shall maintain a record of each case and a supplemental
 15 confidential file for each case, except as otherwise provided in ORS 7.120.

16 (b) The record of the case shall be withheld from public inspection but is open to inspection by
 17 the following:

18 (A) The judge of the juvenile court and those acting under the judge's direction;

19 (B) The child;

20 (C) The ward;

21 (D) The youth;

22 (E) The adjudicated youth;

23 (F) The parent or guardian of the child, ward, youth or adjudicated youth;

24 (G) The guardian ad litem for the parent;

25 (H) A person allowed to intervene in a proceeding involving the child, ward, youth or adjudi-
 26 cated youth;

27 (I) The court appointed special advocate, and a representative of a CASA Volunteer Program
 28 as defined in ORS 184.489, when reasonably necessary for the appointment or supervision of court
 29 appointed special advocates;

30 (J) The attorneys or prospective appellate attorneys for any of the persons listed in subpara-
 31 graphs (B) to (I) of this paragraph;

32 (K) The surrogate;

33 (L) Service providers in the case;

34 (M) The district attorney or assistant attorney general representing a party in the case;

35 (N) The juvenile department;

36 (O) The Department of Human Services;

37 (P) The Oregon Youth Authority; and

38 (Q) Any other person or entity allowed by the court pursuant to ORS 419A.258.

39 (c) The following are entitled to copies of the record of the case:

40 (A) The judge of the juvenile court and those acting under the judge's direction;

41 (B) A party to the extent permitted under ORS 419B.875 (2) or 419C.285 (2);

42 (C) A guardian ad litem for a parent to the same extent the parent is permitted to copies under
 43 ORS 419B.875 (2) or 419C.285 (2);

44 (D) Persons listed in paragraph (b)(J) to (P) of this subsection; and

45 (E) Any other person or entity allowed by the court pursuant to ORS 419A.258.

1 (2)(a) Reports and other material relating to the child, ward, youth or adjudicated youth's his-
2 tory and prognosis in the record of the case or the supplemental confidential file are privileged and,
3 except at the request of the child, ward, youth or adjudicated youth, shall be withheld from public
4 inspection except that inspection is permitted as set forth in subsection (1)(b) of this section and
5 paragraph (b) of this subsection. The offer or admission of reports and other material in the record
6 of the case or the supplemental confidential file as exhibits in a hearing or trial does not waive or
7 otherwise change the privileged status of the reports and other material, except for purposes of the
8 hearing or trial in which the reports and other material are offered or admitted. Once offered as
9 an exhibit, reports and other material relating to the child, ward, youth or adjudicated youth's his-
10 tory and prognosis that were maintained in the supplemental confidential file become part of the
11 record of the case but are subject to paragraph (e) of this subsection.

12 (b) A supplemental confidential file is open to inspection by the following:

13 (A) The judge of the juvenile court and those acting under the judge's direction;

14 (B) The parent or guardian of the child or ward in a dependency case;

15 (C) The guardian ad litem for the parent of a child or ward in a dependency case;

16 (D) The parent or guardian of the youth or adjudicated youth in a delinquency case if the youth
17 or adjudicated youth consents to, or the court authorizes, inspection;

18 (E) The guardian ad litem for the parent of a youth or adjudicated youth in a delinquency case
19 if the youth or adjudicated youth consents to, or the court authorizes, inspection;

20 (F) A person allowed to intervene in a proceeding involving the child, ward, youth or adjudi-
21 cated youth;

22 (G) The court appointed special advocate, and a representative of a CASA Volunteer Program
23 as defined in ORS 184.489, when reasonably necessary for the appointment or supervision of court
24 appointed special advocates;

25 (H) The surrogate;

26 (I) Service providers in the case;

27 (J) The attorneys or prospective appellate attorneys for:

28 (i) The child;

29 (ii) The ward;

30 (iii) The youth;

31 (iv) The adjudicated youth;

32 (v) The parent or guardian of the child, ward, youth or adjudicated youth;

33 (vi) The guardian ad litem for the parent;

34 (vii) A person allowed to intervene in a proceeding involving the child or ward in a dependency
35 case; or

36 (viii) The court appointed special advocate and a representative of a CASA Volunteer Program
37 as defined in ORS 184.489;

38 (K) The district attorney or assistant attorney general representing a party in the case;

39 (L) The juvenile department;

40 (M) The Department of Human Services;

41 (N) The Oregon Youth Authority; and

42 (O) Any other person or entity allowed by the court pursuant to ORS 419A.258.

43 (c) The supplemental confidential file in cases under ORS 419C.005 may be disclosed to the su-
44 perintendent of the school district in which the adjudicated youth resides or the superintendent's
45 designee.

1 (d) The following are entitled to copies of material maintained in the supplemental confidential
 2 file:

- 3 (A) The judge of the juvenile court and those acting under the judge's direction;
- 4 (B) Service providers in the case;
- 5 (C) School superintendents and their designees in cases under ORS 419C.005;
- 6 (D) Attorneys designated under subsection (2)(b)(J) of this section;
- 7 (E) The district attorney or assistant attorney general representing a party in the case;
- 8 (F) The juvenile department;
- 9 (G) The Department of Human Services;
- 10 (H) The Oregon Youth Authority;

11 (I) The court appointed special advocate, and a representative of a CASA Volunteer Program
 12 as defined in ORS 184.489, when reasonably necessary for the appointment or supervision of court
 13 appointed special advocates; and

14 (J) Any other person or entity allowed by the court pursuant to ORS 419A.258.

15 (e) A person that obtains copies of material in the supplemental confidential file pursuant to
 16 paragraph (d) of this subsection is responsible for preserving the confidentiality of the material in
 17 the supplemental confidential file. A service provider, school superintendent or superintendent's
 18 designee who obtains copies of such material shall destroy the copies upon the conclusion of in-
 19 volvement in the case.

20 (3) Except as otherwise provided in subsection (5) of this section, no information appearing in
 21 the record of the case or in the supplemental confidential file may be disclosed to any person not
 22 described in subsections (1)(b) and (2)(b) of this section, respectively, without the consent of the
 23 court, except for purposes of evaluating the child, ward, youth or adjudicated youth's eligibility for
 24 special education as provided in ORS chapter 343, and no such information may be used in evidence
 25 in any proceeding to establish criminal or civil liability against the child, ward, youth or adjudicated
 26 youth, whether such proceeding occurs after the child, ward, youth or adjudicated youth has reached
 27 18 years of age or otherwise, except for the following purposes:

28 (a) In connection with a presentence investigation after guilt has been admitted or established
 29 in a criminal court.

30 (b) In connection with a proceeding in another juvenile court concerning the child, ward, youth
 31 or adjudicated youth or an appeal from the juvenile court.

32 (4)(a) When a person described in subsection (1)(b)(M), (N), (O) or (P) of this section inspects or
 33 obtains copies of reports, materials or documents under this subsection or under subsection (1) or
 34 (2) of this section, the person may not use or disclose the reports, materials or documents, except:

- 35 (A) As provided in this subsection or under subsection (1) or (2) of this section;
- 36 (B) In the juvenile court proceeding for which the reports, materials or documents were sought
 37 or disclosed;
- 38 (C) With the consent of the court; or
- 39 (D) As provided in ORS 419A.253.

40 (b) Nothing in this section prohibits the district attorney or assistant attorney general repre-
 41 senting a party in a juvenile court proceeding, the juvenile department, the Department of Human
 42 Services, the Oregon Youth Authority or other parties in the proceeding or their attorneys from
 43 disclosing to each other reports, materials or documents described in subsections (1) and (2) of this
 44 section if the disclosure is reasonably necessary to perform official duties related to the involvement
 45 of the child, ward, youth or adjudicated youth with the juvenile court or the juvenile department.

1 A person to whom reports, materials or documents are disclosed under this subsection is subject to
2 subsection (3) of this section.

3 (5)(a) Information contained in the supplemental confidential file that, in the professional judg-
4 ment of the juvenile counselor, caseworker, school superintendent or superintendent's designee,
5 teacher or detention worker to whom the information in the supplemental confidential file has been
6 provided, indicates a clear and immediate danger to another person or to society shall be disclosed
7 to the appropriate authority and the person who is in danger from the child, ward, youth or adju-
8 dicated youth.

9 (b) A person that discloses information under paragraph (a) of this subsection has immunity from
10 any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclo-
11 sure.

12 (c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040
13 and 419B.045. The disclosure of information under this subsection does not make the information
14 admissible in any court or administrative proceeding if it is not otherwise admissible.

15 (6) Notwithstanding any other provision of law, and subject to subsection (8) of this section, the
16 following [*are not confidential and not exempt from disclosure*] **information may be disclosed to the**
17 **victim of an act committed by a youth or an adjudicated youth, to a law enforcement unit,**
18 **as defined in ORS 181A.355, to a district attorney, to a county juvenile authority or to any**
19 **entity to which records and information may be disclosed under ORS 419A.257 (2), if the**
20 **disclosure is reasonably necessary for the performance of official duties:**

21 (a) The name and date of birth of the youth or adjudicated youth;

22 (b) The basis for the juvenile court's jurisdiction over the youth or adjudicated youth;

23 (c) The date, time and place of any juvenile court proceeding in which the youth or adjudicated
24 youth is involved;

25 (d) The act alleged in the petition that if committed by an adult would constitute a crime if ju-
26 risdiction is based on ORS 419C.005;

27 (e) That portion of the juvenile court order providing for the legal disposition of the youth or
28 adjudicated youth when jurisdiction is based on ORS 419C.005;

29 (f) The names and addresses of the youth or adjudicated youth's parents or guardians; and

30 (g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

31 (7) Notwithstanding any other provision of law, and subject to subsection (8) of this section,
32 when a youth has been taken into custody under ORS 419C.080, the following information [*shall*]
33 **may be disclosed to a law enforcement unit, as defined in ORS 181A.355, to a district attorney**
34 **and by the district attorney to the victim, to a county juvenile authority and to an entity to**
35 **which records and information may be disclosed under ORS 419.257 (2), if the disclosure is**
36 **reasonably necessary for the performance of official duties** [*unless, and only for so long as, there*
37 *is a clear need to delay disclosure in the course of a specific investigation, including the need to protect*
38 *the complaining party or the victim*]:

39 (a) The youth's name and age and whether the youth is employed or in school;

40 (b) The youth offense for which the youth was taken into custody;

41 (c) The name and age of the adult complaining party and the adult victim, unless the disclosure
42 of such information is otherwise prohibited or restricted;

43 (d) The identity of the investigating and arresting agency; and

44 (e) The time and place that the youth was taken into custody and whether there was resistance,
45 pursuit or a weapon used in taking the youth into custody.

1 *[(8) Except as provided in ORS 419A.300 and unless otherwise directed by the court, only the ju-*
 2 *venile court, the county juvenile department and the Oregon Youth Authority may disclose the infor-*
 3 *mation under subsections (6) and (7) of this section if the information is subject to disclosure. The youth*
 4 *authority may disclose only information relating to adjudicated youths committed to the youth authority*
 5 *by order of the juvenile court if the information is subject to disclosure under subsection (6) or (7) of*
 6 *this section.]*

7 **(8)(a) Except as provided in ORS 419A.015, 419A.300 and 419A.305 and unless otherwise**
 8 **directed by the court, only the juvenile court, the district attorney, the county juvenile de-**
 9 **partment and the Oregon Youth Authority may disclose the information listed under sub-**
 10 **sections (6) and (7) of this section if the information is subject to disclosure. The district**
 11 **attorney, county juvenile department and youth authority may disclose to each other infor-**
 12 **mation listed under subsections (6) and (7) of this section. The youth authority may disclose**
 13 **only information relating to adjudicated youths committed to the youth authority by order**
 14 **of the juvenile court if the information is subject to disclosure under subsections (6) and (7)**
 15 **of this section. The district attorney need not disclose information listed under subsections**
 16 **(6) and (7) of this section that is not in the district attorney's possession.**

17 **(b) Notwithstanding any other provision of law, the Oregon Youth Authority may disclose**
 18 **any information the youth authority possesses about an adjudicated youth after receiving**
 19 **written consent for the disclosure from the adjudicated youth.**

20 **(c)(A) An entity permitted to disclose the information described in subsection (6) or (7)**
 21 **of this section may not disclose the information, and a recipient of the disclosure may not**
 22 **use the information, to limit or deny access to employment, licensing, housing or any other**
 23 **right, benefit or opportunity unless the disclosure or use is necessary:**

24 **(i) To perform a legitimate law enforcement function; or**

25 **(ii) To provide services to a juvenile who is under the jurisdiction of a juvenile court.**

26 **(B) Subparagraph (A)(i) of this paragraph does not limit the authority of an entity de-**
 27 **scribed in ORS 670.290 (2) to request or use information about the existence or contents of**
 28 **a record created or maintained under the jurisdiction of a juvenile court for purposes de-**
 29 **scribed in ORS 670.290 (2).**

30 (9) Nothing in this section limits access to any juvenile court records by an appellate court re-
 31 viewing a juvenile court order or judgment. Appellate court rules may establish procedures for ap-
 32 pellate court access to juvenile records.

33 (10) Nothing in this section prohibits the court from providing to the administrator as defined
 34 in ORS 25.010 the date of entry of a judgment terminating parental rights or the date of entry of a
 35 judgment terminating wardship following entry of a judgment of adoption together with the names
 36 and dates of birth of the parents and children subject to the judgment.

37 (11) In addition to any other provision in this section, the Judicial Department may permit
 38 county or statewide access to juvenile court records or information by county juvenile departments,
 39 the Department of Human Services, the Oregon Youth Authority, district attorney offices, the office
 40 of the Attorney General, the office of public defense services, prospective appellate attorneys or
 41 public defense providers subject to the following restrictions:

42 (a) A prospective appellate attorney or public defense provider granted access under this sub-
 43 section must agree, pursuant to a written agreement with the Judicial Department, to access:

44 (A) Party information only for purposes of conflicts screening procedures; and

45 (B) Other records or information about a client only as reasonably necessary for the represen-

1 tation of that client in any juvenile case in which the client is a party, subject to applicable state
2 and federal confidentiality laws.

3 (b) Any other person or entity granted access under this subsection must agree, pursuant to a
4 written agreement with the department, to access records or information only as authorized and
5 allowed by this section, subject to applicable state and federal confidentiality laws.

6 (c) The State Court Administrator shall prescribe standards and procedures to implement the
7 provisions of this subsection.

8 (d) Any person or entity granted access to juvenile court records or information under this
9 subsection must preserve the confidentiality of that information as required under this section.

10 (12) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within
11 the jurisdiction of the court, or a motion requesting an implementation plan other than return of a
12 ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country
13 as provided under ORS 419B.851 (3).

14 (13) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from
15 disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a
16 guardian.

17 (14) The court shall cooperate in the sharing of information with a court in another state to
18 facilitate an interstate placement of a child or ward.

19 (15) Nothing in this section prohibits the Chief Justice of the Supreme Court, the Chief Judge
20 of the Court of Appeals or a presiding judge from permitting access to juvenile court records, in-
21 cluding the record of the case and the supplemental confidential file in a juvenile court proceeding,
22 or audio or video recordings of a juvenile court proceeding, by researchers or evaluators for the
23 purposes of developing statistics and performing analyses or audits on the effectiveness, cost and
24 other areas of public interest regarding juvenile court programs and activities in accordance with
25 child welfare and juvenile justice state plans and programs related to Title IV-B and IV-E of the
26 Social Security Act and to the Child Abuse Prevention and Treatment Act (42 U.S.C. 5101 et seq).
27 The Chief Justice shall, by rule or order, establish standards and guidelines for the release of juve-
28 nile court information for research and evaluation purposes to ensure confidentiality consistent with
29 state and federal law and to promote consistent statewide application of this subsection. Statistics
30 and analyses released by researchers and evaluators under this subsection may not contain any in-
31 formation that identifies any individual person involved in a juvenile court proceeding.

32 (16) Subject to subsection (11) of this section, the office of public defense services shall be per-
33 mitted access to juvenile court records for the purposes of performing the office's duties as set forth
34 in ORS 151.219 to audit or investigate attorney appointment or representation of a party in a juve-
35 nile court proceeding in order to ensure adequate representation of parties in juvenile court pro-
36 ceedings consistent with the child welfare state plan related to Title IV-E of the Social Security Act.

37 (17) Subject to subsection (11) of this section, the Oregon State Bar shall be permitted access
38 to juvenile court records maintained in the record of the case for the purpose of performing the
39 bar's duties as set forth in ORS 9.005 to 9.757 to investigate attorney representation of a party in
40 a juvenile court proceeding and in order to ensure adequate representation of parties in juvenile
41 court proceedings consistent with the child welfare state plan related to Title IV-E of the Social
42 Security Act.

43 (18)(a) A child, ward, youth or adjudicated youth, or the parent or guardian of a child, ward,
44 youth or adjudicated youth who is a party to the juvenile court proceeding, who is entitled to in-
45 spect or copy the record of the case under subsection (1)(b) and (c) of this section maintains the

1 right to inspect or copy the record of the case after jurisdiction of the court over the child, ward,
 2 youth or adjudicated youth terminates and after the child, ward, youth or adjudicated youth has
 3 reached the age of majority.

4 (b) Notwithstanding ORS 419B.524, a parent of a child, ward, youth or adjudicated youth whose
 5 parental rights have been terminated maintains the right that existed under subsection (1)(b) and (c)
 6 of this section to inspect or copy the record of the case as the record of the case existed up until
 7 the time of entry of the judgment terminating the parent's parental rights and may obtain a copy
 8 of the judgment terminating the parent's parental rights.

9 (19) When inspection or copying of the record of the case or of the supplemental confidential file
 10 is allowed pursuant to this section, and unless otherwise required by law, the court that maintains
 11 the record of the case or the supplemental confidential file is not required to redact the names of,
 12 or information about, siblings or other persons contained in the record of the case or the supple-
 13 mental confidential file.

14 (20) Nothing in this section prohibits the court, acting as a certifying agency or official as de-
 15 fined in ORS 147.620, from certifying a request under ORS 147.620 and including in the certification
 16 document any information obtained from the record of the case or the confidential supplemental file
 17 that is necessary to complete the certification.

18 (21) Nothing in this section prohibits a court from providing to the Department of State Police,
 19 pursuant to ORS 163A.030 (11), a copy of an order requiring a youth or adjudicated youth to report
 20 as a sex offender or a copy of a form that documents the youth's or adjudicated youth's obligation
 21 to report as a sex offender.

22 **SECTION 3.** ORS 419C.400 is amended to read:

23 419C.400. (1) The hearing [*shall*] **must** be held by the court without a jury and may be continued
 24 from time to time.

25 (2) The facts alleged in the petition showing the youth to be within the jurisdiction of the court
 26 as provided in ORS 419C.005, unless admitted, must be established beyond a reasonable doubt.

27 (3) If the youth files written notice of intent to rely on the defense set forth in ORS 419C.522,
 28 the youth has the burden of proving the defense by a preponderance of the evidence.

29 (4) For the purpose of determining proper disposition of the youth, testimony, reports or other
 30 material relating to the youth's mental, physical and social history and prognosis may be received
 31 by the court without regard to their competency or relevancy under the rules of evidence.

32 (5)(a) An adjudication by a juvenile court that a youth is within [*its*] **the juvenile court's** ju-
 33 risdiction is not a conviction of a crime or offense. **The adjudication does not find the youth**
 34 **guilty or determine that the youth is a criminal.**

35 (b) **A juvenile court's adjudication that a youth is within the juvenile court's jurisdiction**
 36 **does not forfeit any right or privilege or disqualify any person from holding any public office.**
 37 **Unless a law of this state explicitly authorizes a disqualification, an adjudication in a juvenile**
 38 **court does not disqualify a person from pursuing or engaging in any lawful activity, occupa-**
 39 **tion, profession or calling.**

40 **SECTION 4.** The amendments to ORS 419A.255, 419C.400 and 670.290 by sections 1 to 3
 41 of this 2023 Act become operative on July 1, 2024.