

**HOUSE AMENDMENTS TO
A-ENGROSSED SENATE BILL 724
(INCLUDING AMENDMENTS TO RESOLVE CONFLICTS)**

By COMMITTEE ON EDUCATION

June 6

1 On page 1 of the printed A-engrossed bill, line 2, after the semicolon delete the rest of the line
2 and insert “creating new provisions; amending ORS 181.534, 181.539, 326.603, 326.607 and 342.143;
3 repealing section 1, chapter 35, Oregon Laws 2007 (Enrolled House Bill 2047); and declaring an
4 emergency.”.

5 On page 2, delete lines 20 through 45 and delete page 3 and insert:

6 “**SECTION 2.** ORS 326.603 is amended to read:

7 “326.603. (1)(a) A school district shall send to the Department of Education **or the Department**
8 **of State Police** for purposes of a criminal records check any information, including fingerprints, for
9 each person described in ORS 181.539 (1)(d), (e), (f), (h), [or] (i) **or (k)**.

10 “(b) A private school may send to the Department of Education for purposes of a criminal re-
11 cords check any information, including fingerprints, for each person described in ORS 181.539 (1)(d),
12 (e), (f), [or] (h) **or (k)**.

13 “(2) The Department of Education **or a school district** shall request that the Department of
14 State Police conduct a **state and nationwide** criminal records check as provided in ORS 181.534.
15 **The Department of Education** [and] may charge the district or private school a fee as established
16 by rule under ORS 181.534. The [school] district or private school may recover its costs or a portion
17 thereof from the person described in ORS 181.539 (1)(d), (e), (f), (h), [or] (i) **or (k)**. If the person de-
18 scribed in ORS 181.539 (1)(e), (f) or (i) requests, the district shall and a private school may withhold
19 the amount from amounts otherwise due the person, including a periodic payroll deduction rather
20 than a lump sum payment.

21 “(3)(a) **Except as provided in subsection (6) of this section**, if the Superintendent of Public
22 Instruction **or the Department of State Police** informs the school district that the person has been
23 convicted of a crime listed in ORS 342.143 or has made a false statement as to the conviction of a
24 crime, [the superintendent shall notify the school district of the fact and] the district [shall] **may** not
25 employ or contract with the person **or use the person as a volunteer**. Notification by the super-
26 intendent **or the Department of State Police** that the school district [shall] **may** not employ or
27 contract with the person **or use the person as a volunteer** shall remove the person from any
28 school district policies, collective bargaining provisions regarding dismissal procedures and appeals
29 and the provisions of ORS 342.805 to 342.937.

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

34 “(4) If a person described in subsection (1) of this section refuses to consent to the criminal re-

1 cords check or refuses to be fingerprinted or if the person falsely swears to the nonconviction of a
2 crime, the district shall terminate the employment, [or] contract **or volunteer** status of the person.
3 Termination under this subsection removes the person from any school district policies, collective
4 bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805
5 to 342.937.

6 “(5) **Except as provided in subsection (6) of this section**, a school district may not hire a
7 **person, use a person as a volunteer** or continue to employ or contract with or allow [the] a con-
8 tractor to continue to assign a person to [the] a school project if the person described in subsection
9 (1) of this section has been convicted of a crime according to the provisions of ORS 342.143.

10 “(6) **A school district may employ a person, contract with a person or use a person as a**
11 **volunteer who has been convicted of a crime under ORS 167.007, convicted of an attempt to**
12 **commit a crime under ORS 167.007 or convicted in another jurisdiction of a crime that is**
13 **substantially equivalent, as defined by Teacher Standards and Practices Commission rule, to**
14 **a crime under ORS 167.007 if the school district determines that:**

15 “(a) **The person is fit to be employed by or to contract or volunteer with a school district;**
16 **and**

17 “(b) **The date of any conviction described in this subsection is more than five years prior**
18 **to the date of employment or the date the contract is entered into.**

19 “[6] (7) As used in this section and ORS 326.607:

20 “(a) ‘Private school’ means a school that provides educational services as defined in ORS 345.505
21 and is registered as a private school under ORS 345.505 to 345.575.

22 “(b) ‘School district’ means:

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

24 “(B) The Oregon State School for the Blind.

25 “(C) The Oregon State School for the Deaf.

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

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

28 “(F) An education service district.

29 “**SECTION 3.** ORS 326.607 is amended to read:

30 “326.607. (1) Upon request from a [school district, a private school or a public charter school or
31 a school district, private school or public charter school] **school district contractor or private**
32 **school contractor** and with consent from the individual, the Department of Education [may conduct
33 an Oregon criminal records check using the Law Enforcement Data System] **shall request that the**
34 **Department of State Police conduct a state and nationwide criminal records check under**
35 **ORS 181.539** for screening an individual who is a volunteer for the [school district, private school
36 or public charter school] **contractor** and who has **or may have** direct, unsupervised contact with
37 school children, or for screening applicants for employment.

38 “(2) The Department **of Education** may charge the requesting [school district, private school,
39 public charter school or school district, private school or public charter school] contractor a fee [not
40 to exceed \$5] **as established by rule under ORS 181.534** for each request under subsection (1) of
41 this section.

42 “**SECTION 4.** ORS 181.539 is amended to read:

43 “181.539. (1) For the purpose of requesting a state (or nationwide criminal records check under
44 ORS 181.534, the Teacher Standards and Practices Commission, [and] the Department of Education
45 **and a school district** may require the fingerprints of:

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

4 “(b) A person who is applying for reinstatement of a license as a teacher, administrator or per-
5 sonnel specialist whose license has lapsed for at least three years.

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

8 “(d) A school district or private school contractor, whether part-time or full-time, or an em-
9 ployee thereof, whether part-time or full-time, who has **or may have** direct, unsupervised contact
10 with students as determined by the district or private school.

11 “(e) A person newly hired, whether part-time or full-time, by a school district or private school
12 in a capacity not described in paragraphs (a) to (c) of this subsection who has **or may have** direct,
13 unsupervised contact with children as determined by the district or private school.

14 “(f) A person employed, whether part-time or full-time, by a school district or private school in
15 a capacity not described in paragraphs (a) to (c) of this subsection who has **or may have** direct,
16 unsupervised contact with children as determined by the district or private school.

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

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

23 “(i) A person who is an employee of a public charter school.

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

26 “**(k) A person who is a volunteer for a school district or private school and who has or**
27 **may have direct, unsupervised contact with children as determined by the district or private**
28 **school.**

29 “(2) Notwithstanding subsection (1) of this section, the commission, [and] the department **or a**
30 **school district** may not require fingerprints of a person described in subsection (1)(d), (e), (f), (h)
31 or (i) of this section if the person or the person’s employer was checked in one school district or
32 private school and is currently seeking to work in another district or private school unless the
33 person lived outside this state during the interval between the two periods of time of working in the
34 district or private school.

35 “(3) Nothing in this section requires a person described in subsection (1)(d), (e) or (i) of this
36 section to submit to fingerprinting until the person has been offered employment or a contract by
37 a school district or private school. Contractor employees shall not be required to submit to finger-
38 printing until the contractor has been offered a contract.

39 “(4) As used in this section:

40 “(a) ‘Private school’ means a school that provides educational services as defined in ORS 345.505
41 and is registered as a private school under ORS 345.505 to 345.575.

42 “(b) ‘School district’ means:

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

44 “(B) The Oregon State School for the Blind.

45 “(C) The Oregon State School for the Deaf.

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

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

3 “(F) An education service district.

4 “**SECTION 5.** ORS 181.534 is amended to read:

5 “181.534. (1) As used in this section:

6 “(a) ‘Authorized agency’ means state government as defined in ORS 174.111, [and] the Oregon
7 State Bar **and a school district as defined in ORS 326.603.** ‘Authorized agency’ does not include:

8 “(A) The Oregon State Lottery Commission or the Oregon State Lottery; or

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

11 “(b) ‘Subject individual’ means a person from whom an authorized agency may require finger-
12 prints pursuant to statute for the purpose of enabling the authorized agency to request a state or
13 nationwide criminal records check.

14 “(2) An authorized agency may request that the Department of State Police conduct a criminal
15 records check on a subject individual for non-criminal justice purposes. If a nationwide criminal
16 records check of a subject individual is necessary, the authorized agency may request that the De-
17 partment of State Police conduct the check, including fingerprint identification, through the Federal
18 Bureau of Investigation.

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

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

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

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

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

36 “(8) An authorized agency and the Department of State Police shall permit a subject individual
37 for whom a fingerprint-based criminal records check was conducted to inspect the individual’s own
38 state and national criminal offender records and, if requested by the subject individual, provide the
39 individual with a copy of the individual’s own state and national criminal offender records.

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

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

45 “(b) Specifying the information that may be required from a subject individual to permit a

1 criminal records check.

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

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

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

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

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

11 “(B) Defining the conditions under which a subject individual may participate in training, ori-
12 entation and work activities pending completion of a criminal records check.

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

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

17 “(11) Except as otherwise provided in ORS 181.612, an authorized agency, using the rules
18 adopted under subsection (9) of this section, shall determine whether a subject individual is fit to
19 hold a position, provide services, be employed or be granted a license, certification, registration or
20 permit, based on the criminal records check obtained pursuant to this section, on any false state-
21 ments made by the individual regarding the criminal history of the individual and on any refusal to
22 submit or consent to a criminal records check including fingerprint identification. If a subject in-
23 dividual is determined to be unfit, then the individual may not hold the position, provide services,
24 be employed or be granted a license, certification, registration or permit.

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

27 “(a) The nature of the crime;

28 “(b) The facts that support the conviction or pending indictment or that indicate the making of
29 the false statement;

30 “(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the
31 subject individual’s present or proposed position, services, employment, license, certification or reg-
32 istration; and

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

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

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

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

39 “(D) The subsequent commission of another relevant crime;

40 “(E) Whether the conviction was set aside and the legal effect of setting aside the conviction;
41 and

42 “(F) A recommendation of an employer.

43 “(13) An authorized agency and an employee of an authorized agency acting within the course
44 and scope of employment are immune from any civil liability that might otherwise be incurred or
45 imposed for determining, pursuant to subsection (11) of this section, that a subject individual is fit

1 or not fit to hold a position, provide services, be employed or be granted a license, certification,
2 registration or permit. An authorized agency and an employee of an authorized agency acting within
3 the course and scope of employment who in good faith comply with this section are not liable for
4 employment-related decisions based on determinations made under subsection (11) of this section.
5 An authorized agency or an employee of an authorized agency acting within the course and scope
6 of employment is not liable for defamation or invasion of privacy in connection with the lawful dis-
7 semination of information lawfully obtained under this section.

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

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

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

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

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

34 **“SECTION 6. The amendments to ORS 181.534, 181.539, 326.603 and 326.607 by sections 2**
35 **to 5 of this 2007 Act first apply to the 2007-2008 school year.**

36 **“SECTION 7. If House Bill 2047 becomes law, section 1, chapter 35, Oregon Laws 2007**
37 **(Enrolled House Bill 2047) (amending ORS 326.603), is repealed and ORS 326.603, as amended**
38 **by section 2 of this 2007 Act, is amended to read:**

39 **“326.603. (1) For the purposes of requesting a state or nationwide criminal records check**
40 **under ORS 181.534, the Department of Education and a school district may require the fin-**
41 **gerprints of:**

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

45 **“(b) A person newly hired, whether part-time or full-time, by a school district or private**

1 school in a capacity not described in ORS 342.223 (1) who has or may have direct, unsuper-
2 vised contact with children as determined by the district or private school.

3 “(c) A person employed, whether part-time or full-time, by a school district or private
4 school in a capacity not described in ORS 342.223 (1) who has or may have direct, unsuper-
5 vised contact with children as determined by the district or private school.

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

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

9 “(f) A person who is a volunteer for a school district or private school and who has or
10 may have direct, unsupervised contact with children as determined by the district or private
11 school.

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

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

18 “[2)] (3) The Department of Education or a school district shall request that the Department
19 of State Police conduct a state and nationwide criminal records check as provided in ORS 181.534.
20 The Department of Education may charge the district or private school a fee as established by rule
21 under ORS 181.534. The district or private school may recover its costs or a portion thereof from
22 the person described in [ORS 181.539 (1)(d), (e), (f), (h), (i) or (k)] **subsection (1) of this section.** If
23 the person described in [ORS 181.539 (1)(e), (f) or (i)] **subsection (1)(b), (c) or (e) of this section**
24 requests, the district shall and a private school may withhold the amount from amounts otherwise
25 due the person, including a periodic payroll deduction rather than a lump sum payment.

26 “(4) **Notwithstanding subsection (1) of this section, the Department of Education and a**
27 **school district may not require fingerprints of a person described in subsection (1) of this**
28 **section if the person or the person’s employer was checked in one school district or private**
29 **school and is currently seeking to work in another district or private school unless the per-**
30 **son lived outside this state during the interval between the two periods of time of working**
31 **in the district or private school.**

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

36 “[3)(a)] (6)(a) Except as provided in subsection [(6)] (9) of this section, if the Superintendent
37 of Public Instruction or the Department of State Police informs the school district that the person
38 has been convicted of a crime listed in ORS 342.143 or has made a false statement as to the con-
39 viction of a crime, the district may not employ or contract with the person or use the person as a
40 volunteer. Notification by the superintendent or the Department of State Police that the school
41 district may not employ or contract with the person or use the person as a volunteer shall remove
42 the person from any school district policies, collective bargaining provisions regarding dismissal
43 procedures and appeals and the provisions of ORS 342.805 to 342.937.

44 “(b) The Superintendent of Public Instruction shall notify the private school if the person has
45 been convicted of a crime listed in ORS 342.143 or has made a false statement as to the conviction

1 of a crime. Based on the notice, the private school may choose not to employ or contract with the
2 person or use the person as a volunteer.

3 “[4] (7) If a person described in subsection (1) of this section refuses to consent to the criminal
4 records check or refuses to be fingerprinted or if the person falsely swears to the nonconviction of
5 a crime, the district shall terminate the employment, contract or volunteer status of the person.
6 Termination under this subsection removes the person from any school district policies, collective
7 bargaining provisions regarding dismissal procedures and appeals and the provisions of ORS 342.805
8 to 342.937.

9 “[5] (8) Except as provided in subsection [(6)] (9) of this section, a school district may not hire
10 a person, use a person as a volunteer or continue to employ or contract with or allow a contractor
11 to continue to assign a person to a school project if the person described in subsection (1) of this
12 section has been convicted of a crime according to the provisions of ORS 342.143.

13 “[6] (9) A school district may employ a person, contract with a person or use a person as a
14 volunteer who has been convicted of a crime under ORS 167.007, convicted of an attempt to commit
15 a crime under ORS 167.007 or convicted in another jurisdiction of a crime that is substantially
16 equivalent, as defined by Teacher Standards and Practices Commission rule, to a crime under ORS
17 167.007 if the school district determines that:

18 “(a) The person is fit to be employed by or to contract or volunteer with a school district; and

19 “(b) The date of any conviction described in this subsection is more than five years prior to the
20 date of employment or the date the contract is entered into.

21 “[7] (10) As used in this section and ORS 326.607:

22 “(a) ‘Private school’ means a school that provides educational services as defined in ORS 345.505
23 and is registered as a private school under ORS 345.505 to 345.575.

24 “(b) ‘School district’ means:

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

26 “(B) The Oregon State School for the Blind.

27 “(C) The Oregon State School for the Deaf.

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

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

30 “(F) An education service district.

31 “**SECTION 8.** If House Bill 2047 becomes law, ORS 326.607, as amended by section 3 of this 2007
32 Act, is amended to read:

33 “326.607. (1) Upon request from a school district contractor or private school contractor and
34 with consent from the individual, the Department of Education shall request that the Department
35 of State Police conduct a state and nationwide criminal records check under ORS [181.539] **326.603**
36 for screening an individual who is a volunteer for the contractor and who has or may have direct,
37 unsupervised contact with school children, or for screening applicants for employment.

38 “(2) The Department of Education may charge the requesting contractor a fee as established by
39 rule under ORS 181.534 for each request under subsection (1) of this section.

40 “**SECTION 9.** If House Bill 2047 becomes law, the amendments to ORS 326.603 and 326.607
41 by sections 7 and 8 of this 2007 Act become operative on January 1, 2008.

42 “**SECTION 10.** This 2007 Act being necessary for the immediate preservation of the public
43 peace, health and safety, an emergency is declared to exist, and this 2007 Act takes effect
44 July 1, 2007.”.