

Enrolled Senate Bill 46

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CHAPTER

AN ACT

Relating to background checks for schools; creating new provisions; amending ORS 326.603 and 342.232; and declaring an emergency.

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] **of a contractor**, 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)] (c) 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)] (d) A person who is an employee of a public charter school.

(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 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 subsection (1)(a), (b)[,] **or** (c) [or (d)] of this section.

(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 **school** 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 subsection (1) of this section. If the person described in subsection (1)(b)[, (c) or (e)] **or** (d) of this section requests, the **school** 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 of Education 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)] (d) 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.

[(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.*]

(6) If a person described in subsection (1) of this section states on a criminal history form provided by the Department of Education that the person has not been convicted of a crime but the criminal records check indicates that the person has a conviction, the department shall determine whether the person knowingly made a false statement as to the conviction. The department shall develop a process and criteria to use for appeals of a determination under this subsection.

(7)(a) The Superintendent of Public Instruction shall inform a school district or private school if a person described in subsection (1) of this section has been convicted of a crime listed in ORS 342.143 (3) or has knowingly made a false statement on a criminal history form provided by the Department of Education as to the conviction of any crime.

(b) If a person described in subsection (1) of this section has been convicted of a crime listed in ORS 342.143 (3), a school district may not employ or contract with the person and a private school may choose not to employ or contract with the person. Notification by the superintendent that the school district may 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.

(c) If a person described in subsection (1) of this section has knowingly made a false statement on a criminal history form provided by the Department of Education as to the conviction of a crime not listed in ORS 342.143 (3), a school district or private school may choose to employ or contract with the person.

[(7)] **(8) 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 school 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.**

[(8)] **(9) 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.**

[(9)] **(10) 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 School for the Blind.
- (C) The Oregon 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 342.232 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 326.603 (1)(a), (c) or (d) [or (e)] to begin carrying out the terms of a contract pending the return of a state or nationwide criminal records check.

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

SECTION 3. (1) The amendments to ORS 326.603 (1) by section 1 of this 2009 Act that relate to fingerprints apply to persons hired on or after the effective date of this 2009 Act.

(2) The provisions of ORS 326.603 (6) and (7) that relate to false statements on a criminal history form provided by the Department of Education apply to persons for whom a criminal records check is conducted on or after the effective date of this 2009 Act.

SECTION 4. This 2009 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2009 Act takes effect on its passage.

Passed by Senate February 11, 2009

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 Secretary of Senate

 President of Senate

Received by Governor:

.....M,....., 2009

Approved:

.....M,....., 2009

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 Governor

Passed by House May 29, 2009

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 Speaker of House

Filed in Office of Secretary of State:

.....M,....., 2009

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 Secretary of State