

B-Engrossed
House Bill 4084

Ordered by the House February 27
Including House Amendments dated February 13 and February 27

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Human Services)

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.

Provides that prosecution of certain felonies committed against person 65 years of age or older may be commenced within six years.

Prohibits entry of order setting aside conviction for criminal mistreatment in first or second degree when victim was person 65 years of age or older.

Requires health care provider to permit inspection and copying of protected health information of person who is alleged victim in abuse investigation. **Sunsets June 30, 2015.**

Requires financial institution, upon receipt of [*certification*] **subpoena issued by court or on behalf of grand jury**, to disclose and provide copies of financial records of person who is alleged victim in abuse investigation. **Sunsets June 30, 2015.**

Permits Department of Human Services to make names of witnesses and vulnerable persons, and records and reports compiled in abuse investigations, available to certain entities.

Creates Resident Safety Review Council. Sunsets council on June 30, 2013.

Permits person convicted of certain crimes more than five years before employment to receive public funds in employment where person has contact with vulnerable person.

Clarifies that person whose employment cannot be supported by public funds is not entitled to determination of fitness or right of appeal of determination of unfitness.

Directs Department of Human Services to submit report on statewide call system for reporting abuse of elderly person to appropriate interim committees of Legislative Assembly.

Requires Department of Human Services to, using new or existing materials, develop and implement training for persons investigating abuse and providing care to persons 65 years of age or older.

Re-creates Oregon Elder Abuse Work Group. Sunsets work group on June 30, 2013.

Limits biennial expenditures from fees, moneys or other revenues, including Miscellaneous Receipts, but excluding lottery funds and federal funds, collected or received by Department of Human Services for costs of Resident Safety Review Council.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to vulnerable persons; creating new provisions; amending ORS 124.085, 124.090, 131.125,
3 137.225, 181.534, 181.537, 192.586, 192.600, 192.602, 411.990, 441.671 and 443.004; limiting expen-
4 ditures; and declaring an emergency.

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

6 **NOTE:** Section 1 was deleted by amendment. Subsequent sections were not renumbered.

7 **SECTION 2.** ORS 131.125 is amended to read:

8 131.125. (1) A prosecution for aggravated murder, murder, attempted murder or aggravated
9 murder, conspiracy or solicitation to commit aggravated murder or murder or any degree of
10 manslaughter may be commenced at any time after the commission of the attempt, conspiracy or
11 solicitation to commit aggravated murder or murder, or the death of the person killed.

12 (2) A prosecution for any of the following felonies may be commenced within six years after the
13 commission of the crime or, if the victim at the time of the crime was under 18 years of age, anytime

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 before the victim attains 30 years of age or within 12 years after the offense is reported to a law
2 enforcement agency or the Department of Human Services, whichever occurs first:

- 3 (a) Strangulation under ORS 163.187 (4).
- 4 (b) Criminal mistreatment in the first degree under ORS 163.205.
- 5 (c) Rape in the third degree under ORS 163.355.
- 6 (d) Rape in the second degree under ORS 163.365.
- 7 (e) Rape in the first degree under ORS 163.375.
- 8 (f) Sodomy in the third degree under ORS 163.385.
- 9 (g) Sodomy in the second degree under ORS 163.395.
- 10 (h) Sodomy in the first degree under ORS 163.405.
- 11 (i) Unlawful sexual penetration in the second degree under ORS 163.408.
- 12 (j) Unlawful sexual penetration in the first degree under ORS 163.411.
- 13 (k) Sexual abuse in the second degree under ORS 163.425.
- 14 (L) Sexual abuse in the first degree under ORS 163.427.
- 15 (m) Using a child in a display of sexual conduct under ORS 163.670.
- 16 (n) Encouraging child sexual abuse in the first degree under ORS 163.684.
- 17 (o) Incest under ORS 163.525.
- 18 (p) Promoting prostitution under ORS 167.012.
- 19 (q) Compelling prostitution under ORS 167.017.
- 20 (r) Luring a minor under ORS 167.057.

21 (3) A prosecution for any of the following misdemeanors may be commenced within four years
22 after the commission of the crime or, if the victim at the time of the crime was under 18 years of
23 age, anytime before the victim attains 22 years of age or within four years after the offense is re-
24 ported to a law enforcement agency or the Department of Human Services, whichever occurs first:

- 25 (a) Strangulation under ORS 163.187 (3).
- 26 (b) Sexual abuse in the third degree under ORS 163.415.
- 27 (c) Exhibiting an obscene performance to a minor under ORS 167.075.
- 28 (d) Displaying obscene materials to minors under ORS 167.080.

29 (4) In the case of crimes described in subsection (2)(m) of this section, the victim is the child
30 engaged in sexual conduct. In the case of the crime described in subsection (2)(o) of this section,
31 the victim is the party to the incest other than the party being prosecuted. In the case of crimes
32 described in subsection (2)(p) and (q) of this section, the victim is the child whose acts of
33 prostitution are promoted or compelled.

34 (5) A prosecution for arson in any degree may be commenced within six years after the com-
35 mission of the crime.

36 **(6) A prosecution for any of the following felonies may be commenced within six years**
37 **after the commission of the crime if the victim at the time of the crime was 65 years of age**
38 **or older:**

- 39 **(a) Theft in the first degree under ORS 164.055.**
- 40 **(b) Aggravated theft in the first degree under ORS 164.057.**
- 41 **(c) Theft by extortion under ORS 164.075.**
- 42 **(d) Robbery in the third degree under ORS 164.395.**
- 43 **(e) Robbery in the second degree under ORS 164.405.**
- 44 **(f) Robbery in the first degree under ORS 164.415.**
- 45 **(g) Forgery in the first degree under ORS 165.013.**

1 **(h) Fraudulent use of a credit card under ORS 165.055 (4)(b).**

2 **(i) Identity theft under ORS 165.800.**

3 [(6)] (7) Except as provided in subsection [(7)] (8) of this section or as otherwise expressly pro-
4 vided by law, prosecutions for other offenses must be commenced within the following periods of
5 limitations after their commission:

6 (a) For any other felony, three years.

7 (b) For any misdemeanor, two years.

8 (c) For a violation, six months.

9 [(7)] (8) If the period prescribed in subsection [(6)] (7) of this section has expired, a prosecution
10 nevertheless may be commenced as follows:

11 (a) If the offense has as a material element either fraud or the breach of a fiduciary obligation,
12 prosecution may be commenced within one year after discovery of the offense by an aggrieved party
13 or by a person who has a legal duty to represent an aggrieved party and who is not a party to the
14 offense, but in no case shall the period of limitation otherwise applicable be extended by more than
15 three years;

16 (b) If the offense is based upon misconduct in office by a public officer or employee, prosecution
17 may be commenced at any time while the defendant is in public office or employment or within two
18 years thereafter, but in no case shall the period of limitation otherwise applicable be extended by
19 more than three years; or

20 (c) If the offense is an invasion of personal privacy under ORS 163.700, prosecution may be
21 commenced within one year after discovery of the offense by the person aggrieved by the offense,
22 by a person who has a legal duty to represent the person aggrieved by the offense or by a law
23 enforcement agency, but in no case shall the period of limitation otherwise applicable be extended
24 by more than three years.

25 [(8)] (9) Notwithstanding subsection (2) of this section, if the defendant is identified after the
26 period described in subsection (2) of this section on the basis of DNA (deoxyribonucleic acid) sample
27 comparisons, a prosecution for:

28 (a) Rape in the first degree, sodomy in the first degree, unlawful sexual penetration in the first
29 degree or sexual abuse in the first degree may be commenced at any time after the commission of
30 the crime.

31 (b) Rape in the second degree, sodomy in the second degree or unlawful sexual penetration in
32 the second degree may be commenced within 25 years after the commission of the crime.

33 [(9)] (10) Notwithstanding subsection [(8)] (9) of this section, if a prosecution for a felony listed
34 in subsection [(8)] (9) of this section would otherwise be barred by subsection (2) of this section, the
35 prosecution must be commenced within two years of the DNA-based identification of the defendant.

36 **SECTION 3.** ORS 411.990 is amended to read:

37 411.990. (1) Violation of ORS 411.320 or 411.335 is a Class C misdemeanor.

38 (2) Violation of any provision of ORS 411.630 or 411.840 is a Class C felony which may be re-
39 duced to a Class A misdemeanor in accordance with ORS 161.705.

40 (3) Violation of ORS 411.675 is a Class C felony.

41 (4) Criminal prosecution of violators of ORS 411.675 shall be commenced in accordance with
42 ORS 131.125 [(6) and (7)] (7) and (8).

43 **SECTION 4.** ORS 137.225 is amended to read:

44 137.225. (1)(a) At any time after the lapse of three years from the date of pronouncement of
45 judgment, any defendant who has fully complied with and performed the sentence of the court and

1 whose conviction is described in subsection (5) of this section by motion may apply to the court
2 where the conviction was entered for entry of an order setting aside the conviction; or

3 (b) At any time after the lapse of one year from the date of any arrest, if no accusatory in-
4 strument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested per-
5 son may apply to the court that would have jurisdiction over the crime for which the person was
6 arrested, for entry of an order setting aside the record of the arrest. For the purpose of computing
7 the one-year period, time during which the arrested person has secreted himself or herself within
8 or without this state is not included.

9 (2)(a) A copy of the motion and a full set of the defendant's fingerprints shall be served upon
10 the office of the prosecuting attorney who prosecuted the crime or violation, or who had authority
11 to prosecute the charge if there was no accusatory instrument filed, and opportunity shall be given
12 to contest the motion. The fingerprint card with the notation "motion for setting aside conviction,"
13 or "motion for setting aside arrest record" as the case may be, shall be forwarded to the Department
14 of State Police. Information resulting from the fingerprint search along with the fingerprint card
15 shall be returned to the prosecuting attorney.

16 (b) When a prosecuting attorney is served with a copy of a motion to set aside a conviction
17 under this section, the prosecuting attorney shall provide a copy of the motion and notice of the
18 hearing date to the victim, if any, of the crime by mailing a copy of the motion and notice to the
19 victim's last-known address.

20 (c) When a person makes a motion under subsection (1)(a) of this section, the person must pay
21 a fee of \$80 to the Department of State Police. The person shall attach a certified check payable to
22 the Department of State Police in the amount of \$80 to the fingerprint card that is served upon the
23 prosecuting attorney. The office of the prosecuting attorney shall forward the check with the fin-
24 gerprint card to the Department of State Police.

25 (d) In addition to the fee established under paragraph (c) of this subsection, when a person
26 makes a motion under subsection (1)(a) of this section the person must pay the filing fee established
27 under ORS 21.135.

28 (3) Upon hearing the motion, the court may require the filing of such affidavits and may require
29 the taking of such proofs as the court deems proper. The court shall allow the victim to make a
30 statement at the hearing. Except as otherwise provided in subsection [(13)] (14) of this section, if the
31 court determines that the circumstances and behavior of the applicant from the date of conviction,
32 or from the date of arrest as the case may be, to the date of the hearing on the motion warrant
33 setting aside the conviction, or the arrest record as the case may be, the court shall enter an ap-
34 propriate order that shall state the original arrest charge and the conviction charge, if any and if
35 different from the original, date of charge, submitting agency and disposition. The order shall further
36 state that positive identification has been established by the Department of State Police and further
37 identified as to Department of State Police number or submitting agency number. Upon the entry
38 of the order, the applicant for purposes of the law shall be deemed not to have been previously
39 convicted, or arrested as the case may be, and the court shall issue an order sealing the record of
40 conviction and other official records in the case, including the records of arrest whether or not the
41 arrest resulted in a further criminal proceeding.

42 (4) The clerk of the court shall forward a certified copy of the order to such agencies as directed
43 by the court. A certified copy must be sent to the Department of Corrections when the person has
44 been in the custody of the Department of Corrections. Upon entry of the order, the conviction, ar-
45 rest or other proceeding shall be deemed not to have occurred, and the applicant may answer ac-

1 cordingly any questions relating to its occurrence.

2 (5) The provisions of subsection (1)(a) of this section apply to a conviction of:

3 (a) A Class B felony, except for a violation of ORS 166.429 or any crime classified as a person
4 felony as that term is defined in the rules of the Oregon Criminal Justice Commission.

5 (b) A Class C felony, except for criminal mistreatment in the first degree under ORS 163.205
6 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

7 (c) The crime of possession of the narcotic drug marijuana when that crime was punishable as
8 a felony only.

9 (d) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
10 cept for:

11 (A) Any sex crime; or

12 (B) The following crimes when they would constitute child abuse as defined in ORS 419B.005:

13 (i) Criminal mistreatment in the first degree under ORS 163.205; and

14 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

15 (e) A misdemeanor, including a violation of a municipal ordinance, for which a jail sentence may
16 be imposed, except for endangering the welfare of a minor under ORS 163.575 (1)(a) when it would
17 constitute child abuse as defined in ORS 419B.005 or any sex crime.

18 (f) A violation, whether under state law or local ordinance.

19 (g) An offense committed before January 1, 1972, that if committed after that date would be:

20 (A) A Class C felony, except for any sex crime or for the following crimes when they would
21 constitute child abuse as defined in ORS 419B.005:

22 (i) Criminal mistreatment in the first degree under ORS 163.205; and

23 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

24 (B) A crime punishable as either a felony or a misdemeanor, in the discretion of the court, ex-
25 cept for any sex crime or for the following crimes when they would constitute child abuse as defined
26 in ORS 419B.005:

27 (i) Criminal mistreatment in the first degree under ORS 163.205; and

28 (ii) Endangering the welfare of a minor under ORS 163.575 (1)(a).

29 (C) A misdemeanor, except for endangering the welfare of a minor under ORS 163.575 (1)(a)
30 when it would constitute child abuse as defined in ORS 419B.005 or any sex crime.

31 (D) A violation.

32 (6) Notwithstanding subsection (5) of this section, the provisions of subsection (1) of this section
33 do not apply to:

34 (a) A conviction for a state or municipal traffic offense.

35 (b) A person convicted, within the 10-year period immediately preceding the filing of the motion
36 pursuant to subsection (1) of this section, of any other offense, excluding motor vehicle violations,
37 whether or not the other conviction is for conduct associated with the same criminal episode that
38 caused the arrest or conviction that is sought to be set aside. Notwithstanding subsection (1) of this
39 section, a conviction that has been set aside under this section shall be considered for the purpose
40 of determining whether this paragraph is applicable.

41 (c) A person who at the time the motion authorized by subsection (1) of this section is pending
42 before the court is under charge of commission of any crime.

43 **(7) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of**
44 **this section do not apply to:**

45 **(a) Criminal mistreatment in the second degree under ORS 163.200 if the victim at the**

1 **time of the crime was 65 years of age or older; and**

2 **(b) Criminal mistreatment in the first degree under ORS 163.205 if the victim at the time**
3 **of the crime was 65 years of age or older.**

4 [(7)] (8) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
5 section do not apply to criminally negligent homicide under ORS 163.145, when that offense was
6 punishable as a Class C felony.

7 [(8)] (9) Notwithstanding subsection (5) of this section, the provisions of subsection (1)(a) of this
8 section apply to a conviction for a Class B felony described in subsection (5)(a) of this section only
9 if:

10 (a) Twenty years or more have elapsed from the date of the conviction sought to be set aside
11 or of the release of the person from imprisonment for the conviction sought to be set aside, which-
12 ever is later; and

13 (b) The person has not been convicted of or arrested for any other offense, excluding motor ve-
14 hicle violations, after the date the person was convicted of the offense sought to be set aside.
15 Notwithstanding subsection (1) of this section, a conviction or arrest that has been set aside under
16 this section shall be considered for the purpose of determining whether this paragraph is applicable.

17 [(9)] (10) The provisions of subsection (1)(b) of this section do not apply to:

18 (a) A person arrested within the three-year period immediately preceding the filing of the motion
19 for any offense, excluding motor vehicle violations, and excluding arrests for conduct associated
20 with the same criminal episode that caused the arrest that is sought to be set aside. An arrest that
21 has been set aside under this section may not be considered for the purpose of determining whether
22 this paragraph is applicable.

23 (b) An arrest for driving while under the influence of intoxicants if the charge is dismissed as
24 a result of the person's successful completion of a diversion agreement described in ORS 813.200.

25 [(10)] (11) The provisions of subsection (1) of this section apply to convictions and arrests that
26 occurred before, as well as those that occurred after, September 9, 1971. There is no time limit for
27 making an application.

28 [(11)] (12) For purposes of any civil action in which truth is an element of a claim for relief or
29 affirmative defense, the provisions of subsection (3) of this section providing that the conviction,
30 arrest or other proceeding be deemed not to have occurred do not apply and a party may apply to
31 the court for an order requiring disclosure of the official records in the case as may be necessary
32 in the interest of justice.

33 [(12)] (13) Upon motion of any prosecutor or defendant in a case involving records sealed under
34 this section, supported by affidavit showing good cause, the court with jurisdiction may order the
35 reopening and disclosure of any records sealed under this section for the limited purpose of assisting
36 the investigation of the movant. However, such an order has no other effect on the orders setting
37 aside the conviction or the arrest record.

38 [(13)] (14) Unless the court makes written findings by clear and convincing evidence that
39 granting the motion would not be in the best interests of justice, the court shall grant the motion
40 and enter an order as provided in subsection (3) of this section if the defendant has been convicted
41 of one of the following crimes and is otherwise eligible for relief under this section:

42 (a) Abandonment of a child, ORS 163.535.

43 (b) Attempted assault in the second degree, ORS 163.175.

44 (c) Assault in the third degree, ORS 163.165.

45 (d) Coercion, ORS 163.275.

1 (e) Criminal mistreatment in the first degree, ORS 163.205.

2 (f) Attempted escape in the first degree, ORS 162.165.

3 (g) Incest, ORS 163.525, if the victim was at least 18 years of age.

4 (h) Intimidation in the first degree, ORS 166.165.

5 (i) Attempted kidnapping in the second degree, ORS 163.225.

6 (j) Attempted robbery in the second degree, ORS 164.405.

7 (k) Robbery in the third degree, ORS 164.395.

8 (L) Supplying contraband, ORS 162.185.

9 (m) Unlawful use of a weapon, ORS 166.220.

10 [(14)] (15) As used in this section, "sex crime" has the meaning given that term in ORS 181.594.

11 **SECTION 5.** Section 6 of this 2012 Act is added to and made a part of ORS 124.050 to
12 **124.095.**

13 **SECTION 6.** (1) Upon notice by a law enforcement agency that an investigation into abuse
14 is being conducted under ORS 124.070, and without the consent of the named elderly person
15 or of the named elderly person's caretaker, fiduciary or other legal representative, a health
16 care provider must:

17 (a) Permit the law enforcement agency to inspect and copy, or otherwise obtain, pro-
18 tected health information of the named elderly person; and

19 (b) Upon request of the law enforcement agency, consult with the agency about the pro-
20 tected health information.

21 (2) A health care provider who in good faith discloses protected health information under
22 this section is not civilly or criminally liable under state law for the disclosure.

23 (3) For purposes of this section:

24 (a) "Health care provider" has the meaning given that term in ORS 192.556.

25 (b) "Protected health information" has the meaning given that term in ORS 192.556.

26 **SECTION 7.** Section 8 of this 2012 Act is added to and made a part of ORS 441.630 to
27 **441.680.**

28 **SECTION 8.** (1) Upon notice by a law enforcement agency that an investigation into abuse
29 is being conducted under ORS 441.650, and without the consent of the named resident or of
30 the named resident's caretaker, fiduciary or other legal representative, a health care pro-
31 vider must:

32 (a) Permit the law enforcement agency to inspect and copy, or otherwise obtain, pro-
33 tected health information of the named resident; and

34 (b) Upon request of the law enforcement agency, consult with the agency about the pro-
35 tected health information.

36 (2) A health care provider who in good faith discloses protected health information under
37 this section is not civilly or criminally liable under state law for the disclosure.

38 (3) For purposes of this section:

39 (a) "Health care provider" has the meaning given that term in ORS 192.556.

40 (b) "Protected health information" has the meaning given that term in ORS 192.556.

41 **SECTION 9.** Section 10 of this 2012 Act is added to and made a part of ORS 192.583 to
42 **192.607.**

43 **SECTION 10.** (1) Notwithstanding ORS 192.596, a financial institution shall disclose and
44 provide copies of the financial records of a person who is the alleged victim in an investi-
45 gation under ORS 124.070 or 441.650 in accordance with a subpoena issued by a court or on

1 **behalf of a grand jury under ORS 136.563.**

2 **(2) A subpoena issued under this section shall specify:**

3 **(a) The name and Social Security number of the person about whom financial records are**
4 **sought; and**

5 **(b) That the person about whom financial records are sought is the alleged victim in an**
6 **abuse investigation under ORS 124.070 or 441.650.**

7 **(3) Disclosure and provision of copies under this section shall be made:**

8 **(a) Without the consent of the person who is the alleged victim in the abuse investi-**
9 **gation, or of the person's caretaker, fiduciary or other legal representative; and**

10 **(b) When made under subsection (7)(b) of this section, without the consent of the person**
11 **who is not the alleged victim in the abuse investigation.**

12 **(4) A copy of the subpoena issued under this section may be served upon the person or**
13 **the person's caretaker, fiduciary or other legal representative, in the discretion of the court**
14 **or the district attorney that issued the subpoena.**

15 **(5) Except when specifically directed by the court or district attorney issuing the**
16 **subpoena not to, a financial institution that discloses and provides copies of financial records**
17 **under this section may, but is not required to:**

18 **(a) Inform the person about whom financial records have been sought about the disclo-**
19 **sure; or**

20 **(b) Inform the person's caretaker, fiduciary or other legal representative, about the dis-**
21 **closure.**

22 **(6) A financial institution that provides copies of financial records under this section may**
23 **be reimbursed for costs incurred as provided in ORS 192.602.**

24 **(7)(a) Financial records may be subpoenaed under this section only with respect to a**
25 **person who is the alleged victim of abuse in an investigation under ORS 124.070 or 441.650.**

26 **(b) Notwithstanding paragraph (a) of this subsection, financial records may be**
27 **subpoenaed under this section when the financial records pertain to an account, loan or**
28 **other financial relationship owned, held or maintained by a person who is the alleged victim**
29 **in an abuse investigation under ORS 124.070 or 441.650 together with one or more other**
30 **persons who are not alleged victims in the abuse investigation.**

31 **(8) A financial institution that discloses and provides copies of financial records under**
32 **this section is not liable to any person for any loss, damage or injury arising out of or in any**
33 **way pertaining to the disclosure and provision of the copies.**

34 **SECTION 10a. ORS 192.586 is amended to read:**

35 **192.586. (1) Except as provided in ORS 192.588, 192.591, 192.593, 192.596, 192.598 and 192.603 and**
36 **section 10 of this 2012 Act or as required by ORS 25.643 and 25.646 and the Uniform Disposition**
37 **of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992:**

38 **(a) A financial institution may not provide financial records of a customer to a state or local**
39 **agency.**

40 **(b) A state or local agency may not request or receive from a financial institution financial re-**
41 **ords of customers.**

42 **(2) Subsection (1) of this section does not preclude a financial institution, in the discretion of**
43 **the financial institution, from initiating contact with, and thereafter communicating with and dis-**
44 **closing customer financial records to:**

45 **(a) Appropriate state or local agencies concerning a suspected violation of the law.**

1 (b) The office of the State Treasurer if the records relate to state investments in commercial
2 mortgages involving the customer. The records and the information contained therein are public
3 records but are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in
4 disclosure clearly outweighs the public interest in confidentiality. However, the following records
5 in the office must remain open to public inspection:

6 (A) The contract or promissory note establishing a directly held residential or commercial
7 mortgage and information identifying collateral;

8 (B) Any copy the office retains of the underlying mortgage note in which the office purchases
9 a participation interest; and

10 (C) Information showing that a directly held loan is in default.

11 (c) An appropriate state or local agency in connection with any business relationship or trans-
12 action between the financial institution and the customer, if the disclosure is made in the ordinary
13 course of business of the financial institution and will further the legitimate business interests of
14 the customer or the financial institution.

15 (3) ORS 192.583 to 192.607 do not prohibit any of the following:

16 (a) The dissemination of any financial information that is not identified with, or identifiable as
17 being derived from, the financial records of a particular customer.

18 (b) The examination by, or disclosure to, the Department of Consumer and Business Services of
19 financial records that relate solely to the exercise of the department's supervisory function. The
20 scope of the department's supervisory function shall be determined by reference to statutes that
21 grant authority to examine, audit, or require reports of financial records or financial institutions.

22 (c) The furnishing to the Department of Revenue of information by the financial institution,
23 whether acting as principal or agent, as required by ORS 314.360.

24 (d) Compliance with the provisions of ORS 708A.655 or 723.844.

25 (4) Notwithstanding subsection (1) of this section, a financial institution may:

26 (a) Enter into an agreement with the Oregon State Bar that requires the financial institution
27 to make reports to the Oregon State Bar whenever a properly payable instrument is presented for
28 payment out of an attorney trust account that contains insufficient funds, whether or not the in-
29 strument is honored by the financial institution; and

30 (b) Submit reports to the Oregon State Bar concerning instruments presented for payment out
31 of an attorney trust account under a trust account overdraft notification program established under
32 ORS 9.685.

33 **SECTION 10b.** ORS 192.600 is amended to read:

34 192.600. (1) Nothing in ORS 192.583 to 192.607 shall require a financial institution to inquire or
35 determine that those seeking disclosure have duly complied with the requirements set forth in ORS
36 192.583 to 192.607, provided only that the customer authorization, summons, subpoena or search
37 warrant served upon or delivered to a financial institution pursuant to ORS 192.593, 192.596 or
38 192.598 or **section 10 of this 2012 Act** shows compliance on its face.

39 (2) A financial institution which in good faith reliance refuses to disclose financial records of
40 a customer upon the prohibitions of ORS 192.583 to 192.607, shall not be liable to its customer, to
41 a state or local agency, or to any person for any loss or damage caused in whole or in part by such
42 refusal.

43 (3) Financial institutions shall not be required to notify their customers concerning the receipt
44 by them of requests from state or local agencies for disclosures of financial records of such cus-
45 tomers. However, except as otherwise provided in ORS 192.583 to 192.607, nothing in ORS 192.583

1 to 192.607 shall preclude financial institutions from giving such notice to customers. A court may
2 order a financial institution to withhold notification to a customer of the receipt of a summons,
3 subpoena or search warrant when the court finds that notice to the customer would impede the in-
4 vestigation being conducted by the state or local agency.

5 (4) Financial institutions that participate in a trust account overdraft notification program es-
6 tablished under ORS 9.685 are not liable to a lawyer or law firm on the attorney trust account, to
7 a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole
8 or in part by that participation or arising in any way out of that participation.

9 (5) A financial institution shall not be liable to any person for any loss, damage or injury arising
10 out of or in any way pertaining to the release of information pursuant to ORS 192.586 (2)(a).

11 **SECTION 10c.** ORS 192.602 is amended to read:

12 192.602. (1)(a) A financial institution shall have a reasonable period of time in which to comply
13 with any proper customer authorization, summons, subpoena or search warrant permitting or seek-
14 ing disclosure of financial records. [*For the purposes of this section,*] **Except as provided in para-**
15 **graphs (b) and (c) of this subsection,** a “reasonable period of time” shall in no case be less than
16 10 days from the date upon which the financial institution receives or is served with a customer
17 authorization, summons, subpoena or search warrant.

18 (b) [*However, in all cases in which*] **When** disclosure is sought [*pursuant to*] **under** ORS 192.596,
19 the reasonable period of time shall be not less than 20 days.

20 (c) **When disclosure is sought under section 10 of this 2012 Act, the reasonable period of**
21 **time shall be that period of time required by the circumstances but in no case more than five**
22 **days from the date upon which the financial institution receives or is served with a subpoena**
23 **under section 10 of this 2012 Act.**

24 (2) Before making disclosures, a financial institution may require that the requesting state or
25 local agency reimburse the financial institution for the reasonable costs incurred by the financial
26 institution in the course of compliance. These costs include, but are not limited to, personnel costs,
27 reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

28 (a) Personnel costs, \$30 per hour per person, computed on the basis of \$7.50 per quarter hour
29 or fraction thereof, for time expended by personnel of the financial institution in searching, locating,
30 retrieving, copying and transporting or conveying the requested material to the place of examina-
31 tion.

32 (b) Reproduction costs, \$1 per page, including copies produced by reader and printer repro-
33 duction processes. Photographs, films and other materials shall be reimbursed at actual costs.

34 (c) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel
35 to locate and retrieve the information required or requested and to convey the required or requested
36 material to the place of examination.

37 (3) The provisions of subsection (2) of this section do not apply in the case of records
38 subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under
39 ORS 165.065, forgery under ORS 165.007 and 165.013, theft by deception by means of a bad check
40 under ORS 164.085, fraudulent use of a credit card under ORS 165.055, identity theft under ORS
41 165.800 or racketeering activity under ORS 166.720 or of an offense listed in ORS 137.700.

42 **SECTION 11.** ORS 124.085 is amended to read:

43 124.085. A proper record of complaints made under ORS 124.060 and 124.065 shall be maintained
44 by the Department of Human Services. The department shall prepare reports in writing when in-
45 vestigation has shown that the condition of the elderly person was the result of abuse even if the

1 cause remains unknown. The complaints and investigative reports shall be cataloged under the name
2 of the victim but shall be treated as confidential information **subject to ORS 124.090**, and shall be
3 disclosed only with the consent of that person or by judicial process.

4 **SECTION 12.** ORS 124.090 is amended to read:

5 124.090. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of the public
6 or private official **or any other person** who made the complaint, **the** witnesses and the elderly
7 persons, **and the reports and records** compiled under the provisions of ORS 124.050 to 124.095, are
8 confidential and are not accessible for public inspection. [*However, the Department of Human Ser-*
9 *vices shall make the information and any investigative report available to*]

10 (2) **Notwithstanding subsection (1) of this section, the Department of Human Services or**
11 **the department's designee may, if appropriate, make the names of the witnesses and the el-**
12 **derly persons, and the reports and records compiled under ORS 124.050 to 124.095, available**
13 **to:**

14 (a) [*Any*] **A law enforcement agency**[, *to*];

15 (b) [*Any*] **A public agency that licenses or certifies residential facilities or licenses or certifies**
16 **the persons practicing** [*therein, to*] **in the facilities;**

17 (c) [*Any*] **A public agency or private nonprofit agency or organization** providing protective
18 services for the elderly person [*and to*];

19 (d) **The Long Term Care Ombudsman**[, *if appropriate. The department shall also make the infor-*
20 *mation and any investigative report available to any private nonprofit agency providing protective ser-*
21 *vices for the elderly person. When this information and any investigative report is made available to*
22 *the private agency, ORS 124.050 to 124.095 relating to confidentiality apply to the private agency.*];

23 (e) **A public agency that licenses or certifies a person that has abused or is alleged to**
24 **have abused an elderly person;**

25 (f) **A court pursuant to a court order or as provided in ORS 125.012; and**

26 (g) **An administrative law judge in an administrative proceeding when necessary to pro-**
27 **vide protective services as defined in ORS 410.040 to an elderly person, when in the best in-**
28 **terests of the elderly person or when necessary to investigate, prevent or treat abuse of an**
29 **elderly person.**

30 (3) **Information made available under subsection (2) of this section, and the recipient of**
31 **the information, are otherwise subject to the confidentiality provisions of ORS 124.050 to**
32 **124.095.**

33 **SECTION 13.** ORS 441.671 is amended to read:

34 441.671. (1) Notwithstanding the provisions of ORS 192.410 to 192.505, the names of
35 complainants, **witnesses** and residents, **and the reports and records** compiled under the provisions
36 of ORS [*441.640 to 441.660*] **441.630 to 441.680**, are confidential and are not accessible for public
37 inspection. [*However, the Department of Human Services shall make the information available to any*]

38 (2) **Notwithstanding subsection (1) of this section, the Department of Human Services or**
39 **the department's designee may, if appropriate, make the names of witnesses and residents,**
40 **and the reports and records compiled under ORS 441.630 to 441.680, available to:**

41 (a) **A law enforcement agency**[, *to any*];

42 (b) **A public agency** [*which*] **that** licenses or certifies long term care facilities [*or*];

43 (c) **A public agency that** licenses or certifies the persons practicing the healing arts [*therein*
44 *and to*] **in long term care facilities;**

45 (d) **The Long Term Care Ombudsman**[.];

1 (e) A public agency that licenses or certifies a person that has abused or is alleged to
2 have abused a resident;

3 (f) A court pursuant to a court order or as provided in ORS 125.012; and

4 (g) An administrative law judge in an administrative proceeding when necessary to pro-
5 vide protective services as defined in ORS 410.040 to a resident, when in the best interests
6 of the resident or when necessary to investigate, prevent or treat abuse of a resident.

7 [(2) Except as provided in subsection (1) of this section, the provisions of ORS 192.410 to 192.505
8 apply to all records and reports compiled under ORS 441.640 to 441.665.]

9 (3) Information made available under subsection (2) of this section, and the recipient of
10 the information, are otherwise subject to the confidentiality provisions of ORS 441.630 to
11 441.680.

12 **SECTION 14. (1) The Resident Safety Review Council is created, consisting of six mem-
13 bers as follows:**

14 (a) The Long Term Care Ombudsman;

15 (b) A representative of the Oregon Patient Safety Commission established in ORS 442.820,
16 to be appointed by the commission and to serve as the chairperson of the council;

17 (c) A person with expertise in the area of geriatrics who is licensed, registered or certi-
18 fied to provide care or services to a person 65 years of age or older, to be appointed by the
19 President of the Senate;

20 (d) A representative of the Oregon District Attorneys Association, to be appointed by the
21 Speaker of the House of Representatives;

22 (e) A representative of a Medicare quality improvement organization in Oregon, to be
23 appointed by the Speaker of the House of Representatives; and

24 (f) A representative of the Department of Human Services, to be appointed by the Gov-
25 ernor.

26 (2) All appointments to the council under subsection (1) of this section must be completed
27 on or before the date that is 30 days after the adjournment sine die of the 2012 regular ses-
28 sion of the Seventy-sixth Legislative Assembly.

29 (3) Members of the council shall receive no compensation for their services but shall be
30 allowed actual and necessary travel expenses incurred in the performance of their duties.

31 (4) The council shall:

32 (a) Hold the first meeting of the council no later than May 30, 2012;

33 (b) Review information and reports from investigations of abuse undertaken pursuant to
34 ORS 124.070 or 441.650 that are provided under section 15 of this 2012 Act;

35 (c) Perform a root cause analysis of the information received under paragraph (b) of this
36 subsection to determine whether the occurrences of abuse or alleged abuse should be clas-
37 sified as acts of abuse or as adverse events; and

38 (d) Prepare a report on the review and findings of the council, together with recommen-
39 dations for improvement to the processes of investigation and for corrective actions with
40 respect to occurrences of abuse.

41 (5) The council shall submit the report prepared under subsection (4)(d) of this section,
42 and may include recommendations for legislation, to the committees of the Legislative As-
43 sembly related to the care, protection and provision of services to elderly persons over 65
44 years of age and residents of long term care facilities no later than February 15, 2013.

45 (6) The Oregon Patient Safety Commission shall provide staff support to the council.

1 **SECTION 15.** (1) The Department of Human Services shall provide information and re-
2 ports from investigations of abuse undertaken pursuant to ORS 124.070 or 441.650 to the
3 Resident Safety Review Council created under section 14 of this 2012 Act no later than May
4 1, 2012.

5 (2) Information and reports provided under subsection (1) of this section may not contain
6 or reveal the name of or other identifiable information regarding an alleged victim, a resi-
7 dent or any other person identified in the information or reports.

8 **SECTION 16.** Sections 14 and 15 of this 2012 Act are repealed on June 30, 2013.

9 **SECTION 17.** ORS 443.004 is amended to read:

10 443.004. (1) The Department of Human Services or the Oregon Health Authority shall complete
11 a criminal records check under ORS 181.534 on:

12 (a) An employee of a residential facility or an adult foster home;

13 (b) Any individual who is paid directly or indirectly with public funds who has or will have
14 contact with a recipient of support services or a resident of an adult foster home or a residential
15 facility; and

16 (c) A home care worker registering with the Home Care Commission or renewing a registration
17 with the Home Care Commission.

18 (2)(a) A home health agency shall conduct a criminal background check before hiring or con-
19 tracting with an individual and before allowing an individual to volunteer to provide services on
20 behalf of the home health agency, if the individual will have direct contact with a patient of the
21 home health agency.

22 (b) An in-home care agency shall conduct a criminal background check before hiring or con-
23 tracting with an individual and before allowing an individual to volunteer to provide services on
24 behalf of the in-home care agency, if the individual will have direct contact with a client of the in-
25 home care agency.

26 (c) The authority shall prescribe by rule the process for conducting a criminal background
27 check.

28 (3) Public funds may not be used to support, in whole or in part, the employment in any capacity
29 having contact with a recipient of support services or a resident of a residential facility or an adult
30 foster home, of an individual, other than a mental health or substance abuse treatment provider,
31 who has been convicted:

32 (a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145, 163.149, 163.165,
33 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235, 163.263, 163.264, 163.266, 163.275, 163.465,
34 163.467, 163.535, 163.537, **163.547**, 163.689, 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d),
35 164.215, 164.225, 164.325, 164.377 (2) or (3), 164.405, 164.415, **165.013**, 165.022, 165.032, 165.800,
36 165.803, 167.012, 167.017 [or], 167.057, **167.320** or **167.322**;

37 (b) **Notwithstanding paragraph (a) of this subsection, of a crime described in ORS 163.465,**
38 **163.467, 163.700, 164.055, 164.125 or 164.377, the date of conviction for which was within the**
39 **five years immediately preceding employment in any capacity of an individual, other than a**
40 **mental health or substance abuse treatment provider, having contact with a recipient of**
41 **support services, a resident of a residential facility or a resident of an adult foster home,**
42 **when the recipient or resident is 65 years of age or older;**

43 [(b)] (c) Of a crime listed in ORS 181.594;

44 [(c)] (d) In the last 10 years, of a crime involving the delivery or manufacture of a controlled
45 substance;

1 [(d)] (e) Of an attempt, conspiracy or solicitation to commit a crime described in paragraphs (a)
2 to [(c)] (d) of this subsection; or

3 [(e)] (f) Of a crime in another jurisdiction that is substantially equivalent, as defined by rule, to
4 a crime described in paragraphs (a) to [(d)] (e) of this subsection.

5 (4) If the criminal background check conducted by a home health agency or in-home care agency
6 under subsection (2) of this section reveals that the individual who is subject to the criminal back-
7 ground check has been convicted of any of the crimes described in subsection (3) of this section, the
8 home health agency or in-home care agency may not employ the individual.

9 (5) Public funds may not be used to support, in whole or in part, the employment, in any ca-
10 pacity having contact with a recipient of support services or a resident of a residential facility or
11 an adult foster home, of a mental health or substance abuse treatment provider who has been con-
12 victed of committing, or convicted of an attempt, conspiracy or solicitation to commit, a crime de-
13 scribed in ORS 163.095, 163.115, 163.375, 163.405, 163.411 or 163.427.

14 (6) Upon the request of a mental health or substance abuse treatment provider, the department
15 or authority shall maintain a record of the results of any fitness determination made under ORS
16 181.534 (11) and (12). The department or authority may disclose the record only to a person the
17 provider specifically authorizes, by a written release, to receive the information.

18 (7) If the department or authority has a record of substantiated abuse committed by an employee
19 or potential employee of a home health agency, in-home care agency, adult foster home or residen-
20 tial facility, regardless of whether criminal charges were filed, the department or authority shall
21 notify, in writing, the employer and the employee or potential employee.

22 (8) As used in this section:

23 (a) "Adult foster home" has the meaning given that term in ORS 443.705.

24 (b) "Home care worker" has the meaning given that term in ORS 410.600.

25 (c) "Home health agency" has the meaning given that term in ORS 443.005.

26 (d) "In-home care agency" has the meaning given that term in ORS 443.305.

27 (e) "Mental health or substance abuse treatment provider" means:

28 (A) A peer support specialist;

29 (B) An employee of a residential treatment facility or a residential treatment home that is li-
30 censed under ORS 443.415 to provide treatment for individuals with alcohol or drug dependence;

31 (C) An individual who provides treatment or services for persons with substance use disorders;

32 or

33 (D) An individual who provides mental health treatment or services.

34 (f) "Peer support specialist" means a person who:

35 (A) Is providing peer support services as defined by the authority by rule;

36 (B) Is under the supervision of a qualified clinical supervisor;

37 (C) Has completed training required by the authority; and

38 (D) Is currently receiving or has formerly received mental health services, or is in recovery from
39 a substance use disorder and meets the abstinence requirements for staff providing services in al-
40 cohol or other drug treatment programs.

41 (g) "Residential facility" has the meaning given that term in ORS 443.400.

42 **SECTION 18.** ORS 181.534 is amended to read:

43 181.534. (1) As used in this section:

44 (a) "Authorized agency" means state government as defined in ORS 174.111 and the Oregon
45 State Bar. "Authorized agency" does not include:

1 (A) The Oregon State Lottery Commission or the Oregon State Lottery; or

2 (B) A criminal justice agency, as defined in ORS 181.010, that is authorized by federal law to
3 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

4 (b) "Subject individual" means a person from whom an authorized agency may require finger-
5 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
6 nationwide criminal records check.

7 (2) An authorized agency may request that the Department of State Police conduct a criminal
8 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
9 records check of a subject individual is necessary, the authorized agency may request that the De-
10 partment of State Police conduct the check, including fingerprint identification, through the Federal
11 Bureau of Investigation.

12 (3) The Department of State Police shall provide the results of a criminal records check con-
13 ducted pursuant to subsection (2) of this section to the authorized agency requesting the check.

14 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
15 conduct the criminal records check and may not keep any record of the fingerprints. If the federal
16 bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department
17 of State Police shall cease to send the cards to the federal bureau but shall continue to process the
18 information through other available resources.

19 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
20 State Police, the department shall destroy the fingerprint cards and shall retain no facsimiles or
21 other material from which a fingerprint can be reproduced.

22 (6) If only a state criminal records check is conducted, the Department of State Police shall
23 destroy the fingerprint cards after the criminal records check is completed and the results of the
24 criminal records check provided to the authorized agency and shall retain no facsimiles or other
25 material from which a fingerprint can be reproduced.

26 (7) An authorized agency may conduct criminal records checks on subject individuals through
27 the Law Enforcement Data System maintained by the Department of State Police in accordance with
28 rules adopted, and procedures established, by the Department of State Police.

29 (8) An authorized agency and the Department of State Police shall permit a subject individual
30 for whom a fingerprint-based criminal records check was conducted to inspect the individual's own
31 state and national criminal offender records and, if requested by the subject individual, provide the
32 individual with a copy of the individual's own state and national criminal offender records.

33 (9) Each authorized agency, in consultation with the Department of State Police, shall adopt
34 rules to implement this section and other statutes relating to criminal offender information obtained
35 through fingerprint-based criminal records checks. The rules shall include but need not be limited
36 to:

37 (a) Specifying categories of subject individuals who are subject to criminal records checks.

38 (b) Specifying the information that may be required from a subject individual to permit a crim-
39 inal records check.

40 (c) Specifying which programs or services are subject to this section.

41 (d) Specifying the types of crimes that may be considered in reviewing criminal offender infor-
42 mation of a subject individual.

43 (e) Specifying when a nationwide fingerprint-based criminal records check must be conducted.
44 An authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based
45 criminal records check when adopting rules under this subsection.

1 (f) If the authorized agency uses criminal records checks for agency employment purposes:

2 (A) Determining when and under what conditions a subject individual may be hired on a pre-
3 liminary basis pending a criminal records check; and

4 (B) Defining the conditions under which a subject individual may participate in training, orien-
5 tation and work activities pending completion of a criminal records check.

6 (g) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
7 criminal offender information.

8 (10) The Department of State Police shall verify that an authorized agency has adopted the rules
9 required by subsection (9) of this section.

10 (11)(a) Except as otherwise provided in ORS 181.612 **and paragraph (b) of this subsection**, an
11 authorized agency, using the rules adopted under subsection (9) of this section, shall determine
12 whether a subject individual is fit to hold a position, provide services, be employed or be granted
13 a license, certification, registration or permit, based on the criminal records check obtained pursu-
14 ant to this section, on any false statements made by the individual regarding the criminal history
15 of the individual and on any refusal to submit or consent to a criminal records check including
16 fingerprint identification. If a subject individual is determined to be unfit, then the individual may
17 not hold the position, provide services, be employed or be granted a license, certification, registra-
18 tion or permit.

19 **(b) An individual prohibited from receiving public funds for employment under ORS**
20 **443.004 (3) is not entitled to a determination of fitness as a subject individual under para-**
21 **graph (a) of this subsection.**

22 (12) Except as otherwise provided in ORS 181.612, in making the fitness determination under
23 subsection (11) of this section, the authorized agency shall consider:

24 (a) The nature of the crime;

25 (b) The facts that support the conviction or pending indictment or that indicate the making of
26 the false statement;

27 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
28 subject individual's present or proposed position, services, employment, license, certification or reg-
29 istration; and

30 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
31 services, employment, license, certification, registration or permit. Intervening circumstances in-
32 clude but are not limited to:

33 (A) The passage of time since the commission of the crime;

34 (B) The age of the subject individual at the time of the crime;

35 (C) The likelihood of a repetition of offenses or of the commission of another crime;

36 (D) The subsequent commission of another relevant crime;

37 (E) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

38 (F) A recommendation of an employer.

39 (13) An authorized agency and an employee of an authorized agency acting within the course
40 and scope of employment are immune from any civil liability that might otherwise be incurred or
41 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
42 or not fit to hold a position, provide services, be employed or be granted a license, certification,
43 registration or permit. An authorized agency and an employee of an authorized agency acting within
44 the course and scope of employment who in good faith comply with this section are not liable for
45 employment-related decisions based on determinations made under subsection (11) of this section.

1 An authorized agency or an employee of an authorized agency acting within the course and scope
2 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
3 semination of information lawfully obtained under this section.

4 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
5 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
6 provide services, be employed or be granted a license, certification, registration or permit on the
7 basis of information obtained as the result of a criminal records check conducted pursuant to this
8 section. Challenges to the accuracy or completeness of information provided by the Department of
9 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-
10 partment of State Police or Federal Bureau of Investigation must be made through the Department
11 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
12 case process required by this paragraph.

13 (b) A subject individual who is employed by an authorized agency and who is determined not to
14 be fit for a position on the basis of information obtained as the result of a criminal records check
15 conducted pursuant to this section may appeal the determination through the contested case process
16 adopted under this subsection or applicable personnel rules, policies and collective bargaining pro-
17 visions. An individual's decision to appeal a determination through personnel rules, policies and
18 collective bargaining provisions is an election of remedies as to the rights of the individual with
19 respect to the fitness determination and is a waiver of the contested case process.

20 **(c) An individual prohibited from receiving public funds for employment under ORS**
21 **443.004 (3) is not entitled to appeal a determination under paragraph (a) or (b) of this sub-**
22 **section.**

23 (15) Criminal offender information is confidential. Authorized agencies and the Department of
24 State Police shall adopt rules to restrict dissemination of information received under this section to
25 persons with a demonstrated and legitimate need to know the information.

26 (16) If a subject individual refuses to consent to the criminal records check or refuses to be
27 fingerprinted, the authorized agency shall deny the employment of the individual, or revoke or deny
28 any applicable position, authority to provide services, license, certification, registration or permit.

29 (17) If an authorized agency requires a criminal records check of employees, prospective em-
30 ployees, contractors, vendors or volunteers or applicants for a license, certification, registration or
31 permit, the application forms of the authorized agency must contain a notice that the person is
32 subject to fingerprinting and a criminal records check.

33 **SECTION 19.** ORS 181.537 is amended to read:

34 181.537. (1) As used in this section:

35 (a) "Care" means the provision of care, treatment, education, training, instruction, supervision,
36 placement services, recreation or support to children, the elderly or persons with disabilities.

37 (b) "Qualified entity" means a community mental health program, a community developmental
38 disabilities program, a local health department or an individual or business or organization, whether
39 public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organ-
40 ization that licenses, certifies or registers others to provide care.

41 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
42 181.534, the Department of Human Services, the Oregon Health Authority and the Employment De-
43 partment may require the fingerprints of a person:

44 (a) Who is employed by or is applying for employment with either department or the authority;

45 (b) Who provides or seeks to provide services to either department or the authority as a con-

1 tractor, subcontractor, vendor or volunteer who:

2 (A) May have contact with recipients of care;

3 (B) Has access to personal information about employees of either department or the authority,
4 recipients of care from either department or the authority or members of the public, including Social
5 Security numbers, dates of birth, driver license numbers, medical information, personal financial in-
6 formation or criminal background information;

7 (C) Has access to information the disclosure of which is prohibited by state or federal laws,
8 rules or regulations, or information that is defined as confidential under state or federal laws, rules
9 or regulations;

10 (D) Has access to property held in trust or to private property in the temporary custody of the
11 state;

12 (E) Has payroll or fiscal functions or responsibility for:

13 (i) Receiving, receipting or depositing money or negotiable instruments;

14 (ii) Billing, collections, setting up financial accounts or other financial transactions; or

15 (iii) Purchasing or selling property;

16 (F) Provides security, design or construction services for government buildings, grounds or fa-
17 cilities;

18 (G) Has access to critical infrastructure or secure facilities information; or

19 (H) Is providing information technology services and has control over or access to information
20 technology systems;

21 (c) For the purposes of licensing, certifying, registering or otherwise regulating or administering
22 programs, persons or qualified entities that provide care;

23 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
24 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
25 thority and that provide care; or

26 (e) For the purposes of employment decisions made by a mass transit district or transportation
27 district for qualified entities that, under contracts with the district or the Oregon Health Authority,
28 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
29 ents.

30 (3) The Department of Human Services and the Oregon Health Authority may conduct criminal
31 records checks on a person through the Law Enforcement Data System maintained by the Depart-
32 ment of State Police, if deemed necessary by the Department of Human Services or the Oregon
33 Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable
34 persons.

35 (4) The Department of Human Services and the Oregon Health Authority may furnish to quali-
36 fied entities, in accordance with the rules of the Department of Human Services or the Oregon
37 Health Authority and the rules of the Department of State Police, information received from the
38 Law Enforcement Data System. However, any criminal offender records and information furnished
39 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of
40 Investigation through the Department of State Police may not be disseminated to qualified entities.

41 (5)(a) A qualified entity, using rules adopted by the Department of Human Services or the
42 Oregon Health Authority, shall determine under this section whether a person is fit to hold a posi-
43 tion, provide services, be employed or, if the qualified entity has authority to make such a determi-
44 nation, be licensed, certified or registered, based on the criminal records check obtained pursuant
45 to ORS 181.534, any false statements made by the person regarding the criminal history of the per-

1 son and any refusal to submit or consent to a criminal records check including fingerprint identifi-
2 cation. If a person is determined to be unfit, then that person may not hold the position, provide
3 services or be employed, licensed, certified or registered.

4 **(b) A person prohibited from receiving public funds for employment under ORS 443.004**
5 **(3) is not entitled to a determination of fitness under paragraph (a) of this subsection.**

6 (6) In making the fitness determination under subsection (5) of this section, the qualified entity
7 shall consider:

8 (a) The nature of the crime;

9 (b) The facts that support the conviction or pending indictment or indicate the making of the
10 false statement;

11 (c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
12 person's present or proposed position, services, employment, license, certification or registration;
13 and

14 (d) Intervening circumstances relevant to the responsibilities and circumstances of the position,
15 services, employment, license, certification or registration. Intervening circumstances include but
16 are not limited to the passage of time since the commission of the crime, the age of the person at
17 the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of an-
18 other relevant crime and a recommendation of an employer.

19 (7) The Department of Human Services, the Oregon Health Authority and the Employment De-
20 partment may make fitness determinations based on criminal offender records and information fur-
21 nished by the Federal Bureau of Investigation through the Department of State Police only as
22 provided in ORS 181.534.

23 (8) A qualified entity and an employee of a qualified entity acting within the course and scope
24 of employment are immune from any civil liability that might otherwise be incurred or imposed for
25 determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position,
26 provide services or be employed, licensed, certified or registered. A qualified entity, employee of a
27 qualified entity acting within the course and scope of employment and an employer or employer's
28 agent who in good faith comply with this section and the decision of the qualified entity or employee
29 of the qualified entity acting within the course and scope of employment are not liable for the fail-
30 ure to hire a prospective employee or the decision to discharge an employee on the basis of the
31 qualified entity's decision. An employee of the state acting within the course and scope of employ-
32 ment is not liable for defamation or invasion of privacy in connection with the lawful dissemination
33 of information lawfully obtained under this section.

34 (9) The Department of Human Services and the Oregon Health Authority shall develop systems
35 that maintain information regarding criminal records checks in order to minimize the administrative
36 burden imposed by this section and ORS 181.534. Records maintained under this subsection are
37 confidential and may not be disseminated except for the purposes of this section and in accordance
38 with the rules of the Department of Human Services, the Oregon Health Authority and the Depart-
39 ment of State Police. Nothing in this subsection permits the Department of Human Services to re-
40 tain fingerprint cards obtained pursuant to this section.

41 (10) In addition to the rules required by ORS 181.534, the Department of Human Services and
42 the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

43 (a) Specifying which qualified entities are subject to this section;

44 (b) Specifying which qualified entities may request criminal offender information;

45 (c) Specifying which qualified entities are responsible for deciding whether a subject individual

1 is not fit for a position, service, license, certification, registration or employment; and

2 (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records
3 check, may proceed to make a fitness determination under subsection (5) of this section using the
4 information maintained by the Department of Human Services and the Oregon Health Authority
5 pursuant to subsection (9) of this section.

6 (11) If a person refuses to consent to the criminal records check or refuses to be fingerprinted,
7 the qualified entity shall deny or terminate the employment of the person, or revoke or deny any
8 applicable position, authority to provide services, employment, license, certification or registration.

9 (12) If the qualified entity requires a criminal records check of employees or other persons, the
10 application forms of the qualified entity must contain a notice that employment is subject to fin-
11 gerprinting and a criminal records check.

12 **SECTION 20. No later than October 1, 2012, the Department of Human Services shall**
13 **make a report, and may include recommendations for legislation, to the interim committees**
14 **of the Legislative Assembly related to reporting of abuse of vulnerable persons regarding**
15 **implementation of a statewide call system and 2-1-1 system integration to provide a means**
16 **of making the report required by ORS 124.060.**

17 **SECTION 21. (1) The Department of Human Services shall:**

18 (a) Using new or existing materials, develop and implement a training and continuing
19 education curriculum for persons other than law enforcement officers required by law to
20 investigate allegations of abuse under ORS 124.070 or 441.650. The curriculum shall address
21 the areas of training and education necessary to facilitate the skills required to investigate
22 reports of abuse, including, but not limited to, risk assessment, investigatory technique, ev-
23 idence gathering and report writing.

24 (b) Using new or existing materials, develop and implement training for persons that
25 provide care to vulnerable persons to facilitate awareness of the dynamics of abuse, abuse
26 prevention strategies and early detection of abuse.

27 (2) For purposes of this section, “vulnerable person” means a person 65 years of age or
28 older.

29 **SECTION 22. No later than October 1, 2012, the Department of Human Services shall**
30 **make a report, and may include recommendations for legislation, to the interim committees**
31 **of the Legislative Assembly related to reporting of abuse of persons 65 years of age or older**
32 **regarding development and implementation of the training and continuing education curric-**
33 **ulum required by section 21 of this 2012 Act.**

34 **SECTION 23. (1) It is the intent of the Legislative Assembly to recreate the Oregon Elder**
35 **Abuse Work Group, first established on June 21, 2011, by section 1, chapter 444, Oregon Laws**
36 **2011, and repealed on February 29, 2012, so that the work group may complete its work as**
37 **set forth in section 1, chapter 444, Oregon Laws 2011.**

38 (2) The Oregon Elder Abuse Work Group shall consist of 17 members appointed as fol-
39 lows:

40 (a) The President of the Senate shall appoint two members from among members of the
41 Senate who shall cease being members of the work group upon ceasing to be members of the
42 Legislative Assembly.

43 (b) The Speaker of the House of Representatives shall appoint two members from among
44 members of the House of Representatives who shall cease being members of the work group
45 upon ceasing to be members of the Legislative Assembly.

- 1 (c) The Governor shall appoint 10 members as follows:
- 2 (A) The Long Term Care Ombudsman appointed under ORS 441.103;
- 3 (B) Three members representing long term care providers for elderly persons;
- 4 (C) Two members representing law enforcement agencies, one of whom shall be a repre-
- 5 sentative from the Oregon District Attorneys Association and one of whom shall be a rep-
- 6 resentative from a local law enforcement agency with expertise in investigating elder abuse;
- 7 (D) Two members representing consumers who are elderly persons;
- 8 (E) An officer of a bank, as defined in ORS 706.008; and
- 9 (F) An officer of a credit union, as defined in ORS 723.008.
- 10 (d) The chairperson of the Governor's Commission on Senior Services created under ORS
- 11 410.320 shall appoint one member.
- 12 (e) The Director of Human Services shall appoint two members as follows:
- 13 (A) One member with expertise in elder abuse services and investigations; and
- 14 (B) One member representing the office or department within the Department of Human
- 15 Services that performs criminal background checks of individuals providing services to el-
- 16 derly persons or conducting elder abuse investigations.
- 17 (3) The work group shall have its first meeting on or before the later of 30 days after
- 18 adjournment sine die of the 2012 regular session of the Seventy-sixth Legislative Assembly
- 19 or September 30, 2012.
- 20 (4) The work group shall study and make recommendations on:
- 21 (a) The definition of "elder abuse."
- 22 (b) The criminal background check system and its role in prevention and investigation
- 23 of elder abuse.
- 24 (c) The process involved in conducting elder abuse investigations.
- 25 (d) Elder abuse data reporting systems.
- 26 (e) Reports to the Legislative Assembly.
- 27 (f) Information that could be made available to the public regarding elder abuse and in-
- 28 vestigations of elder abuse.
- 29 (5) The work group shall prepare a detailed assessment of the costs to implement the
- 30 work group's recommendations. The assessment must address both current and future needs
- 31 in providing elder abuse prevention and investigation services. Each agency or organization
- 32 with a member on the work group shall cooperate with the work group in assessing and
- 33 identifying the costs of complying with the work group's recommendations.
- 34 (6) A majority of the members of the work group constitutes a quorum for the trans-
- 35 action of business.
- 36 (7) Official action by the work group requires the approval of a majority of the members
- 37 of the work group.
- 38 (8) The work group shall elect one of its members to serve as chairperson.
- 39 (9) If there is a vacancy for any cause, the appointing authority shall make an appoint-
- 40 ment to become immediately effective.
- 41 (10) The work group shall meet at times and places specified by the call of the chair-
- 42 person or of a majority of the members of the work group.
- 43 (11) The work group may adopt rules necessary for the operation of the work group.
- 44 (12) The work group shall make a report, and may include recommendations for legis-
- 45 lation, to interim committees of the Legislative Assembly related to the provision of services

1 to elderly persons and investigation of elder abuse no later than January 15, 2013.

2 (13) The work group may accept donations of staff support, office space and equipment
3 from advocacy or service provider organizations to assist the work group in the performance
4 of its functions.

5 (14) Notwithstanding ORS 171.072, members of the work group who are members of the
6 Legislative Assembly are not entitled to mileage expenses or a per diem and serve as volun-
7 teers on the work group. Other members of the work group are not entitled to compensation
8 or reimbursement for expenses and serve as volunteers on the work group.

9 (15) All agencies of state government as defined in ORS 174.111 are directed to assist the
10 work group in the performance of its duties and, to the extent permitted by laws relating to
11 confidentiality, to furnish such information and advice as the members of the work group
12 consider necessary to perform their duties.

13 **SECTION 24.** Section 23 of this 2012 Act is repealed on June 30, 2013.

14 **SECTION 25.** Sections 6, 8 and 10 of this 2012 Act are repealed.

15 **SECTION 26.** ORS 192.586, as amended by section 10a of this 2012 Act, is amended to read:

16 192.586. (1) Except as provided in ORS 192.588, 192.591, 192.593, 192.596, 192.598 and 192.603
17 [and section 10 of this 2012 Act] or as required by ORS 25.643 and 25.646 and the Uniform Disposition
18 of Unclaimed Property Act, ORS 98.302 to 98.436 and 98.992:

19 (a) A financial institution may not provide financial records of a customer to a state or local
20 agency.

21 (b) A state or local agency may not request or receive from a financial institution financial re-
22 cords of customers.

23 (2) Subsection (1) of this section does not preclude a financial institution, in the discretion of
24 the financial institution, from initiating contact with, and thereafter communicating with and dis-
25 closing customer financial records to:

26 (a) Appropriate state or local agencies concerning a suspected violation of the law.

27 (b) The office of the State Treasurer if the records relate to state investments in commercial
28 mortgages involving the customer. The records and the information contained therein are public
29 records but are exempt from disclosure under ORS 192.410 to 192.505 unless the public interest in
30 disclosure clearly outweighs the public interest in confidentiality. However, the following records
31 in the office must remain open to public inspection:

32 (A) The contract or promissory note establishing a directly held residential or commercial
33 mortgage and information identifying collateral;

34 (B) Any copy the office retains of the underlying mortgage note in which the office purchases
35 a participation interest; and

36 (C) Information showing that a directly held loan is in default.

37 (c) An appropriate state or local agency in connection with any business relationship or trans-
38 action between the financial institution and the customer, if the disclosure is made in the ordinary
39 course of business of the financial institution and will further the legitimate business interests of
40 the customer or the financial institution.

41 (3) ORS 192.583 to 192.607 do not prohibit any of the following:

42 (a) The dissemination of any financial information that is not identified with, or identifiable as
43 being derived from, the financial records of a particular customer.

44 (b) The examination by, or disclosure to, the Department of Consumer and Business Services of
45 financial records that relate solely to the exercise of the department's supervisory function. The

1 scope of the department's supervisory function shall be determined by reference to statutes that
2 grant authority to examine, audit, or require reports of financial records or financial institutions.

3 (c) The furnishing to the Department of Revenue of information by the financial institution,
4 whether acting as principal or agent, as required by ORS 314.360.

5 (d) Compliance with the provisions of ORS 708A.655 or 723.844.

6 (4) Notwithstanding subsection (1) of this section, a financial institution may:

7 (a) Enter into an agreement with the Oregon State Bar that requires the financial institution
8 to make reports to the Oregon State Bar whenever a properly payable instrument is presented for
9 payment out of an attorney trust account that contains insufficient funds, whether or not the in-
10 strument is honored by the financial institution; and

11 (b) Submit reports to the Oregon State Bar concerning instruments presented for payment out
12 of an attorney trust account under a trust account overdraft notification program established under
13 ORS 9.685.

14 **SECTION 27.** ORS 192.600, as amended by section 10b of this 2012 Act, is amended to read:

15 192.600. (1) Nothing in ORS 192.583 to 192.607 shall require a financial institution to inquire or
16 determine that those seeking disclosure have duly complied with the requirements set forth in ORS
17 192.583 to 192.607, provided only that the customer authorization, summons, subpoena or search
18 warrant served upon or delivered to a financial institution pursuant to ORS 192.593, 192.596 or
19 192.598 [*or section 10 of this 2012 Act*] shows compliance on its face.

20 (2) A financial institution which in good faith reliance refuses to disclose financial records of
21 a customer upon the prohibitions of ORS 192.583 to 192.607, shall not be liable to its customer, to
22 a state or local agency, or to any person for any loss or damage caused in whole or in part by such
23 refusal.

24 (3) Financial institutions shall not be required to notify their customers concerning the receipt
25 by them of requests from state or local agencies for disclosures of financial records of such cus-
26 tomers. However, except as otherwise provided in ORS 192.583 to 192.607, nothing in ORS 192.583
27 to 192.607 shall preclude financial institutions from giving such notice to customers. A court may
28 order a financial institution to withhold notification to a customer of the receipt of a summons,
29 subpoena or search warrant when the court finds that notice to the customer would impede the in-
30 vestigation being conducted by the state or local agency.

31 (4) Financial institutions that participate in a trust account overdraft notification program es-
32 tablished under ORS 9.685 are not liable to a lawyer or law firm on the attorney trust account, to
33 a beneficiary of the trust account or to the Oregon State Bar for loss or damage caused in whole
34 or in part by that participation or arising in any way out of that participation.

35 (5) A financial institution shall not be liable to any person for any loss, damage or injury arising
36 out of or in any way pertaining to the release of information pursuant to ORS 192.586 (2)(a).

37 **SECTION 28.** ORS 192.602, as amended by section 10c of this 2012 Act, is amended to read:

38 192.602. (1)[(a)] A financial institution shall have a reasonable period of time in which to comply
39 with any proper customer authorization, summons, subpoena or search warrant permitting or seek-
40 ing disclosure of financial records. [*Except as provided in paragraphs (b) and (c) of this subsection,*]
41 **For the purposes of this section,** a "reasonable period of time" shall in no case be less than 10
42 days from the date upon which the financial institution receives or is served with a customer au-
43 thorization, summons, subpoena or search warrant.

44 [(b)] **However, in all cases in which** [*When*] disclosure is sought under ORS 192.596, the rea-
45 sonable period of time shall be not less than 20 days.

1 *[(c) When disclosure is sought under section 10 of this 2012 Act, the reasonable period of time shall*
2 *be that period of time required by the circumstances but in no case more than five days from the date*
3 *upon which the financial institution receives or is served with a subpoena under section 10 of this 2012*
4 *Act.]*

5 (2) Before making disclosures, a financial institution may require that the requesting state or
6 local agency reimburse the financial institution for the reasonable costs incurred by the financial
7 institution in the course of compliance. These costs include, but are not limited to, personnel costs,
8 reproduction costs and travel expenses. The following charges shall be considered reasonable costs:

9 (a) Personnel costs, \$30 per hour per person, computed on the basis of \$7.50 per quarter hour
10 or fraction thereof, for time expended by personnel of the financial institution in searching, locating,
11 retrieving, copying and transporting or conveying the requested material to the place of examina-
12 tion.

13 (b) Reproduction costs, \$1 per page, including copies produced by reader and printer repro-
14 duction processes. Photographs, films and other materials shall be reimbursed at actual costs.

15 (c) Travel expenses, 50 cents per mile, plus other actual costs, necessary to transport personnel
16 to locate and retrieve the information required or requested and to convey the required or requested
17 material to the place of examination.

18 (3) The provisions of subsection (2) of this section do not apply in the case of records
19 subpoenaed by a prosecuting attorney as evidence of the crimes of negotiating a bad check under
20 ORS 165.065, forgery under ORS 165.007 and 165.013, theft by deception by means of a bad check
21 under ORS 164.085, fraudulent use of a credit card under ORS 165.055, identity theft under ORS
22 165.800 or racketeering activity under ORS 166.720 or of an offense listed in ORS 137.700.

23 **SECTION 29. The repeal of sections 6, 8 and 10 of this 2012 Act by section 25 of this 2012**
24 **Act and the amendments to ORS 192.586, 192.600 and 192.602 by sections 26, 27 and 28 of this**
25 **2012 Act become operative on June 30, 2015.**

26 **SECTION 30. Notwithstanding any other law limiting expenditures, the amount of**
27 **\$300,000 is established for the biennium beginning July 1, 2011, as the maximum limit for**
28 **payment of expenses from fees, moneys or other revenues, including Miscellaneous Receipts,**
29 **but excluding lottery funds and federal funds, collected or received by the Department of**
30 **Human Services for deposit into the Quality Care Fund established under ORS 443.001, for**
31 **the purpose of providing technical support for data acquisition and analysis and staff support**
32 **and for other costs of the Resident Safety Review Council created under section 14 of this**
33 **2012 Act in the performance of the council's duties under section 14 of this 2012 Act.**

34 **SECTION 31. The amendments to ORS 131.125 and 411.990 by sections 2 and 3 of this 2012**
35 **Act apply to offenses committed before, on or after the effective date of this 2012 Act, but**
36 **do not operate to revive a prosecution barred by the operation of ORS 131.125 before the ef-**
37 **fective date of this 2012 Act.**

38 **SECTION 32. The amendments to ORS 137.225 by section 4 of this 2012 Act apply to**
39 **motions for entry of an order setting aside a conviction made on or after the effective date**
40 **of this 2012 Act that involve convictions that occurred before, on or after the effective date**
41 **of this 2012 Act.**

42 **SECTION 33. This 2012 Act being necessary for the immediate preservation of the public**
43 **peace, health and safety, an emergency is declared to exist, and this 2012 Act takes effect**
44 **on its passage.**