

Enrolled
House Bill 2053

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor John A. Kitzhaber, M.D., for Department of Human Services)

CHAPTER

AN ACT

Relating to criminal records checks for tribal foster care; creating new provisions; amending ORS 181.537 and 181.538; and declaring an emergency.

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

SECTION 1. ORS 181.537, as amended by section 19, chapter 70, Oregon Laws 2012, is amended to read:

181.537. (1) As used in this section:

(a) "Care" means the provision of care, treatment, education, training, instruction, supervision, placement services, recreation or support to children, the elderly or persons with disabilities.

(b) **"Native American tribe" has the meaning given that term in ORS 181.538 (4).**

[(b)] (c) "Qualified entity" means a community mental health program, a community developmental disabilities program, a local health department, **the government of a Native American tribe or an agency of a Native American tribe responsible for child welfare** or an individual or business or organization, whether public, private, for-profit, nonprofit or voluntary, that provides care, including a business or organization that licenses, certifies or registers others to provide care.

(2) For the purpose of requesting a state or nationwide criminal records check under ORS 181.534, the Department of Human Services, the Oregon Health Authority and the Employment Department may require the fingerprints of a person:

(a) Who is employed by or is applying for employment with either department or the authority;

(b) Who provides or seeks to provide services to either department or the authority as a contractor, subcontractor, vendor or volunteer who:

(A) May have contact with recipients of care;

(B) Has access to personal information about employees of either department or the authority, recipients of care from either department or the authority or members of the public, including Social Security numbers, dates of birth, driver license numbers, medical information, personal financial information or criminal background information;

(C) Has access to information the disclosure of which is prohibited by state or federal laws, rules or regulations, or information that is defined as confidential under state or federal laws, rules or regulations;

(D) Has access to property held in trust or to private property in the temporary custody of the state;

(E) Has payroll or fiscal functions or responsibility for:

(i) Receiving, receipting or depositing money or negotiable instruments;

(ii) Billing, collections, setting up financial accounts or other financial transactions; or

(iii) Purchasing or selling property;
(F) Provides security, design or construction services for government buildings, grounds or facilities;

(G) Has access to critical infrastructure or secure facilities information; or

(H) Is providing information technology services and has control over or access to information technology systems;

(c) For the purposes of licensing, certifying, registering or otherwise regulating or administering programs, persons or qualified entities that provide care;

(d) For the purposes of employment decisions by or for qualified entities that are regulated or otherwise subject to oversight by the Department of Human Services or the Oregon Health Authority and that provide care; [or]

(e) For the purposes of employment decisions made by a mass transit district or transportation district for qualified entities that, under contracts with the district or the Oregon Health Authority, employ persons to operate motor vehicles for the transportation of medical assistance program clients[.]; or

(f) For the purposes of licensure, certification or registration of foster homes by the government of a Native American tribe or an agency of a Native American tribe responsible for child welfare.

(3) The Department of Human Services and the Oregon Health Authority may conduct criminal records checks on a person through the Law Enforcement Data System maintained by the Department of State Police, if deemed necessary by the Department of Human Services or the Oregon Health Authority to protect children, elderly persons, persons with disabilities or other vulnerable persons.

(4) The Department of Human Services and the Oregon Health Authority may furnish to qualified entities, in accordance with the rules of the Department of Human Services or the Oregon Health Authority and the rules of the Department of State Police, information received from the Law Enforcement Data System. However, any criminal offender records and information furnished to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of Investigation through the Department of State Police may not be disseminated to qualified entities.

(5)(a) A qualified entity, using rules adopted by the Department of Human Services or the Oregon Health Authority, shall determine under this section whether a person is fit to hold a position, provide services, be employed or, if the qualified entity has authority to make such a determination, be licensed, certified or registered, based on the criminal records check obtained pursuant to ORS 181.534, any false statements made by the person regarding the criminal history of the person and any refusal to submit or consent to a criminal records check including fingerprint identification. If a person is determined to be unfit, then that person may not hold the position, provide services or be employed, licensed, certified or registered.

(b) A person prohibited from receiving public funds for employment under ORS 443.004 (3) is not entitled to a determination of fitness under paragraph (a) of this subsection.

(6) In making the fitness determination under subsection (5) of this section, the qualified entity shall consider:

(a) The nature of the crime;

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

(c) The relevancy, if any, of the crime or the false statement to the specific requirements of the person's present or proposed position, services, employment, license, certification or registration; and

(d) Intervening circumstances relevant to the responsibilities and circumstances of the position, services, employment, license, certification or registration. Intervening circumstances include but are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(7) The Department of Human Services, the Oregon Health Authority and the Employment Department may make fitness determinations based on criminal offender records and information furnished by the Federal Bureau of Investigation through the Department of State Police only as provided in ORS 181.534.

(8) A qualified entity and an employee of a qualified entity acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for determining pursuant to subsection (5) of this section that a person is fit or not fit to hold a position, provide services or be employed, licensed, certified or registered. A qualified entity, employee of a qualified entity acting within the course and scope of employment and an employer or employer's agent who in good faith comply with this section and the decision of the qualified entity or employee of the qualified entity acting within the course and scope of employment are not liable for the failure to hire a prospective employee or the decision to discharge an employee on the basis of the qualified entity's decision. An employee of the state acting within the course and scope of employment is not liable for defamation or invasion of privacy in connection with the lawful dissemination of information lawfully obtained under this section.

(9) The Department of Human Services and the Oregon Health Authority shall develop systems that maintain information regarding criminal records checks in order to minimize the administrative burden imposed by this section and ORS 181.534. Records maintained under this subsection are confidential and may not be disseminated except for the purposes of this section and in accordance with the rules of the Department of Human Services, the Oregon Health Authority and the Department of State Police. Nothing in this subsection permits the Department of Human Services to retain fingerprint cards obtained pursuant to this section.

(10) In addition to the rules required by ORS 181.534, the Department of Human Services and the Oregon Health Authority, in consultation with the Department of State Police, shall adopt rules:

- (a) Specifying which qualified entities are subject to this section;
- (b) Specifying which qualified entities may request criminal offender information;
- (c) Specifying which qualified entities are responsible for deciding whether a subject individual is not fit for a position, service, license, certification, registration or employment; and
- (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records check, may proceed to make a fitness determination under subsection (5) of this section using the information maintained by the Department of Human Services and the Oregon Health Authority pursuant to subsection (9) of this section.

(11) If a person refuses to consent to the criminal records check or refuses to be fingerprinted, the qualified entity shall deny or terminate the employment of the person, or revoke or deny any applicable position, authority to provide services, employment, license, certification or registration.

(12) If the qualified entity requires a criminal records check of employees or other persons, the application forms of the qualified entity must contain a notice that employment is subject to fingerprinting and a criminal records check.

SECTION 2. ORS 181.538 is amended to read:

181.538. (1) Upon the request of a Native American tribe, and in compliance with procedures adopted by the Department of State Police under ORS 181.555, the Department of State Police shall furnish to the authorized staff of the Native American tribe such information on a subject individual or contractor as the Department of State Police may have in its possession, including but not limited to manual or computerized criminal offender information. With the approval of the Department of State Police, a local law enforcement agency may furnish the information described in this subsection to a Native American tribe.

(2)(a) Subsequent to furnishing the information required under subsection (1) of this section, the Department of State Police shall conduct nationwide criminal records checks of the subject individual or contractor through the Federal Bureau of Investigation by use of the subject individual's or contractor's fingerprints and shall report the results to the staff of the Native American tribe, who must be specifically authorized to receive the information. In accordance with the procedures of the Department of State Police, a local law enforcement agency may conduct the criminal records

check described in this paragraph if the local law enforcement agency has received approval under subsection (1) of this section.

(b) The Department of State Police shall return the fingerprint cards to the Native American tribe.

(3) For purposes of requesting and receiving the information and data described in subsections (1) and (2) of this section, Native American tribes are designated agencies for purposes of ORS 181.010 to 181.560 and 181.715 to 181.730.

(4) As used in this section:

(a) "Contractor" means an individual or entity with which a Native American tribe intends to contract for the purpose of providing supplies or services related to tribal gaming, or a control person of a contractor.

(b) "Control person" means:

(A) In a privately owned corporation, the officers, directors and stockholders of the parent company and, if applicable, each of its subsidiaries.

(B) In a publicly owned corporation, the officers and directors of the parent company, each of its subsidiaries and stockholders owning at least 15 percent of the company's stock.

(C) In a trust, the trustee and all persons entitled to receive income or benefit from the trust.

(D) In an association, the members, officers and directors.

(E) In a partnership or joint venture, the general partners, limited partners or joint venturers.

(F) A member of the immediate family of any of the persons listed in subparagraphs (A) to (E) of this paragraph if the person is involved in the business.

(G) A subcontractor of a contractor, if the subcontractor performs more than 50 percent of the contractor's contract with the Native American tribe.

(c) "Native American tribe" means a recognized Native American tribe or band of tribes:

(A) Authorized by the Indian Gaming Regulatory Act of October 17, 1988 (Public Law 100-497), 25 U.S.C. 2701 et seq., and the State of Oregon to conduct gambling operations on tribal land; or

(B) Eligible for special programs and services provided by the United States to Indians because of their status as Indians.

(d) "Subject individual" means an individual who is:

(A) Applying for employment at a tribal gaming facility as a key employee, high security employee, low security employee or management employee; *[or]*

(B) Employed or applying for employment with a tribal government or agency responsible for child care, child welfare, law enforcement, education, health care, housing or social services[.];

(C) **Licensed, certified or registered, or applying to be licensed, certified or registered, by the government of a Native American tribe or an agency of a Native American tribe to provide foster care for children; or**

(D) **Living in the home of an individual described in subparagraph (C) of this paragraph.**

SECTION 3. (1) The amendments to ORS 181.537 by section 1 of this 2013 Act apply to foster homes licensed, certified or registered before, on or after the effective date of this 2013 Act.

(2)(a) The amendments to ORS 181.538 by section 2 (4)(d)(C) of this 2013 Act apply to individuals who are licensed, certified or registered, or applying to be licensed, certified or registered, to provide foster care for children, before, on or after the effective date of this 2013 Act.

(b) The amendments to ORS 181.538 by section 2 (4)(d)(D) of this 2013 Act apply to an individual living in the home of an individual described in the amendments to ORS 181.538 by section 2 (4)(d)(C) of this 2013 Act before, on or after the effective date of this 2013 Act.

SECTION 4. This 2013 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect on its passage.

Passed by House March 5, 2013

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Ramona J. Line, Chief Clerk of House

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Tina Kotek, Speaker of House

Passed by Senate April 30, 2013

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Peter Courtney, President of Senate

Received by Governor:

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Approved:

.....M,....., 2013

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John Kitzhaber, Governor

Filed in Office of Secretary of State:

.....M,....., 2013

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Kate Brown, Secretary of State