

House Bill 2228

Sponsored by Representatives HOYLE, GILLIAM (at the request of Oregon Elder Abuse Prevention Work Group)
(Presession filed.)

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**.

Requires Department of State Police to establish voluntary program through which department retains fingerprint cards or creates facsimiles of fingerprints received from Federal Bureau of Investigation, or created during state criminal records check, for purpose of notifying agencies and districts that subscribe to program of receipt of fingerprints or other identifying information by department for reasons related to administration of criminal justice.

A BILL FOR AN ACT

1
2 Relating to retention of fingerprint information; creating new provisions; and amending ORS 181.533,
3 181.534, 181.880, 267.237, 480.235, 703.090 and 703.425.

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

5 **SECTION 1. (1) The Department of State Police shall establish a voluntary fingerprint**
6 **retention program through which the department retains fingerprint cards or creates fac-**
7 **similes of fingerprints received from the Federal Bureau of Investigation, or created during**
8 **a state criminal records check under ORS 181.533, 181.534, 181.537 or 267.237, for the purpose**
9 **of providing information as described in subsection (3) of this section.**

10 **(2) When the department receives forms containing a person's fingerprints and other**
11 **identifying information under ORS 181.511 or for any other purpose related to the adminis-**
12 **tration of criminal justice, the department shall determine whether the person has volun-**
13 **tarily chosen to participate in the fingerprint retention program.**

14 **(3) If an authorized agency as defined in ORS 181.533 or 181.534, an agency listed in ORS**
15 **181.537 (2), or a district as defined in ORS 267.237, subscribes to the fingerprint retention**
16 **program, the department shall provide to the authorized agency, agency or district any in-**
17 **formation described in subsection (2) of this section, received by the department, that is re-**
18 **lated to a person who has voluntarily chosen to participate in the program.**

19 **(4) An individual subject to a criminal records check under ORS 181.533, 181.534, 181.537**
20 **or 267.237 is not required to participate in the fingerprint retention program and an author-**
21 **ized agency, agency or district is not required to subscribe to the program. Participation in**
22 **the program is voluntary.**

23 **(5) An authorized agency, agency or district that subscribes to the fingerprint retention**
24 **program shall inform an individual subject to a criminal records check under ORS 181.533,**
25 **181.534, 181.537 or 267.237 about the program. Information provided under this subsection**
26 **must clearly indicate that participation in the program is voluntary.**

27 **(6) An authorized agency, agency or district that subscribes to the fingerprint retention**
28 **program may not require a person to volunteer to participate in the program as a condition**
29 **of employment.**

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 **(7) Information retained under this section is exempt from public disclosure under ORS**
2 **192.410 to 192.505, and the department may not otherwise disclose the information.**

3 **(8) The department:**

4 **(a) Shall adopt rules for the administration of this section; and**

5 **(b) May adopt a fee that an authorized agency, agency or district must pay to subscribe**
6 **to the program.**

7 **SECTION 2.** ORS 181.533 is amended to read:

8 181.533. (1) As used in this section:

9 (a) “Authorized agency” means the Department of State Police or other governmental agency
10 designated by the State of Oregon to report, receive or disseminate criminal offender information.

11 (b) “Qualified entity” means a business or organization that:

12 (A) Provides care or placement services, or licenses or certifies others to provide care or
13 placement services, for children, elderly persons or dependent persons;

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

15 (C) Has been determined by an authorized agency to meet the criteria established by the au-
16 thorized agency by rule under subsection (9) of this section.

17 (c) “Subject individual” means a person who is employed or seeks to be employed by a qualified
18 entity or who is providing services or seeks to provide services to a qualified entity on a contractual
19 or volunteer basis.

20 (2) An entity may request from an authorized agency a criminal records check for purposes of
21 evaluating the fitness of a subject individual as an employee, contractor or volunteer. The author-
22 ized agency may access state and federal criminal records under this subsection only through use
23 of the subject individual’s fingerprints.

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

25 (a) The authorized agency must determine whether the entity requesting the criminal records
26 check is a qualified entity;

27 (b) The qualified entity must establish criteria, subject to rules adopted by the Oregon Depart-
28 ment of Administrative Services under ORS 181.547, to be used by the authorized agency in re-
29 viewing the criminal offender information for a final record check determination;

30 (c) The qualified entity must provide the criteria established under paragraph (b) of this sub-
31 section to the authorized agency; and

32 (d) The qualified entity must have informed the subject individual that the qualified entity might
33 request a fingerprint-based criminal records check and that the subject individual may obtain a copy
34 of the record check report from, or challenge the accuracy or completeness of the record check re-
35 port through, the authorized agency or the Federal Bureau of Investigation.

36 (4)(a) Upon receipt of a subject individual’s criminal offender information, the authorized agency
37 shall use the criteria provided to the authorized agency by the qualified entity under subsection
38 (3)(c) of this section and rules adopted by the Oregon Department of Administrative Services under
39 ORS 181.547 to make a fitness determination. In making the final record check determination, the
40 authorized agency may consider only information that the Department of State Police may disclose
41 under ORS 181.560.

42 (b) An authorized agency is immune from civil liability that might otherwise be incurred or im-
43 posed for making the final record check determination under this subsection.

44 (5) An authorized agency may not transfer a fingerprint card used to conduct the criminal re-
45 cords check unless the public agency or person receiving the fingerprint card agrees to destroy or

1 return the fingerprint card to the authorized agency.

2 (6) **Except as provided in section 1 of this 2015 Act**, if the public agency or person returns
3 a fingerprint card to the authorized agency, the authorized agency:

4 (a) Shall destroy the fingerprint card[. *The authorized agency*]; **and**

5 (b) May not keep a record of the fingerprints.

6 (7) The authorized agency shall permit a subject individual to inspect the individual's Oregon
7 and Federal Bureau of Investigation criminal offender information after positive identification has
8 been established based upon fingerprints.

9 (8) Challenges to the accuracy or completeness of information provided by the authorized
10 agency, the Federal Bureau of Investigation and agencies reporting information to the authorized
11 agency or the federal bureau must be made through the authorized agency or the federal bureau.

12 (9) The authorized agency shall adopt rules to implement this section. The rules may include but
13 are not limited to:

14 (a) Criteria to be used by the authorized agency to determine whether an entity is a qualified
15 entity; and

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

18 **SECTION 3.** ORS 181.534 is amended to read:

19 181.534. (1) As used in this section:

20 (a) "Authorized agency" means state government as defined in ORS 174.111 and the Oregon
21 State Bar. "Authorized agency" does not include:

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

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

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

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

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

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

40 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
41 State Police, the Department **of State Police** shall destroy the fingerprint cards and [*shall retain*
42 *no*] **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except**
43 **that the Department of State Police may retain the fingerprint cards or create facsimiles for**
44 **the purpose of providing information under section 1 of this 2015 Act.**

45 (6) If only a state criminal records check is conducted, **after the criminal records check is**

1 **completed**, the Department of State Police shall destroy the fingerprint cards [*after the criminal*
 2 *records check is completed*] and the results of the criminal records check provided to the authorized
 3 agency and [*shall retain no*] **may not retain** facsimiles or other material from which a fingerprint
 4 can be reproduced, **except that the Department of State Police may retain the fingerprint**
 5 **cards and results or create facsimiles for the purpose of providing information under section**
 6 **1 of this 2015 Act.**

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

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

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

18 (a) Identifying applicable categories of subject individuals as specified by the Oregon Depart-
 19 ment of Administrative Services under ORS 181.547 who are subject to criminal records checks by
 20 the authorized agency.

21 (b) Identifying applicable information that may be required from a subject individual to permit
 22 a criminal records check as specified by the Oregon Department of Administrative Services under
 23 ORS 181.547.

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

25 (d) If the authorized agency uses criminal records checks for agency employment purposes:

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

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

30 (e) Establishing fees in an amount not to exceed the actual cost of acquiring and furnishing
 31 criminal offender information.

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

34 (11)(a) Except as otherwise provided in ORS 181.612, 342.143, 342.223, 443.735 and 475.304 and
 35 paragraph (b) of this subsection, an authorized agency, using the rules adopted by the authorized
 36 agency under subsection (9) of this section and the rules adopted by the Oregon Department of Ad-
 37 ministrative Services under ORS 181.547, shall determine whether a subject individual is fit to hold
 38 a position, provide services, be employed or be granted a license, certification, registration or per-
 39 mit, based on the criminal records check obtained pursuant to this section, on any false statements
 40 made by the individual regarding the criminal history of the individual and on any refusal to submit
 41 or consent to a criminal records check including fingerprint identification. If a subject individual
 42 is determined to be unfit, then the individual may not hold the position, provide services, be em-
 43 ployed or be granted a license, certification, registration or permit.

44 (b) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
 45 is not entitled to a determination of fitness as a subject individual under paragraph (a) of this sub-

1 section.

2 (c)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a fitness de-
 3 termination of an individual under this subsection may request results of a previously made fitness
 4 determination from an authorized agency that has already made a fitness determination for the in-
 5 dividual. An authorized agency that receives a request under this paragraph shall provide the re-
 6 quested information.

7 (B) An authorized agency may make a request under this paragraph only for individuals:

8 (i) Who are applying to hold a position, provide services, be employed or be granted a license,
 9 certification, registration or permit;

10 (ii) Who are in a category of individuals as specified by the Oregon Department of Administra-
 11 tive Services under ORS 181.547; and

12 (iii) For whom a fitness determination has already been made.

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

15 (a) The nature of the crime;

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

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

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

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

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

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

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

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

29 (F) A recommendation of an employer.

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

40 (14)(a) Each authorized agency shall establish by rule a contested case process by which a sub-
 41 ject individual may appeal the determination that the individual is fit or not fit to hold a position,
 42 provide services, be employed or be granted a license, certification, registration or permit on the
 43 basis of information obtained as the result of a criminal records check conducted pursuant to this
 44 section. Challenges to the accuracy or completeness of information provided by the Department of
 45 State Police, the Federal Bureau of Investigation and agencies reporting information to the De-

1 partment of State Police or Federal Bureau of Investigation must be made through the Department
 2 of State Police, Federal Bureau of Investigation or reporting agency and not through the contested
 3 case process required by this paragraph.

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

11 (c) An individual prohibited from receiving public funds for employment under ORS 443.004 (3)
 12 is not entitled to appeal a determination under paragraph (a) or (b) of this subsection.

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

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

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

23 **SECTION 4.** ORS 267.237 is amended to read:

24 267.237. (1) As used in this section:

25 (a) "District" means a mass transit district organized under ORS 267.010 to 267.390 or a trans-
 26 portation district organized under ORS 267.510 to 267.650.

27 (b) "Qualified entity" means an individual or business or organization, whether public, private,
 28 for-profit, nonprofit or voluntary, that, under contract with a district, provides individuals to operate
 29 motor vehicles for the transportation of passengers in the public transportation system of the dis-
 30 trict.

31 (c) "Subject individual" means a person subject to a criminal records check as specified by re-
 32 solution of a mass transit district or a transportation district.

33 (2) A mass transit district or a transportation district shall request the Department of State
 34 Police to conduct criminal records checks of subject individuals if the checks are required in order
 35 to protect vulnerable Oregonians:

36 (a) To implement a federal or state statute, executive order or rule that expressly refers to
 37 criminal conduct and contains requirements or exclusions expressly based on such conduct;

38 (b) For district employment purposes when hiring individuals to operate motor vehicles of the
 39 district; or

40 (c) For the purposes of employment decisions made by a district for qualified entities that, under
 41 contracts with the district, employ individuals to operate motor vehicles for the transportation of
 42 passengers in the public transportation system of the district.

43 (3) A mass transit district that has a population of more than 500,000 may request the Depart-
 44 ment of State Police to conduct a criminal records check of a subject individual who is:

45 (a) Seeking employment by the district in a position that provides the individual with access to

1 critical infrastructure or security sensitive facilities or information; or

2 (b) Seeking to provide services to the district that will result in the individual's having access
3 to critical infrastructure or security sensitive facilities or information.

4 (4) In order to determine the suitability of the subject individual, a district shall require the
5 subject individual to furnish to the district a full set of fingerprints to enable a criminal records
6 check to be conducted. The district shall submit the completed fingerprint cards to the Department
7 of State Police along with the applicable Oregon and Federal Bureau of Investigation processing
8 fees. If no disqualifying record is identified at the state level, the Department of State Police shall
9 forward the fingerprints to the Federal Bureau of Investigation for a national criminal records
10 check.

11 (5) The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used
12 to conduct the criminal records check and shall not keep any record of the fingerprints. However,
13 if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, a
14 district shall cease to cause the cards to be sent to the federal bureau but shall continue to process
15 the information through other available resources.

16 (6) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
17 State Police, the Department **of State Police** shall destroy the fingerprint cards and [*shall retain*
18 *no*] **may not retain** facsimiles or other material from which a fingerprint can be reproduced, **except**
19 **that the Department of State Police may retain the fingerprint cards or create facsimiles for**
20 **the purpose of providing information under section 1 of this 2015 Act.**

21 (7) If only a state criminal records check is conducted, **after the criminal records check is**
22 **completed**, the Department of State Police shall destroy the fingerprint cards [*after the criminal*
23 *records check is completed*] and the results of the criminal records check provided to the district and
24 [*shall retain no*] **may not retain** facsimiles or other material from which a fingerprint can be re-
25 produced, **except that the Department of State Police may retain the fingerprint cards and**
26 **results or create facsimiles for the purpose of providing information under section 1 of this**
27 **2015 Act.**

28 (8) The district and the Department of State Police shall permit a subject individual to inspect
29 the individual's own Oregon and Federal Bureau of Investigation criminal offender records after
30 positive fingerprint identification has been made.

31 (9)(a) A district, using guidelines established by a resolution of the district, shall determine un-
32 der this section whether a subject individual is fit to operate motor vehicles for the transportation
33 of passengers in the public transportation system of the district or to hold a position or provide
34 services that provide the individual with access to critical infrastructure or security sensitive fa-
35 cilities or information, based on the criminal records check obtained pursuant to this section, any
36 false statements made by the individual regarding the criminal history of the individual and any
37 refusal to submit or consent to a criminal records check including fingerprint identification. If a
38 subject individual is determined to be unfit, then that person shall not be allowed to operate motor
39 vehicles for the transportation of passengers in the public transportation system of the district or
40 to hold the position or provide services that provide the individual with access to critical
41 infrastructure or security sensitive facilities or information.

42 (b) In making the fitness determination, the district shall consider:

43 (A) The nature of the crime;

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

1 (C) The relevancy, if any, of the crime or the false statement to the specific requirements of the
 2 subject individual's present or proposed position or employment; and

3 (D) Intervening circumstances relevant to the responsibilities and circumstances of the position
 4 or employment. Intervening circumstances include but are not limited to the passage of time since
 5 the commission of the crime, the age of the person at the time of the crime, the likelihood of a re-
 6 petition of offenses, the subsequent commission of another relevant crime and a recommendation of
 7 an employer.

8 (c) A district and an employee of the district are immune from any civil liability that might
 9 otherwise be incurred or imposed for actions taken in determining pursuant to this subsection that
 10 a subject individual is fit or not fit to hold a position or be employed. A district, an employee of the
 11 district and an employer or employer's agent who in good faith comply with this section and the
 12 decision of the district or employee of the district are not liable for the failure to hire a prospective
 13 employee or the decision to discharge an employee on the basis of the district's or employee's de-
 14 cision. A district and an employee of the district are immune from any civil liability for the lawful
 15 dissemination of information obtained under this section when the disclosure is:

16 (A) For the purpose of providing notice to the subject individual or the employer of the subject
 17 individual of a determination of fitness under this section;

18 (B) Required by law; or

19 (C) Necessary to support a claim or defense related to denying employment to the subject indi-
 20 vidual.

21 (10) A district shall establish by resolution a process by which a subject individual may appeal
 22 the determination that the subject individual is disqualified for a position or employment pursuant
 23 to this section. Challenges to the accuracy or completeness of information provided by the Depart-
 24 ment of State Police, the Federal Bureau of Investigation and agencies reporting information to the
 25 department or bureau must be made through the department, bureau or agency and not through the
 26 appeal process required by this subsection.

27 (11) A district shall develop a system that maintains information regarding criminal records
 28 checks in order to minimize the administrative burden that criminal records check requirements
 29 impose upon subject individuals and providers. Records maintained under this subsection for subject
 30 individuals are confidential and may not be disseminated except for the purposes of this section and
 31 in accordance with the relevant resolutions of the district. Nothing in this subsection permits a
 32 district to retain fingerprint cards of subject individuals.

33 (12) A district, in consultation with the Department of State Police and affected provider groups,
 34 shall adopt resolutions to implement this section and other statutes relating to criminal offender
 35 information. The resolutions shall include but need not be limited to:

36 (a) Specifying which employees are authorized to make criminal record inquiries;

37 (b) Specifying categories of subject individuals who are subject to criminal records checks;

38 (c) Specifying the information, including fingerprints, that may be required from a subject indi-
 39 vidual to permit a criminal records check;

40 (d) Specifying which services or qualified entities are subject to this section;

41 (e) Specifying which crimes may be considered in reviewing criminal offender information for a
 42 subject individual;

43 (f) Specifying when a nationwide criminal records check shall be conducted on a subject indi-
 44 vidual through the Department of State Police. The additional cost of obtaining a nationwide crim-
 45 inal records check and the risk to vulnerable Oregonians should be taken into consideration when

1 enacting resolutions under this subsection;

2 (g) Specifying when a district, in lieu of conducting a completely new criminal records check,
 3 may proceed to make a fitness determination under this section using the information maintained
 4 by the district under subsection (11) of this section; and

5 (h) Determining when a subject individual may be hired on a probationary basis pending a
 6 criminal records check. At a minimum, if there is any indication of criminal behavior by the subject
 7 individual, the resolution must require that, if the individual is hired, the individual can be hired
 8 only on a probationary basis and must be actively supervised at all times when the individual is in
 9 contact with children, the elderly or persons with disabilities.

10 (13) Criminal offender information is confidential. The Department of State Police shall adopt
 11 rules to restrict dissemination of information received under this section to persons with a demon-
 12 strated and legitimate need to know the information. Any district receiving information pursuant to
 13 this section is bound by the rules of disclosure adopted by the department.

14 (14) If a subject individual refuses to consent to the criminal records check or refuses to be
 15 fingerprinted, the district or qualified entity shall deny or terminate the employment of the individ-
 16 ual, or revoke or deny any applicable position, authority to provide services or employment.

17 (15) A district shall define by resolution the conditions under which subject individuals may
 18 participate in training, orientation and work activities pending completion of a criminal records
 19 check through the Law Enforcement Data System or nationwide criminal records check. At a mini-
 20 mum, subject individuals shall be actively supervised at all times that they are in contact with
 21 children, the elderly and persons with disabilities during such periods of training, orientation and
 22 work. Subject individuals may continue probationary employment while awaiting the nationwide
 23 criminal records check as long as the individual's criminal records check through the Law
 24 Enforcement Data System did not result in disqualification and there are no other indications of
 25 criminal behavior.

26 (16) If a district or a qualified entity requires a criminal records check of employees or other
 27 persons, the application forms of the district or qualified entity must contain a notice that employ-
 28 ment is subject to fingerprinting and a criminal records check as required by this section.

29 **SECTION 5.** ORS 181.880 is amended to read:

30 181.880. (1) A license or certificate issued by the Department of Public Safety Standards and
 31 Training under ORS 181.878 expires two years following the date of issuance or on the assigned
 32 renewal date.

33 (2) The Department of **Public Safety Standards and Training** shall offer certificates or li-
 34 censes to private security providers in levels and categories as established by the Board on Public
 35 Safety Standards and Training in consultation with the department.

36 (3) Upon receipt of an application for certification under ORS 181.876, the Department of **Public**
 37 **Safety Standards and Training** shall forward a complete set of the applicant's fingerprints to the
 38 Department of State Police and request that the Department of State Police conduct a nationwide
 39 criminal records check of the applicant as provided in ORS 181.534. *[Notwithstanding ORS 181.534*
 40 *(5) and (6), the Department of State Police shall maintain in the department's files the fingerprint cards*
 41 *used to conduct the criminal records check.]* **The Department of Public Safety Standards and**
 42 **Training is not required to subscribe to the fingerprint retention program established under**
 43 **section 1 of this 2015 Act to receive information related to a criminal records check con-**
 44 **ducted by the Department of State Police under ORS 181.534.**

45 **SECTION 6.** ORS 480.235 is amended to read:

1 480.235. (1) A certificate of possession shall be issued or denied within 45 days after the date
2 of the application or the conclusion of the investigation conducted by the issuing authority pursuant
3 to subsection (2) of this section.

4 (2) The issuing authority shall conduct an investigation to ensure that the applicant meets the
5 requirements listed in ORS 480.225 and 480.230. The issuing authority shall include fingerprinting
6 and photographic identification in the investigation. The issuing authority may use fingerprints ob-
7 tained under this subsection for the purpose of requesting a state or nationwide criminal records
8 check under ORS 181.534. Unless the issuing authority finds that the applicant is ineligible under
9 ORS 480.225 or 480.230, the authority shall issue a certificate of possession to the applicant. If the
10 issuing authority finds that the applicant is ineligible under ORS 480.225 or 480.230, the authority
11 shall issue a notification of denial. The denial is subject to the provisions of ORS 480.275.

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

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

15 (5) The holder of a certificate of possession shall maintain a record of the type and quantity of
16 all explosives possessed during the certificate period. The record shall be made available upon de-
17 mand of the issuing authority, a magistrate or a law enforcement agency, public fire department or
18 fire protection agency of this state.

19 (6) Notwithstanding ORS 181.534 (5) and (6), the Department of State Police shall maintain in
20 the department's files fingerprint cards submitted to it for purposes of conducting a state or na-
21 tionwide criminal records check under ORS 181.534 on applicants for a certificate of possession.

22 **(7) An issuing authority is not required to subscribe to the fingerprint retention program**
23 **under section 1 of this 2015 Act to receive information related to a criminal records check**
24 **conducted by the Department of State Police under ORS 181.534.**

25 **SECTION 7.** ORS 703.090 is amended to read:

26 703.090. (1) All of the following requirements apply to an applicant for a license as a general
27 polygraph examiner. The applicant must:

28 (a) Be at least 18 years of age.

29 (b) Be a citizen of the United States.

30 (c) Not have demonstrated, in the preceding 10 years, a course of behavior that indicates a high
31 degree of probability that the applicant will be unlikely to perform the duties of a polygraph exam-
32 iner in a manner that would serve the interests of the public.

33 (d) If previously convicted for a criminal offense, provide information, as required by the De-
34 partment of Public Safety Standards and Training, relating to the circumstances of the conviction.
35 ORS 670.280 is applicable when the department considers information provided under this paragraph.

36 (e)(A) Have received a baccalaureate degree from a college or university that is accredited by
37 the American Association of Collegiate Registrars and Admissions Officers; or

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

41 (f) Have graduated from a polygraph examiners course approved by the department and con-
42 forming to any minimum training standards approved by the Board on Public Safety Standards and
43 Training and have satisfactorily completed at least 200 examinations, or have worked as a polygraph
44 examiner for a period of at least five years for a governmental agency within the State of Oregon
45 and have satisfactorily completed at least 200 examinations.

1 (g) Have successfully completed an examination conducted by the department to determine,
 2 consistent with any standards approved by the board, competency to act as a polygraph examiner.

3 (2) An applicant meets the requirements of subsection (1)(e) or (f) of this section if the applicant
 4 provides the Department of Public Safety Standards and Training with documentation of military
 5 training or experience that the department determines is substantially equivalent to the education
 6 or experience required by subsection (1)(e) or (f) of this section.

7 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
 8 181.534, the Department of Public Safety Standards and Training shall require each applicant to be
 9 fingerprinted as part of the licensing procedure.

10 (4) Notwithstanding ORS 181.534 (5) and (6), the Department of State Police shall maintain in
 11 the department's files fingerprint cards submitted to it for purposes of conducting a state or na-
 12 tionwide criminal records check under ORS 181.534 on applicants for a license as a general
 13 polygraph examiner.

14 **(5) The Department of Public Safety Standards and Training is not required to subscribe**
 15 **to the fingerprint retention program established under section 1 of this 2015 Act to receive**
 16 **information related to a criminal records check conducted by the Department of State Police**
 17 **under ORS 181.534.**

18 [(5)] (6) When the Department of Public Safety Standards and Training refuses to issue a license
 19 based upon an applicant's failure to meet the requirements of subsection (1)(c) of this section, the
 20 department shall prepare a concise, specific written statement of the facts supporting the
 21 department's conclusion that there is a high degree of probability that the applicant will be unlikely
 22 to perform required duties in a manner that would serve the interests of the public. A copy of the
 23 statement must be given to the applicant.

24 **SECTION 8.** ORS 703.425 is amended to read:

25 703.425. (1) An application for a private investigator's license or a provisional investigator's li-
 26 cense must be in writing on a form prescribed by the Department of Public Safety Standards and
 27 Training, stating the applicant's:

- 28 (a) Legal name;
- 29 (b) Birthdate;
- 30 (c) Citizenship;
- 31 (d) Physical description;
- 32 (e) Current residence;
- 33 (f) Residence for the preceding 10 years;
- 34 (g) Current employment;
- 35 (h) Employment for the preceding 10 years;
- 36 (i) Experience qualifications;
- 37 (j) Education;
- 38 (k) Business address, which may be a post office box; and
- 39 (L) Any other information required by the department.

40 (2) The application must be accompanied by:

- 41 (a) The application fee as prescribed by the Board on Public Safety Standards and Training by
 42 rule;
- 43 (b) Recent photographs of the applicant as prescribed by the board by rule to be used for an
 44 identification card and for the files of the department;
- 45 (c) Complete sets of the applicant's fingerprints as prescribed by the board by rule;

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

3 (e) Proof of a corporate surety bond, an irrevocable letter of credit issued by an insured insti-
4 tution as defined in ORS 706.008 or such other security as the department may prescribe by rule in
5 the sum of at least \$5,000, or errors and omissions insurance in the sum of at least \$5,000; and

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

8 (3) All applicants must disclose any acts constituting grounds for denial of an investigator's li-
9 cense and must notify the department if the applicant is charged with a criminal offense. The de-
10 partment shall conduct a special review of any applicant making a disclosure under this subsection.

11 (4) The Department of Public Safety Standards and Training shall forward a complete set of an
12 applicant's fingerprints to the Department of State Police and shall request that the Department of
13 State Police conduct criminal records checks as provided in ORS 181.534. Notwithstanding ORS
14 181.534 (5) and (6), the Department of State Police shall maintain in its files the fingerprint cards
15 used to conduct the state criminal records check. **The Department of Public Safety Standards
16 and Training is not required to subscribe to the fingerprint retention program established
17 under section 1 of this 2015 Act to receive information related to a criminal records check
18 conducted by the Department of State Police under ORS 181.534.**

19 (5) Employees of or partners in a firm who are covered by the firm's errors and omissions in-
20 surance meet the requirements of subsection (2)(e) of this section as long as the coverage is at least
21 \$5,000 per investigator.

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