

Enrolled House Bill 2047

Ordered printed by the Speaker pursuant to House Rule 12.00A (5). Pre-session filed (at the request of House Interim Committee on Education)

CHAPTER

AN ACT

Relating to criminal records checks of school personnel; amending ORS 326.603, 336.631, 338.115, 342.127, 342.223 and 342.232; and repealing ORS 181.539.

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

SECTION 1. ORS 326.603 is amended to read:

326.603. **(1) For the purposes of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Education may require the fingerprints of:**

(a) A school district or private school contractor, whether part-time or full-time, or an employee thereof, whether part-time or full-time, who has direct, unsupervised contact with students as determined by the district or private school.

(b) A person newly hired, whether part-time or full-time, by a school district or private school in a capacity not described in ORS 342.223 (1) who has direct, unsupervised contact with children as determined by the district or private school.

(c) A person employed, whether part-time or full-time, by a school district or private school in a capacity not described in ORS 342.223 (1) who has direct, unsupervised contact with children as determined by the district or private school.

(d) A person who is a community college faculty member providing instruction at a kindergarten through grade 12 school site during the regular school day.

(e) A person who is an employee of a public charter school.

[(1)(a)] (2)(a) A school district shall send to the Department of Education for purposes of a criminal records check any information, including fingerprints, for each person described in **[ORS 181.539 (1)(d), (e), (f), (h) or (i)] subsection (1) of this section.**

(b) A private school may send to the Department of Education for purposes of a criminal records check any information, including fingerprints, for each person described in **[ORS 181.539 (1)(d), (e), (f) or (h)] subsection (1)(a), (b), (c) or (d) of this section.**

[(2)] (3) The Department of Education shall request that the Department of State Police conduct a criminal records check as provided in ORS 181.534 and may charge the district or private school a fee as established by rule under ORS 181.534. The school district or private school may recover its costs or a portion thereof from the person described in **[ORS 181.539 (1)(d), (e), (f), (h) or (i)] subsection (1) of this section.** If the person described in **[ORS 181.539 (1)(e), (f) or (i)] subsection (1)(b), (c) or (e) of this section** requests, the district shall and a private school may withhold the amount from amounts otherwise due the person, including a periodic payroll deduction rather than a lump sum payment.

(4) Notwithstanding subsection (1) of this section, the department may not require fingerprints of a person described in subsection (1) of this section if the person or the person's employer was checked in one school district or private school and is currently seeking to work in another district or private school unless the person lived outside this state during the interval between the two periods of time of working in the district or private school.

(5) Nothing in this section requires a person described in subsection (1)(a), (b) or (e) of this section to submit to fingerprinting until the person has been offered employment or a contract by a school district or private school. Contractor employees may not be required to submit to fingerprinting until the contractor has been offered a contract.

[(3)(a)] (6)(a) If the Superintendent of Public Instruction informs the school district that the person has been convicted of a crime listed in ORS 342.143 or has made a false statement as to the conviction of a crime, the superintendent shall notify the school district of the fact and the district shall not employ or contract with the person. Notification by the superintendent that the school district shall not employ or contract with the person shall remove the person from any school district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805 to 342.937.

(b) The Superintendent of Public Instruction shall notify the private school if the person has been convicted of a crime listed in ORS 342.143 or has made a false statement as to the conviction of a crime. Based on the notice, the private school may choose not to employ or contract with the person.

[(4)] (7) If a person described in subsection (1) of this section refuses to consent to the criminal records check or refuses to be fingerprinted or if the person falsely swears to the nonconviction of a crime, the district shall terminate the employment or contract status of the person. Termination under this subsection removes the person from any school district policies, collective bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805 to 342.937.

[(5)] (8) A school district may not hire or continue to employ or contract with or allow the contractor to continue to assign a person to the school project if the person described in subsection (1) of this section has been convicted of a crime according to the provisions of ORS 342.143.

[(6)] (9) As used in this section and ORS 326.607:

(a) "Private school" means a school that provides educational services as defined in ORS 345.505 and is registered as a private school under ORS 345.505 to 345.575.

(b) "School district" means:

(A) A school district as defined in ORS 330.003.

(B) The Oregon State School for the Blind.

(C) The Oregon State School for the Deaf.

(D) An educational program under the Youth Corrections Education Program.

(E) A public charter school as defined in ORS 338.005.

(F) An education service district.

SECTION 2. ORS 342.223 is amended to read:

342.223. [(1) *The Teacher Standards and Practices Commission may charge a person described in ORS 181.539 (1)(a) to (c), (g) or (j) a fee not to exceed the full cost of acquiring and furnishing the information described in ORS 181.525 and 181.534.*]

(1) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Teacher Standards and Practices Commission may require the fingerprints of:

(a) A person who is applying for initial issuance of a license under ORS 342.120 to 342.430 as a teacher, administrator or personnel specialist if the person has not submitted to a criminal records check by the commission within the previous year.

(b) A person who is applying for reinstatement of a license as a teacher, administrator or personnel specialist whose license has lapsed for at least three years.

(c) A person who is applying for initial issuance of a certificate under ORS 342.475 as a school nurse.

(d) A person who is registering with the commission for student teaching, practicum or internship as a teacher, administrator or personnel specialist, if the person has not submitted to a criminal records check by the commission within the previous year for student teaching, practicum or internship as a teacher, administrator or personnel specialist.

(e) A person who is applying for initial issuance of a registration as a public charter school teacher under ORS 342.125.

(2) The making of any false statement as to the conviction of a crime is grounds for refusal to issue, renew or reinstate a license, certificate or registration and is in addition to the grounds stated in ORS 342.143.

(3) A person may appeal the refusal to issue an initial license, certificate or registration under this section as a contested case under ORS 183.413 to 183.470, but the refusal to renew or reinstate a license or registration is subject to ORS 342.175 to 342.180, and the commission shall notify the person of the right to appeal.

SECTION 3. ORS 342.127 is amended to read:

342.127. (1) The Teacher Standards and Practices Commission shall establish and the commission shall collect:

(a) A fee not to exceed \$100 for evaluation of the initial application for each teaching license for which application is made. If the applicant is eligible for the teaching license for which application is made and the license is issued within 90 days of original application, the commission shall issue the license without additional charge.

(b) A fee not to exceed \$100 for the renewal of each teaching license and a fee not to exceed \$20 for each duplicate teaching license.

(c) A fee not to exceed \$800 for a beginning teacher assessment conducted in lieu of an approved preparation program required for licensure.

(d) A fee not to exceed \$200 for alternative assessment conducted in lieu of a passing score on a licensure examination established by the commission.

(e) A fee not to exceed \$75 for registration as a public charter school teacher that includes any fee charged pursuant to [ORS 342.223 or] rules adopted under ORS 181.534.

(f) A fee not to exceed \$75 for renewal of a registration as a public charter school teacher that includes any fee charged pursuant to [ORS 342.223 or] rules adopted under ORS 181.534.

(2) In addition to the fee required by subsection (1) of this section for the issuance of a teaching license, the Teacher Standards and Practices Commission shall collect a fee not to exceed \$150 for the evaluation of an applicant requesting licensing based upon completion of other than an Oregon approved teacher education program.

(3) In addition to the fees required by subsection (1) of this section, the Teacher Standards and Practices Commission shall collect a late application fee not to exceed \$25 per month up to a maximum of \$125 from an applicant who fails to make timely application for renewal of the license or registration. The actual amount of the fee shall be determined in accordance with rules of the Teacher Standards and Practices Commission.

(4) In spite of the expiration date posted on the license, the license shall continue to be valid for purposes of ORS 342.173 for an additional 120 days. However, the district may require a statement from the applicant indicating that the applicant has completed the requirements for license renewal.

(5) In addition to the fee required by subsection (1) of this section for the issuance of a teaching license, the commission shall collect a fee not to exceed \$150 for the reinstatement of a license that has been revoked by the commission for gross neglect of duty or gross unfitness under ORS 342.175.

(6) In addition to the fee required by subsection (1) of this section for the issuance of a teaching license, the commission shall collect a fee not to exceed \$100 for the issuance of any emergency license through an expedited process at the request of any school district or education service district that seeks to employ the applicant.

(7) Fee rates established under this section shall cover, but not exceed, the full cost of administrative expenses incurred by the commission during any biennium.

SECTION 4. ORS 342.232 is amended to read:

342.232. (1) A school district, education service district, private school or public charter school may authorize a person described under ORS [181.539 (1)(d), (h) or (i)] **326.603 (1)(a), (d) or (e)** to begin carrying out the terms of a contract pending the return of [the] **a state or nationwide** criminal records check [by the *Federal Bureau of Investigation*].

(2) A school district, education service district, private school or public charter school may hire on a probationary basis a person described under ORS [181.539 (1)(e) or (i)] **326.603 (1)(b) or (e)** pending the return of the criminal records check [by the *Federal Bureau of Investigation*].

SECTION 5. ORS 336.631 is amended to read:

336.631. (1) Prior to contracting with or distributing any public funds to a private alternative education program, a district school board shall:

(a) Annually approve the private alternative education program;

(b) Determine that the private alternative education program is registered with the Department of Education; and

(c) Determine that the private alternative education program complies with the requirements of subsection (2) of this section and ORS 336.625 (3)(c).

(2) The following laws apply to private alternative education programs that are registered with the Department of Education under ORS 336.635 in the same manner as the laws apply to school districts and public schools:

(a) Federal law;

(b) ORS 181.534, [181.539,] 326.603, 326.607, **342.223** and 342.232 (criminal records checks);

(c) ORS 337.150, 339.141, 339.147 and 339.155 (tuition and fees);

(d) ORS 659.850 and 659.855 (discrimination);

(e) Health and safety statutes and rules; and

(f) Any statute, rule or school district policy that is specified in a contract between the school district board and the private alternative education program.

(3) Prior to placement of a student in a private alternative education program, the resident district shall determine whether the proposed placement best serves the student's educational needs and interests and assists the student in achieving the district and state academic standards.

(4) Contracts between a school district and a private alternative education program shall be included in the assessment of effectiveness provided for in ORS 329.085.

SECTION 6. ORS 338.115 is amended to read:

338.115. (1) Statutes and rules that apply to school district boards, school districts or other public schools do not apply to public charter schools. However, the following laws do apply to public charter schools:

(a) Federal law;

(b) ORS 192.410 to 192.505 (public records law);

(c) ORS 192.610 to 192.690 (public meetings law);

(d) ORS 297.405 to 297.555 and 297.990 (Municipal Audit Law);

(e) ORS 181.534, [181.539,] 326.603, 326.607, **342.223** and 342.232 (criminal records checks);

(f) ORS 337.150 (textbooks);

(g) ORS 339.141, 339.147 and 339.155 (tuition and fees);

(h) ORS 659.850 and 659.855 (discrimination);

(i) ORS 30.260 to 30.300 (tort claims);

(j) Health and safety statutes and rules;

(k) Any statute or rule that is listed in the charter;

(L) The statewide assessment system developed by the Department of Education for mathematics, science and English under ORS 329.485 (1);

(m) ORS 329.045 (academic content standards and instruction);

(n) Any statute or rule that establishes requirements for instructional time provided by a school during each day or during a year;

(o) ORS 339.250 (12) (prohibition on infliction of corporal punishment);

(p) ORS 339.370, 339.372 and 339.375 (reporting of child abuse); and

(q) This chapter.

(2) Notwithstanding subsection (1) of this section, a charter may specify that statutes and rules that apply to school district boards, school districts and other public schools may apply to a public charter school.

(3) If a statute or rule applies to a public charter school, then the terms “school district” and “public school” include public charter school as those terms are used in that statute or rule.

(4) A public charter school may not violate the Establishment Clause of the First Amendment to the United States Constitution or section 5, Article I of the Oregon Constitution, or be religion based.

(5) A public charter school shall maintain an active enrollment of at least 25 students.

(6) A public charter school may sue or be sued as a separate legal entity.

(7) The sponsor, members of the governing board of the sponsor acting in their official capacities and employees of a sponsor acting in their official capacities are immune from civil liability with respect to all activities related to a public charter school within the scope of their duties or employment.

(8) A public charter school may enter into contracts and may lease facilities and services from a school district, education service district, state institution of higher education, other governmental unit or any person or legal entity.

(9) A public charter school may not levy taxes or issue bonds under which the public incurs liability.

(10) A public charter school may receive and accept gifts, grants and donations from any source for expenditure to carry out the lawful functions of the school.

(11) The school district in which the public charter school is located shall offer a high school diploma, certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery to any public charter school student who meets the district’s and state’s standards for a high school diploma, certificate, Certificate of Initial Mastery or Certificate of Advanced Mastery. If the school district offers a Certificate of Initial Mastery subject area endorsement to students who attend school in the district, then the school district shall offer the endorsement to any public charter school student who meets the district’s and state’s standards for the endorsement.

(12) A high school diploma, certificate, Certificate of Initial Mastery, Certificate of Initial Mastery subject area endorsement or Certificate of Advanced Mastery issued by a public charter school grants to the holder the same rights and privileges as a high school diploma, certificate, Certificate of Initial Mastery, Certificate of Initial Mastery subject area endorsement or Certificate of Advanced Mastery issued by a nonchartered public school.

(13) Prior to beginning operation, the public charter school shall show proof of insurance to the sponsor as specified in the charter.

(14) A public charter school may receive services from an education service district in the same manner as a nonchartered public school in the school district in which the public charter school is located.

SECTION 7. ORS 181.539 is repealed.

Passed by House February 20, 2007

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Chief Clerk of House

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Speaker of House

Passed by Senate March 26, 2007

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President of Senate

Received by Governor:

.....M,....., 2007

Approved:

.....M,....., 2007

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Governor

Filed in Office of Secretary of State:

.....M,....., 2007

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Secretary of State