

Senate Bill 157

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Theodore R. Kulongoski for Department of 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 **as introduced**.

Designates Home Care Commission as independent agency by transfer of duties, functions, powers, employees and property associated with administration of commission from Department of Human Services to commission.

Specifies authority of commission. Exempts commission from laws relating to transfer of public employees, state personnel relations, public contracting, public printing, interagency services, state financial administration and salaries and expenses of state officers and employees.

A BILL FOR AN ACT

1
2 Relating to the Home Care Commission; creating new provisions; and amending ORS 181.534, 410.604
3 and 410.612.

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

5 **SECTION 1. The duties, functions and powers of the Department of Human Services re-**
6 **lating to the Home Care Commission are imposed upon, transferred to and vested in the**
7 **Home Care Commission.**

8 **SECTION 2. (1) The Director of Human Services shall:**

9 (a) **Deliver to the Home Care Commission all records and property within the jurisdiction**
10 **of the director that relate to the duties, functions and powers transferred by section 1 of this**
11 **2007 Act; and**

12 (b) **Transfer to the commission those employees engaged primarily in the exercise of the**
13 **duties, functions and powers transferred by section 1 of this 2007 Act.**

14 (2) **The commission shall take possession of the records and property, and shall take**
15 **charge of the employees and employ them in the exercise of the duties, functions and powers**
16 **transferred by section 1 of this 2007 Act, without reduction of compensation but subject to**
17 **change or termination of employment or compensation as provided by law.**

18 (3) **Any employee who transfers from the department to the commission at any time**
19 **prior to July 1, 2008, may retain any accrued sick leave and up to 80 hours of accrued vaca-**
20 **tion.**

21 (4) **The department shall pay the Home Care Commission an amount equal to the number**
22 **of hours of sick leave and vacation retained by a transferring employee multiplied by the**
23 **employee's hourly rate of pay.**

24 **SECTION 3. Sections 4 to 8 of this 2007 Act are added to and made a part of ORS 410.600**
25 **to 410.614.**

26 **SECTION 4. (1) In carrying out its duties under ORS 410.600 to 410.614, the Home Care**
27 **Commission may:**

28 (a) **Enter into an interagency agreement or a contract with any state agency for the**

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 performance of the commission's duties or the leasing of office space;

2 (b) Provide nonemployee compensation to home care workers or prospective home care
3 workers who attend training sessions approved by the commission;

4 (c) On behalf of an elderly person or a disabled person who hires a home care worker
5 through the Home Care Commission registry, elect workers' compensation coverage or
6 health insurance coverage, or both, for the person's home care workers;

7 (d) Unless the person to be served is a public assistance recipient, impose fees upon any
8 person seeking a referral from the registry of qualified home care workers;

9 (e) Award grants from funds appropriated by the Legislative Assembly to the commission
10 for that purpose;

11 (f) Contract for, lease, acquire, hold, own, encumber, insure, sell, provide, replace, deal
12 in and with and dispose of equipment, supplies, goods, other personal property, services and
13 real property in its own name; and

14 (g) Sue and be sued in its own name.

15 (2) A state agency that chooses to enter into an agreement or a contract with the com-
16 mission under subsection (1) of this section may not charge the commission an amount that
17 exceeds the actual cost of providing the contracted services.

18 **SECTION 5.** (1) Except as otherwise provided in ORS 410.600 to 410.614, the provisions
19 of ORS 236.605 to 236.640 and ORS chapters 240, 276, 279, 279A, 279B, 279C, 282, 283, 291 and
20 292 do not apply to the Home Care Commission or employees of the commission.

21 (2) A member of the commission or an employee of the commission is an employee, eli-
22 gible employee or public employee for purposes of ORS 30.260 to 30.300 and ORS chapters 238,
23 238A, 243, 244 and 316.

24 (3) A member of the commission is a public official or public officer for purposes of ORS
25 171.725 to 171.785 and 278.120 and ORS chapters 295 and 297.

26 **SECTION 6.** (1) By September 1 of each even-numbered year, the Home Care Commission
27 shall submit to the Oregon Department of Administrative Services a budget request for the
28 next biennium. The department shall include the request with the Governor's budget request
29 to the Legislative Assembly. Any such request approved by the Legislative Assembly shall
30 be appropriated to the Oregon Department of Administrative Services for direct allocation
31 to the commission.

32 (2) The commission's budget request must be adopted in accordance with generally ac-
33 cepted accounting principles, reflect all sources of the commission's income and be adopted
34 in accordance with ORS 192.610 to 192.690.

35 **SECTION 7.** (1) Subject to the limits of subsection (2) of this section, the unexpended
36 balances of amounts authorized to be expended by the Department of Human Services for
37 the biennium beginning July 1, 2007, from revenues dedicated, continuously appropriated,
38 appropriated or otherwise made available for the purposes of administering and enforcing the
39 duties, functions and powers of the Home Care Commission are transferred to and are
40 available for expenditure by the commission beginning on the effective date of this 2007 Act,
41 for the purposes of administering and enforcing the duties, functions and powers of the
42 commission.

43 (2) Any funds authorized to be expended by the Department of Human Services for the
44 biennium beginning July 1, 2007, from revenues dedicated, continuously appropriated, appro-
45 priated or otherwise made available to the department for the purposes of administering and

1 **enforcing any duties, functions and powers that are not transferred to the commission by**
 2 **section 1 of this 2007 Act shall be retained and expended by the department.**

3 **SECTION 8. For the purpose of requesting a state or nationwide criminal records check**
 4 **under ORS 181.534 or 181.537, the Home Care Commission may require the fingerprints of:**

5 (1) **A person seeking registration as a home care worker.**

6 (2) **A person who is employed by or applying for employment with the commission.**

7 (3) **A person who provides services or seeks to provide services to the commission as a**
 8 **contractor or volunteer and who has or will have access to information, the disclosure of**
 9 **which is prohibited by state or federal laws, rules or regulations, or to information that is**
 10 **defined as confidential under state or federal laws, rules or regulations.**

11 **SECTION 9.** ORS 181.534 is amended to read:

12 181.534. (1) As used in this section:

13 (a) "Authorized agency" means state government as defined in ORS 174.111, **the Home Care**
 14 **Commission** and the Oregon State Bar. "Authorized agency" does not include:

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

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

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

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

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

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

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

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

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

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

1 individual with a copy of the individual's own state and national criminal offender records.

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

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

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

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

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

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

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

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

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

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

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

24 (11) Except as otherwise provided in ORS 181.612, an authorized agency, using the rules adopted
25 under subsection (9) of this section, shall determine whether a subject individual is fit to hold a
26 position, provide services, be employed or be granted a license, certification, registration or permit,
27 based on the criminal records check obtained pursuant to this section, on any false statements made
28 by the individual regarding the criminal history of the individual and on any refusal to submit or
29 consent to a criminal records check including fingerprint identification. If a subject individual is
30 determined to be unfit, then the individual may not hold the position, provide services, be employed
31 or be granted a license, certification, registration or permit.

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

34 (a) The nature of the crime;

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

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

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

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

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

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

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

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

3 (F) A recommendation of an employer.

4 (13) An authorized agency and an employee of an authorized agency acting within the course
5 and scope of employment are immune from any civil liability that might otherwise be incurred or
6 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit
7 or not fit to hold a position, provide services, be employed or be granted a license, certification,
8 registration or permit. An authorized agency and an employee of an authorized agency acting within
9 the course and scope of employment who in good faith comply with this section are not liable for
10 employment-related decisions based on determinations made under subsection (11) of this section.
11 An authorized agency or an employee of an authorized agency acting within the course and scope
12 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
13 semination of information lawfully obtained under this section.

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

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

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

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

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

40 **SECTION 10.** ORS 410.604 is amended to read:

41 410.604. (1) The Home Care Commission shall ensure the quality of home care services by:

42 (a) Establishing qualifications for home care workers with the advice and consent of the De-
43 partment of Human Services as the single state Medicaid agency;

44 (b) Providing training opportunities for home care workers and elderly and disabled persons who
45 employ home care workers;

1 (c) Establishing and maintaining a registry of qualified home care workers;

2 (d) Providing routine, emergency and respite referrals of home care workers;

3 (e) Entering into contracts with public and private organizations and individuals for the purpose
4 of obtaining or developing training materials and curriculum or other services as may be needed by
5 the commission; and

6 (f) Working cooperatively with area agencies and state and local agencies to accomplish the
7 duties listed in paragraphs (a) to (e) of this subsection.

8 (2)(a) The commission shall employ an executive director who is appointed by the Governor and
9 who shall serve at the pleasure of the Governor. The commission may employ other staff as may be
10 necessary to carry out its functions. An employee of the commission is not an employee of the State
11 of Oregon for any purpose.

12 **(b) The commission shall adopt a compensation plan and personnel policies for all com-**
13 **mission employees including the executive director.**

14 (3) When conducting its activities, and in making decisions relating to those activities, the
15 commission shall first consider the effect of its activities and decisions on:

16 (a) Improving the quality of service delivered by home care workers; and

17 (b) Ensuring adequate hours of service are provided to elderly and disabled persons by home
18 care workers.

19 (4) The commission has the authority to [*contract, lease, acquire, hold, own, encumber, insure, sell,*
20 *replace, deal in and with and dispose of real and personal property*] **adopt by rule standards for the**
21 **establishment and collection of fees to pay the expenses of administering functions under**
22 **this section.**

23 **SECTION 11.** ORS 410.612 is amended to read:

24 410.612. (1) For purposes of collective bargaining under ORS 243.650 to 243.782, the Home Care
25 Commission is the employer of record for home care workers.

26 (2) [*Notwithstanding*] **Except as provided in** subsection (1) of this section, a home care
27 [*workers*] **worker** may not be considered for any purposes to be an employee of the State of Oregon,
28 an area agency or other public agency.

29 (3) The Oregon Department of Administrative Services shall represent the commission in col-
30 lective bargaining negotiations with the certified or recognized exclusive representatives of all ap-
31 propriate bargaining units of home care workers. The department is authorized to agree to terms
32 and conditions of collective bargaining agreements on behalf of the commission [*and the Department*
33 *of Human Services*].

34 **SECTION 12.** (1) **Nothing in sections 1 to 8 of this 2007 Act or the amendments to ORS**
35 **181.534, 410.604 and 410.612 by sections 9 to 11 of this 2007 Act relieves a person of a liability,**
36 **duty or obligation accruing under or with respect to the duties, functions and powers**
37 **transferred by section 1 of this 2007 Act. The Home Care Commission may undertake the**
38 **collection or enforcement of any such liability, duty or obligation.**

39 **(2) The rights and obligations of the Department of Human Services legally incurred un-**
40 **der contracts, leases and business transactions executed, entered into or begun before the**
41 **effective date of this 2007 Act accruing under or with respect to the duties, functions and**
42 **powers transferred by section 1 of this 2007 Act are transferred to the commission. For the**
43 **purpose of succession to these rights and obligations, the commission is a continuation of**
44 **the department and not a new authority.**

45 **SECTION 13.** Whenever, in any uncodified law or resolution of the Legislative Assembly

1 or in any rule, document, record or proceeding authorized by the Legislative Assembly, in
2 the context of the duties, functions and powers transferred by section 1 of this 2007 Act,
3 reference is made to the Department of Human Services, or an officer or employee of the
4 department whose duties, functions or powers are transferred by section 1 of this 2007 Act,
5 the reference is considered to be a reference to the Home Care Commission or an officer or
6 employee of the commission who by this 2007 Act is charged with carrying out such duties,
7 functions and powers.

8
