

HB 4091-9
(LC 280)
2/7/12 (MNJ/ps)

**PROPOSED AMENDMENTS TO
HOUSE BILL 4091**

1 On page 1 of the printed bill, line 2, after the semicolon insert “creating
2 new provisions; amending ORS 181.533, 181.534, 181.612, 181.880, 443.004,
3 480.235, 703.090 and 703.425;”.

4 On page 2, delete lines 10 through 12 and insert:

5 **“SECTION 3. (1) As used in this section, ‘subject individual’ means**
6 **a person who provides fingerprints pursuant to statute for the purpose**
7 **of enabling the Department of State Police to conduct a criminal re-**
8 **ords check.**

9 **“(2) Unless a subject individual has directed the department not to**
10 **retain fingerprint cards and results of a criminal records check pur-**
11 **suant to rules adopted under subsection (3) of this section, the de-**
12 **partment may retain fingerprint cards used to conduct a criminal**
13 **records check under ORS 181.533 or 181.534 and the results of a crimi-**
14 **nal records check conducted under ORS 181.533 or 181.534 for five years**
15 **after the criminal records check is conducted.**

16 **“(3)(a) The department shall adopt rules allowing a subject individ-**
17 **ual to direct the department not to retain the individual’s fingerprint**
18 **cards used to conduct a criminal records check under ORS 181.533 or**
19 **181.534 and the results of a criminal records check conducted under**
20 **ORS 181.533 or 181.534.**

21 **“(b) If a subject individual has directed the department not to re-**
22 **tain fingerprint cards and results of a criminal records check pursuant**

1 to rules adopted under this subsection, the department shall destroy
2 the results and the fingerprint cards used to conduct the check and
3 shall retain no facsimiles or other material from which a fingerprint
4 can be reproduced.

5 “(c) If the department sends fingerprint cards of a subject individ-
6 ual who has directed the department not to retain fingerprint cards
7 and results of a criminal records check pursuant to rules adopted un-
8 der this subsection to the Federal Bureau of Investigation, the de-
9 partment shall direct the Federal Bureau of Investigation to return
10 or destroy any fingerprint cards used to conduct the criminal records
11 check and to destroy any record of the fingerprints. If the federal bu-
12 reau policy authorizing return or destruction of the fingerprint cards
13 is changed, the department shall cease to send the fingerprint cards
14 of subject individuals who have directed the department not to retain
15 fingerprint cards and results of a criminal records check pursuant to
16 rules adopted under this subsection to the federal bureau but shall
17 continue to process the information through other available resources.

18 “(d) If the Federal Bureau of Investigation returns the fingerprint
19 cards of a subject individual who has directed the department not to
20 retain fingerprint cards and results of a criminal records check pur-
21 suant to rules adopted under this subsection, the department shall
22 destroy the fingerprint cards and shall retain no facsimiles or other
23 material from which a fingerprint can be reproduced.

24 **“SECTION 4.** ORS 181.533 is amended to read:

25 “181.533. (1) As used in this section:

26 “(a) ‘Authorized agency’ means the Department of State Police or other
27 governmental agency designated by the State of Oregon to report, receive
28 or disseminate criminal offender information.

29 “(b) ‘Qualified entity’ means a business or organization that:

30 “(A) Provides care or placement services, or licenses or certifies others

1 to provide care or placement services, for children, elderly persons or de-
2 pendent persons;

3 “(B) Is not governed by a state regulatory or licensing agency; and

4 “(C) Has been determined by an authorized agency to meet the criteria
5 established by the authorized agency by rule under subsection [(9)] (10) of
6 this section.

7 “(c) ‘Subject individual’ means a person who is employed or seeks to be
8 employed by a qualified entity or who is providing services or seeks to pro-
9 vide services to a qualified entity on a contractual or volunteer basis.

10 “(2) An entity may request from an authorized agency a criminal records
11 check for purposes of evaluating the fitness of a subject individual as an
12 employee, contractor or volunteer. The authorized agency may access state
13 and federal criminal records under this subsection only through use of the
14 subject individual’s fingerprints.

15 “(3) Before an authorized agency may conduct a criminal records check
16 under this section:

17 “(a) The authorized agency must determine whether the entity requesting
18 the criminal records check is a qualified entity;

19 “(b) The qualified entity must establish criteria to be used by the au-
20 thorized agency in reviewing the criminal offender information for a final
21 record check determination;

22 “(c) The qualified entity must provide the criteria established under par-
23 agraph (b) of this subsection to the authorized agency; and

24 “(d) The qualified entity must have informed the subject individual that
25 the qualified entity might request a fingerprint-based criminal records check
26 and that the subject individual may obtain a copy of the record check report
27 from, or challenge the accuracy or completeness of the record check report
28 through, the authorized agency or the Federal Bureau of Investigation.

29 “(4) **If the Department of State Police has results of a criminal re-**
30 **ords check of a subject individual that was conducted within the five**

1 years preceding the date of the request, the department shall provide
2 the qualified entity requesting the criminal records check with a copy
3 of the results of the earlier criminal records check. If the department
4 provides a copy of results of an earlier criminal records check under
5 this subsection, the department may conduct an updated criminal re-
6 cords check using the Law Enforcement Data System established in
7 ORS 181.730 upon the request of the qualified entity.

8 “[~~(4)(a)~~] (5)(a) Upon receipt of a subject individual’s criminal offender
9 information, the authorized agency shall make a final record check determi-
10 nation by comparing the criminal offender information with the criteria
11 provided to the authorized agency by the qualified entity under subsection
12 (3)(c) of this section. In making the final record check determination, the
13 authorized agency may consider only information that the Department of
14 State Police may disclose under ORS 181.560.

15 “(b) An authorized agency is immune from civil liability that might oth-
16 erwise be incurred or imposed for making the final record check determi-
17 nation under this subsection.

18 “(6)(a) If the subject individual has directed the Department of
19 State Police not to retain fingerprint cards and results of a criminal
20 records check pursuant to rules adopted under section 3 (3) of this 2012
21 Act, the department may not transfer a fingerprint card used to con-
22 duct the criminal records check unless the public agency or person
23 receiving the fingerprint card agrees to destroy or return the finger-
24 print card to the authorized agency.

25 “[~~(5)~~] (b) An authorized agency other than the Department of State
26 Police may not transfer a fingerprint card used to conduct the criminal re-
27 cords check unless the public agency or person receiving the fingerprint card
28 agrees to destroy or return the fingerprint card to the authorized agency.

29 “(7)(a) If the public agency or person returns a fingerprint card of
30 a subject individual who has directed the Department of State Police

1 not to retain fingerprint cards and results of a criminal records check
2 pursuant to rules adopted under section 3 (3) of this 2012 Act, the de-
3 partment shall destroy the fingerprint card and may not keep a record
4 of the fingerprints.

5 “[6] (b) If the public agency or person returns a fingerprint card to
6 [the] an authorized agency other than the Department of State Police,
7 the authorized agency shall destroy the fingerprint card[. The authorized
8 agency] and may not keep a record of the fingerprints.

9 “[7] (8) The authorized agency shall permit a subject individual to in-
10 spect the individual’s Oregon and Federal Bureau of Investigation criminal
11 offender information after positive identification has been established based
12 upon fingerprints.

13 “[8] (9) Challenges to the accuracy or completeness of information pro-
14 vided by the authorized agency, the Federal Bureau of Investigation and
15 agencies reporting information to the authorized agency or the federal bu-
16 reau must be made through the authorized agency or the federal bureau.

17 “[9] (10) The authorized agency shall adopt rules to implement this
18 section. The rules may include but are not limited to:

19 “(a) Criteria to be used by the authorized agency to determine whether
20 an entity is a qualified entity; and

21 “(b) Fees to be charged for conducting criminal records checks under this
22 section in amounts not to exceed the actual costs of acquiring and furnishing
23 criminal offender information.

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

25 “181.534. (1) As used in this section:

26 “(a) ‘Authorized agency’ means state government as defined in ORS
27 174.111 and the Oregon State Bar. ‘Authorized agency’ does not include:

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

29 or

30 “(B) A criminal justice agency, as defined in ORS 181.010, that is au-

1 thORIZED by federal law to receive fingerprint-based criminal records checks
2 from the Federal Bureau of Investigation.

3 “(b) ‘Subject individual’ means a person from whom an authorized agency
4 may require fingerprints pursuant to statute for the purpose of enabling the
5 authorized agency to request a state or nationwide criminal records check.

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

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

15 “(b) **If the Department of State Police has results of a criminal re-**
16 **ords check of a subject individual that was conducted within the five**
17 **years preceding the date of the request, the department shall provide**
18 **the authorized agency requesting the criminal records check with a**
19 **copy of the results of the earlier criminal records check. If the de-**
20 **partment provides a copy of results of an earlier criminal records**
21 **check under this paragraph, the department may conduct an updated**
22 **criminal records check using the Law Enforcement Data System es-**
23 **tablished in ORS 181.730 upon the request of the authorized agency.**

24 “[4) *The Federal Bureau of Investigation shall return or destroy the fin-*
25 *gerprint cards used to conduct the criminal records check and may not keep*
26 *any record of the fingerprints. If the federal bureau policy authorizing return*
27 *or destruction of the fingerprint cards is changed, the Department of State*
28 *Police shall cease to send the cards to the federal bureau but shall continue*
29 *to process the information through other available resources.]*

30 “[5) *If the Federal Bureau of Investigation returns the fingerprint cards*

1 to the Department of State Police, the department shall destroy the fingerprint
2 cards and shall retain no facsimiles or other material from which a fingerprint
3 can be reproduced.]

4 “[6] If only a state criminal records check is conducted, the Department
5 of State Police shall destroy the fingerprint cards after the criminal records
6 check is completed and the results of the criminal records check provided to
7 the authorized agency and shall retain no facsimiles or other material from
8 which a fingerprint can be reproduced.]

9 “[7] (4) An authorized agency may conduct criminal records checks on
10 subject individuals through the Law Enforcement Data System maintained
11 by the Department of State Police in accordance with rules adopted, and
12 procedures established, by the Department of State Police.

13 “[8] (5) An authorized agency and the Department of State Police shall
14 permit a subject individual for whom a fingerprint-based criminal records
15 check was conducted to inspect the individual’s own state and national
16 criminal offender records and, if requested by the subject individual, provide
17 the individual with a copy of the individual’s own state and national crimi-
18 nal offender records.

19 “[9] (6) Each authorized agency, in consultation with the Department
20 of State Police, shall adopt rules to implement this section and other statutes
21 relating to criminal offender information obtained through fingerprint-based
22 criminal records checks. The rules shall include but need not be limited to:

23 “(a) Specifying categories of subject individuals who are subject to crim-
24 inal records checks.

25 “(b) Specifying the information that may be required from a subject indi-
26 vidual to permit a criminal records check.

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

28 “(d) Specifying the types of crimes that may be considered in reviewing
29 criminal offender information of a subject individual.

30 “(e) Specifying when a nationwide fingerprint-based criminal records

under info

1 check must be conducted. An authorized agency shall consider the additional
2 cost of obtaining a nationwide fingerprint-based criminal records check when
3 adopting rules under this subsection.

4 “(f) If the authorized agency uses criminal records checks for agency em-
5 ployment purposes:

6 “(A) Determining when and under what conditions a subject individual
7 may be hired on a preliminary basis pending a criminal records check; and

8 “(B) Defining the conditions under which a subject individual may par-
9 ticipate in training, orientation and work activities pending completion of
10 a criminal records check.

11 “(g) Establishing fees in an amount not to exceed the actual cost of ac-
12 quiring and furnishing criminal offender information.

13 “[~~(10)~~] (7) The Department of State Police shall verify that an authorized
14 agency has adopted the rules required by subsection [~~(9)~~] (6) of this section.

15 “[~~(11)~~] (8) Except as otherwise provided in ORS 181.612, an authorized
16 agency, using the rules adopted under subsection [~~(9)~~] (6) of this section,
17 shall determine whether a subject individual is fit to hold a position, provide
18 services, be employed or be granted a license, certification, registration or
19 permit, based on the criminal records check obtained pursuant to this sec-
20 tion, on any false statements made by the individual regarding the criminal
21 history of the individual and on any refusal to submit or consent to a crim-
22 inal records check including fingerprint identification. If a subject individ-
23 ual is determined to be unfit, then the individual may not hold the position,
24 provide services, be employed or be granted a license, certification, regis-
25 tration or permit.

26 “[~~(12)~~] (9) Except as otherwise provided in ORS 181.612, in making the
27 fitness determination under subsection [~~(11)~~] (8) of this section, the author-
28 ized agency shall consider:

29 “(a) The nature of the crime;

30 “(b) The facts that support the conviction or pending indictment or that

1 indicate the making of the false statement;

2 “(c) The relevancy, if any, of the crime or the false statement to the spe-
3 cific requirements of the subject individual’s present or proposed position,
4 services, employment, license, certification or registration; and

5 “(d) Intervening circumstances relevant to the responsibilities and cir-
6 cumstances of the position, services, employment, license, certification, reg-
7 istration or permit. Intervening circumstances include but are not limited
8 to:

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

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

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

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

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

16 “(F) A recommendation of an employer.

17 “[~~(13)~~ (10) An authorized agency and an employee of an authorized
18 agency acting within the course and scope of employment are immune from
19 any civil liability that might otherwise be incurred or imposed for deter-
20 mining, pursuant to subsection [~~(11)~~ (8) of this section, that a subject indi-
21 vidual is fit or not fit to hold a position, provide services, be employed or
22 be granted a license, certification, registration or permit. An authorized
23 agency and an employee of an authorized agency acting within the course
24 and scope of employment who in good faith comply with this section are not
25 liable for employment-related decisions based on determinations made under
26 subsection [~~(11)~~ (8) of this section. An authorized agency or an employee
27 of an authorized agency acting within the course and scope of employment
28 is not liable for defamation or invasion of privacy in connection with the
29 lawful dissemination of information lawfully obtained under this section.

30 “[~~(14)(a)~~ (11)(a) Each authorized agency shall establish by rule a con-

1 tested case process by which a subject individual may appeal the determi-
2 nation that the individual is fit or not fit to hold a position, provide services,
3 be employed or be granted a license, certification, registration or permit on
4 the basis of information obtained as the result of a criminal records check
5 conducted pursuant to this section. Challenges to the accuracy or complete-
6 ness of information provided by the Department of State Police, the Federal
7 Bureau of Investigation and agencies reporting information to the Depart-
8 ment of State Police or Federal Bureau of Investigation must be made
9 through the Department of State Police, Federal Bureau of Investigation or
10 reporting agency and not through the contested case process required by this
11 paragraph.

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

22 “[~~(15)~~] (12) Criminal offender information is confidential. Authorized
23 agencies and the Department of State Police shall adopt rules to restrict
24 dissemination of information received under this section to persons with a
25 demonstrated and legitimate need to know the information.

26 “[~~(16)~~] (13) If a subject individual refuses to consent to the criminal re-
27 cords check or refuses to be fingerprinted, the authorized agency shall deny
28 the employment of the individual, or revoke or deny any applicable position,
29 authority to provide services, license, certification, registration or permit.

30 “[~~(17)~~] (14) If an authorized agency requires a criminal records check of

1 employees, prospective employees, contractors, vendors or volunteers or ap-
2 plicants for a license, certification, registration or permit, the application
3 forms of the authorized agency must contain a notice that the person is
4 subject to fingerprinting and a criminal records check.

5 **SECTION 6.** ORS 181.612 is amended to read:

6 "181.612. (1) For the purpose of requesting a state or nationwide criminal
7 records check under ORS 181.534, the Department of Public Safety Standards
8 and Training may require the fingerprints of a person who:

9 "(a) Is employed or applying for employment by the department;

10 "(b) Provides services or seeks to provide services to the department as
11 a contractor, vendor or volunteer; or

12 "(c) Is applying for a license or certificate, or for reissuance of a license
13 or certificate, that is issued by the department or is under investigation by
14 the department.

15 "(2) ORS 181.534 [(11) and (12)] **(8) and (9)** does not apply to the depart-
16 ment when the department makes denial or revocation decisions regarding
17 persons described in subsection (1)(c) of this section or ORS 181.880 or
18 703.090.

19 "(3) The department and an employee of the department acting within the
20 course and scope of employment are immune from any civil liability that
21 might otherwise be incurred or imposed for making denial or revocation de-
22 cisions regarding persons described in subsection (1)(c) of this section or
23 ORS 181.880 or 703.090. The department, an employee of the department
24 acting within the course and scope of employment and an employer or
25 employer's agent who in good faith comply with the requirements of ORS
26 181.662, 181.875 or 703.090, any rules adopted by the department and the de-
27 cision of the department or employee of the department acting within the
28 course and scope of employment are not liable for employment-related deci-
29 sions based on decisions made under ORS 181.662, 181.875 or 703.090. The
30 department or an employee of the department acting within the course and

1 scope of employment is not liable for defamation or invasion of privacy in
2 connection with the lawful dissemination of information lawfully obtained
3 under ORS 181.534.

4 **SECTION 7.** ORS 181.880 is amended to read:

5 "181.880. (1) A license or certificate issued by the Department of Public
6 Safety Standards and Training under ORS 181.878 expires two years follow-
7 ing the date of issuance or on the assigned renewal date.

8 "(2) The department shall offer certificates or licenses to private security
9 providers in levels and categories as established by the Board on Public
10 Safety Standards and Training in consultation with the department.

11 "(3) Upon receipt of an application for certification under ORS 181.876,
12 the department shall forward a complete set of the applicant's fingerprints
13 to the Department of State Police and request that the Department of State
14 Police conduct a nationwide criminal records check of the applicant as pro-
15 vided in ORS 181.534. Notwithstanding [*ORS 181.534 (5) and (6),*] **directions**
16 **made under section 3 (3) of this 2012 Act,** the Department of State Police
17 shall maintain in the department's files the fingerprint cards used to conduct
18 the criminal records check.

19 **SECTION 8.** ORS 443.004 is amended to read:

20 "443.004. (1) The Department of Human Services or the Oregon Health
21 Authority shall complete a criminal records check under ORS 181.534 on:

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

23 "(b) Any individual who is paid directly or indirectly with public funds
24 who has or will have contact with a recipient of support services or a resi-
25 dent of an adult foster home or a residential facility; and

26 "(c) A home care worker registering with the Home Care Commission or
27 renewing a registration with the Home Care Commission.

28 "(2)(a) A home health agency shall conduct a criminal background check
29 before hiring or contracting with an individual and before allowing an indi-
30 vidual to volunteer to provide services on behalf of the home health agency,

1 if the individual will have direct contact with a patient of the home health
2 agency.

3 “(b) An in-home care agency shall conduct a criminal background check
4 before hiring or contracting with an individual and before allowing an indi-
5 vidual to volunteer to provide services on behalf of the in-home care agency,
6 if the individual will have direct contact with a client of the in-home care
7 agency.

8 “(c) The authority shall prescribe by rule the process for conducting a
9 criminal background check.

10 “(3) Public funds may not be used to support, in whole or in part, the
11 employment in any capacity having contact with a recipient of support ser-
12 vices or a resident of a residential facility or an adult foster home, of an
13 individual, other than a mental health or substance abuse treatment pro-
14 vider, who has been convicted:

15 “(a) Of a crime described in ORS 163.095, 163.115, 163.118, 163.125, 163.145,
16 163.149, 163.165, 163.175, 163.185, 163.187, 163.200, 163.205, 163.225, 163.235,
17 163.263, 163.264, 163.266, 163.275, 163.465, 163.467, 163.535, 163.537, 163.689,
18 163.700, 164.055, 164.057, 164.098, 164.125 (5)(c) or (d), 164.215, 164.225, 164.325,
19 164.377 (2) or (3), 164.405, 164.415, 165.022, 165.032, 165.800, 165.803, 167.012,
20 167.017 or 167.057;

21 “(b) Of a crime listed in ORS 181.594;

22 “(c) In the last 10 years, of a crime involving the delivery or manufacture
23 of a controlled substance;

24 “(d) Of an attempt, conspiracy or solicitation to commit a crime described
25 in paragraphs (a) to (c) of this subsection; or

26 “(e) Of a crime in another jurisdiction that is substantially equivalent,
27 as defined by rule, to a crime described in paragraphs (a) to (d) of this sub-
28 section.

29 “(4) If the criminal background check conducted by a home health agency
30 or in-home care agency under subsection (2) of this section reveals that the

1 individual who is subject to the criminal background check has been con-
2 victed of any of the crimes described in subsection (3) of this section, the
3 home health agency or in-home care agency may not employ the individual.

4 “(5) Public funds may not be used to support, in whole or in part, the
5 employment, in any capacity having contact with a recipient of support ser-
6 vices or a resident of a residential facility or an adult foster home, of a
7 mental health or substance abuse treatment provider who has been convicted
8 of committing, or convicted of an attempt, conspiracy or solicitation to
9 commit, a crime described in ORS 163.095, 163.115, 163.375, 163.405, 163.411
10 or 163.427.

11 “(6) Upon the request of a mental health or substance abuse treatment
12 provider, the department or authority shall maintain a record of the results
13 of any fitness determination made under ORS 181.534 [(11) and (12)] **(8) and**
14 **(9)**. The department or authority may disclose the record only to a person
15 the provider specifically authorizes, by a written release, to receive the in-
16 formation.

17 “(7) If the department or authority has a record of substantiated abuse
18 committed by an employee or potential employee of a home health agency,
19 in-home care agency, adult foster home or residential facility, regardless of
20 whether criminal charges were filed, the department or authority shall no-
21 tify, 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
26 443.005.

27 “(d) ‘In-home care agency’ has the meaning given that term in ORS
28 443.305.

29 “(e) ‘Mental health or substance abuse treatment provider’ means:

30 “(A) A peer support specialist;

1 “(B) An employee of a residential treatment facility or a residential
2 treatment home that is licensed under ORS 443.415 to provide treatment for
3 individuals with alcohol or drug dependence;

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

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

7 “(f) ‘Peer support specialist’ means a person who:

8 “(A) Is providing peer support services as defined by the authority by
9 rule;

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

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

12 “(D) Is currently receiving or has formerly received mental health ser-
13 vices, or is in recovery from a substance use disorder and meets the
14 abstinence requirements for staff providing services in alcohol or other drug
15 treatment programs.

16 “(g) ‘Residential facility’ has the meaning given that term in ORS 443.400.

17 “**SECTION 9.** ORS 480.235 is amended to read:

18 “480.235. (1) A certificate of possession shall be issued or denied within
19 45 days after the date of the application or the conclusion of the investi-
20 gation conducted by the issuing authority pursuant to subsection (2) of this
21 section.

22 “(2) The issuing authority shall conduct an investigation to ensure that
23 the applicant meets the requirements listed in ORS 480.225 and 480.230. The
24 issuing authority shall include fingerprinting and photographic identification
25 in the investigation. The issuing authority may use fingerprints obtained
26 under this subsection for the purpose of requesting a state or nationwide
27 criminal records check under ORS 181.534. Unless the issuing authority finds
28 that the applicant is ineligible under ORS 480.225 or 480.230, the authority
29 shall issue a certificate of possession to the applicant. If the issuing au-
30 thority finds that the applicant is ineligible under ORS 480.225 or 480.230,

1 the authority shall issue a notification of denial. The denial is subject to the
2 provisions of ORS 480.275.

3 “(3) A certificate of possession is valid for three years from the date of
4 issuance unless suspended or revoked pursuant to ORS 480.270.

5 “(4) A certificate of possession may not be assigned or transferred.

6 “(5) The holder of a certificate of possession shall maintain a record of
7 the type and quantity of all explosives possessed during the certificate pe-
8 riod. The record shall be made available upon demand of the issuing au-
9 thority, a magistrate or a law enforcement agency, public fire department
10 or fire protection agency of this state.

11 “(6) Notwithstanding [ORS 181.534 (5) and (6),] **directions made under**
12 **section 3 (3) of this 2012 Act**, the Department of State Police shall main-
13 tain in the department’s files fingerprint cards submitted to it for purposes
14 of conducting a state or nationwide criminal records check under ORS
15 181.534 on applicants for a certificate of possession.

16 **“SECTION 10.** ORS 703.090 is amended to read:

17 “703.090. (1) All of the following requirements apply to an applicant for
18 a license as a general polygraph examiner. The applicant must:

19 “(a) Be at least 18 years of age.

20 “(b) Be a citizen of the United States.

21 “(c) Not have demonstrated, in the preceding 10 years, a course of be-
22 havior that indicates a high degree of probability that the applicant will be
23 unlikely to perform the duties of a polygraph examiner in a manner that
24 would serve the interests of the public.

25 “(d) If previously convicted for a criminal offense, provide information,
26 as required by the Department of Public Safety Standards and Training, re-
27 lating to the circumstances of the conviction. ORS 670.280 is applicable when
28 the department considers information provided under this paragraph.

29 “(e)(A) Have received a baccalaureate degree from a college or university
30 that is accredited by the American Association of Collegiate Registrars and

1 Admissions Officers; or

2 “(B) Have graduated from high school or have been awarded a General
3 Educational Development (GED) certificate, and have at least five years of
4 active investigative experience before the date of application.

5 “(f) Have graduated from a polygraph examiners course approved by the
6 department and conforming to any minimum training standards approved by
7 the Board on Public Safety Standards and Training and have satisfactorily
8 completed at least 200 examinations, or have worked as a polygraph exam-
9 iner for a period of at least five years for a governmental agency within the
10 State of Oregon and have satisfactorily completed at least 200 examinations.

11 “(g) Have successfully completed an examination conducted by the de-
12 partment to determine, consistent with any standards approved by the board,
13 competency to act as a polygraph examiner.

14 “(2) For the purpose of requesting a state or nationwide criminal records
15 check under ORS 181.534, the Department of Public Safety Standards and
16 Training shall require each applicant to be fingerprinted as part of the li-
17 censing procedure.

18 “(3) Notwithstanding [*ORS 181.534 (5) and (6)*], **directions made under**
19 **section 3 (3) of this 2012 Act**, the Department of State Police shall main-
20 tain in the department’s files fingerprint cards submitted to it for purposes
21 of conducting a state or nationwide criminal records check under ORS
22 181.534 on applicants for a license as a general polygraph examiner.

23 “(4) When the Department of Public Safety Standards and Training re-
24 fuses to issue a license based upon an applicant’s failure to meet the re-
25 quirements of subsection (1)(c) of this section, the department shall prepare
26 a concise, specific written statement of the facts supporting the department’s
27 conclusion that there is a high degree of probability that the applicant will
28 be unlikely to perform required duties in a manner that would serve the in-
29 terests of the public. A copy of the statement must be given to the applicant.

30 “**SECTION 11.** ORS 703.425 is amended to read:

1 "703.425. (1) An application for a private investigator's license or a pro-
2 visional investigator's license must be in writing on a form prescribed by the
3 Department of Public Safety Standards and Training, stating the applicant's:

4 "(a) Legal name;

5 "(b) Birthdate;

6 "(c) Citizenship;

7 "(d) Physical description;

8 "(e) Current residence;

9 "(f) Residence for the preceding 10 years;

10 "(g) Current employment;

11 "(h) Employment for the preceding 10 years;

12 "(i) Experience qualifications;

13 "(j) Education;

14 "(k) Business address, which may be a post office box; and

15 "(L) Any other information required by the department.

16 "(2) The application must be accompanied by:

17 "(a) The application fee as prescribed by the Board on Public Safety
18 Standards and Training by rule;

19 "(b) Recent photographs of the applicant as prescribed by the board by
20 rule to be used for an identification card and for the files of the department;

21 "(c) Complete sets of the applicant's fingerprints as prescribed by the
22 board by rule;

23 "(d) Three professional references, none of which may be from a person
24 who is related to the applicant by blood or marriage;

25 "(e) Proof of a corporate surety bond, an irrevocable letter of credit issued
26 by an insured institution as defined in ORS 706.008 or such other security
27 as the department may prescribe by rule in the sum of at least \$5,000, or
28 errors and omissions insurance in the sum of at least \$5,000; and

29 "(f) Proof of a passing score on the test of investigator competency
30 adopted by the board and administered by the department.

1 “(3) All applicants must disclose any acts constituting grounds for denial
2 of an investigator’s license and must notify the department if the applicant
3 is charged with a criminal offense. The department shall conduct a special
4 review of any applicant making a disclosure under this subsection.

5 “(4) The Department of Public Safety Standards and Training shall for-
6 ward a complete set of an applicant’s fingerprints to the Department of State
7 Police and shall request that the Department of State Police conduct crimi-
8 nal records checks as provided in ORS 181.534. Notwithstanding [ORS
9 181.534 (5) and (6),] **directions made under section 3 (3) of this 2012 Act,**
10 the Department of State Police shall maintain in its files the fingerprint
11 cards used to conduct the state criminal records check.

12 “(5) Employees of or partners in a firm who are covered by the firm’s
13 errors and omissions insurance meet the requirements of subsection (2)(e) of
14 this section as long as the coverage is at least \$5,000 per investigator.

15 “**SECTION 12. This 2012 Act being necessary for the immediate**
16 **preservation of the public peace, health and safety, an emergency is**
17 **declared to exist, and this 2012 Act takes effect on its passage.”.**

18

Department