

A-Engrossed
Senate Bill 40

Ordered by the Senate February 7
Including Senate Amendments dated February 7

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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.

Requires all private security providers to use same application process for certification or licensure.

Expands type of employers of public safety officers required to provide access to personnel records to Department of Public Safety Standards and Training.

Clarifies application of criminal records check law to persons certified or licensed by department [*of Public Safety Standards and Training*].

Exempts department from law requiring governmental agencies to use electronic fingerprint capture technology for purpose of conducting criminal records checks.

A BILL FOR AN ACT

1
2 Relating to public safety standards; creating new provisions; and amending ORS 181A.170, 181A.195,
3 181A.400, 181A.670, 181A.860, 181A.875, 703.090 and 703.425.

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

5 **SECTION 1.** ORS 181A.860 is amended to read:

6 181A.860. An applicant for certification **or licensure** as a private security [*professional*] **pro-**
7 **vider** shall submit a written application to the Department of Public Safety Standards and Training.
8 The application must be on a form approved by the department, contain all the information required
9 by the department and be made under oath to the department.

10 **SECTION 2.** ORS 181A.670 is amended to read:

11 181A.670. (1) The Board on Public Safety Standards and Training and the Department of Public
12 Safety Standards and Training may not disclose a photograph of a public safety officer without the
13 written consent of the public safety officer or the public safety officer's employer. This subsection
14 does not apply to the internal use by the board or department of a photograph of a public safety
15 officer.

16 (2) A public or private safety agency **or other employer of a public safety officer** shall pro-
17 vide the department with access to personnel records of an employee or former employee of the
18 agency **or employer** if:

19 (a) The department requests access to the records;

20 (b) The department is conducting an investigation under ORS 181A.640 relating to the employee
21 or former employee's qualifications for employment, training or certification as a public safety offi-
22 cer; and

23 (c) The records are related to the issue being investigated.

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 (3) A public or private safety agency **or other employer of a public safety officer** that dis-
2 closes information under subsection (2) of this section is presumed to be acting in good faith and,
3 unless lack of good faith is shown by a preponderance of the evidence, is immune from civil liability
4 from the disclosure or *[its]* **the disclosure's** consequences. For purposes of this subsection, the
5 presumption of good faith is rebutted upon a showing that the agency **or employer** disclosed the
6 information knowing that the information was false or deliberately misleading or disclosed the in-
7 formation with malicious purpose.

8 (4) If a public or private safety agency **or other employer of a public safety officer** fails or
9 refuses to comply with a request made pursuant to subsection (2) of this section, the Director of the
10 Department of Public Safety Standards and Training may apply to a court having jurisdiction over
11 the matter for an order to compel compliance.

12 **SECTION 3.** ORS 181A.400 is amended to read:

13 181A.400. (1) For the purpose of requesting a state or nationwide criminal records check under
14 ORS 181A.195, the Department of Public Safety Standards and Training may require the fingerprints
15 of a person who:

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

17 (b) Provides services or seeks to provide services to the department as a contractor, vendor or
18 volunteer; or

19 *[(c) Is applying for a license or certificate, or for reissuance of a license or certificate, that is issued
20 by the department or is under investigation by the department.]*

21 **(c) Is applying to be certified as a public safety officer, is applying to be reissued certi-
22 fication as a public safety officer or is an applicant or public safety officer who is under in-
23 vestigation by the department.**

24 **(2) Notwithstanding ORS 181A.195 (5) and (6), the Department of State Police shall
25 maintain in the department's files the fingerprint cards used to conduct a criminal records
26 check on persons described in subsection (1)(c) of this section.**

27 *[(2)]* **(3) ORS 181A.195 (10) does not apply to the Department of Public Safety Standards and
28 Training** when the department makes denial or revocation decisions regarding persons described in
29 subsection (1)(c) of this section *[or ORS 181A.875 or 703.090]*.

30 *[(3)]* **(4) The department and an employee of the department acting within the course and scope
31 of employment are immune from any civil liability that might otherwise be incurred or imposed for
32 making denial or revocation decisions regarding persons described in subsection (1)(c) of this section
33 [or ORS 181A.875 or 703.090]. The department, an employee of the department acting within the
34 course and scope of employment and an employer or employer's agent who in good faith comply with
35 the requirements of ORS 181A.640, [181A.855 or 703.090,] any rules adopted by the department and
36 the decision of the department or employee of the department acting within the course and scope
37 of employment are not liable for employment-related decisions based on decisions made under ORS
38 181A.640[, 181A.855 or 703.090]. The department or an employee of the department acting within the
39 course and scope of employment is not liable for defamation or invasion of privacy in connection
40 with the lawful dissemination of information lawfully obtained under ORS 181A.195.**

41 **SECTION 4.** ORS 181A.875 is amended to read:

42 181A.875. (1) A license or certificate issued by the Department of Public Safety Standards and
43 Training under ORS 181A.870 expires two years following the date of issuance or on the assigned
44 renewal date.

45 (2) The department shall offer certificates or licenses to private security providers in levels and

1 categories as established by the Board on Public Safety Standards and Training in consultation with
2 the department.

3 (3) Upon receipt of an application for certification **or licensure** under ORS 181A.860, the de-
4 partment shall forward a complete set of the applicant's fingerprints to the Department of State
5 Police and request that the Department of State Police conduct a nationwide criminal records check
6 of the applicant as provided in ORS 181A.195. [*Notwithstanding ORS 181A.195 (5) and (6), the De-*
7 *partment of State Police shall maintain in the department's files the fingerprint cards used to conduct*
8 *the criminal records check.*]

9 (4) **ORS 181A.195 (10) does not apply to the Department of Public Safety Standards and**
10 **Training when the department makes a denial or revocation decision as a result of informa-**
11 **tion received pursuant to subsection (3) this section.**

12 (5) **The department and an employee of the department acting within the course and**
13 **scope of employment are immune from any civil liability that might otherwise be incurred**
14 **or imposed for making a denial or revocation decision regarding an applicant pursuant to**
15 **subsection (3) of this section. The department, an employee of the department acting within**
16 **the course and scope of employment and an employer or employer's agent who in good faith**
17 **comply with the requirements of ORS 181A.855 or 181A.860, any rules adopted by the de-**
18 **partment and the decision of the department or employee of the department acting within**
19 **the course and scope of employment are not liable for employment-related decisions based**
20 **on decisions made under ORS 181A.855 or 181A.860. The department or an employee of the**
21 **department acting within the course and scope of employment is not liable for defamation**
22 **or invasion of privacy in connection with the lawful dissemination of information lawfully**
23 **obtained under ORS 181A.195.**

24 **SECTION 5.** ORS 703.090 is amended to read:

25 703.090. (1) All of the following requirements apply to an applicant for a license as a general
26 polygraph examiner. The applicant must:

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

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

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

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

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

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

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

45 (g) Have successfully completed an examination conducted by the department to determine,

1 consistent with any standards approved by the board, competency to act as a polygraph examiner.

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

6 (3) For the purpose of requesting a state or nationwide criminal records check under ORS
7 181A.195, the department [*of Public Safety Standards and Training*] shall require each applicant to
8 be fingerprinted as part of the licensing procedure.

9 [(4) *Notwithstanding ORS 181A.195 (5) and (6), the Department of State Police shall maintain in*
10 *the department's files fingerprint cards submitted to it for purposes of conducting a state or nationwide*
11 *criminal records check under ORS 181A.195 on applicants for a license as a general polygraph exam-*
12 *iner.*]

13 [(5)] (4) When the department [*of Public Safety Standards and Training*] refuses to issue a li-
14 cense based upon an applicant's failure to meet the requirements of subsection (1)(c) of this section,
15 the department shall prepare a concise, specific written statement of the facts supporting the
16 department's conclusion that there is a high degree of probability that the applicant will be unlikely
17 to perform required duties in a manner that would serve the interests of the public. A copy of the
18 statement must be given to the applicant. **ORS 181A.195 (10) does not apply to the department**
19 **when the department refuses to issue a license under this subsection.**

20 (5) **The department and an employee of the department acting within the course and**
21 **scope of employment are immune from any civil liability that might otherwise be incurred**
22 **or imposed for refusing to issue a license under subsection (4) of this section. The depart-**
23 **ment, an employee of the department acting within the course and scope of employment and**
24 **an employer or employer's agent who in good faith comply with the requirements of this**
25 **section, any rules adopted by the department and the decision of the department or employee**
26 **of the department acting within the course and scope of employment are not liable for**
27 **employment-related decisions based on decisions made under this section. The department**
28 **or an employee of the department acting within the course and scope of employment is not**
29 **liable for defamation or invasion of privacy in connection with the lawful dissemination of**
30 **information lawfully obtained under ORS 181A.195.**

31 **SECTION 6.** ORS 703.425 is amended to read:

32 703.425. (1) An application for a private investigator's license or a provisional investigator's li-
33 cense must be in writing on a form prescribed by the Department of Public Safety Standards and
34 Training, stating the applicant's:

- 35 (a) Legal name;
- 36 (b) Birthdate;
- 37 (c) Citizenship;
- 38 (d) Physical description;
- 39 (e) Current residence;
- 40 (f) Residence for the preceding 10 years;
- 41 (g) Current employment;
- 42 (h) Employment for the preceding 10 years;
- 43 (i) Experience qualifications;
- 44 (j) Education;
- 45 (k) Business address, which may be a post office box; and

1 (L) Any other information required by the department.

2 (2) The application must be accompanied by:

3 (a) The application fee as prescribed by the Board on Public Safety Standards and Training by
4 rule;

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

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

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

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

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

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

18 (4) The Department of Public Safety Standards and Training shall forward a complete set of an
19 applicant's fingerprints to the Department of State Police and shall request that the Department of
20 State Police conduct criminal records checks as provided in ORS 181A.195. [*Notwithstanding ORS*
21 *181A.195 (5) and (6), the Department of State Police shall maintain in its files the fingerprint cards*
22 *used to conduct the state criminal records check.*]

23 (5) Employees of or partners in a firm who are covered by the firm's errors and omissions in-
24 surance meet the requirements of subsection (2)(e) of this section as long as the coverage is at least
25 \$5,000 per investigator.

26 **SECTION 7.** ORS 181A.170 is amended to read:

27 181A.170. (1)(a) Except as provided in subsection (2) of this section, the Department of State
28 Police and any other governmental agency authorized to report, receive or disseminate criminal
29 offender information shall use electronic fingerprint capture technology to take and submit a
30 person's fingerprints for purposes of conducting criminal records checks under ORS 181A.190,
31 181A.195 or 267.237 or for any other purpose authorized by law.

32 (b)(A) The Oregon Department of Administrative Services shall adopt rules to implement this
33 section.

34 (B) In adopting rules under this paragraph, the Oregon Department of Administrative Services
35 may adopt exemptions from the requirement described in paragraph (a) of this subsection.

36 (2)(a) This section applies to the Department of State Police only with respect to the adminis-
37 tration of criminal records checks under ORS 181A.190, 181A.195 and 267.237.

38 (b) This section does not apply to a criminal justice agency, as defined in ORS 181A.010, that
39 is authorized by federal law to receive fingerprint-based criminal records checks from the Federal
40 Bureau of Investigation.

41 **(c) This section does not apply to the Department of Public Safety Standards and Train-**
42 **ing.**

43 (3) To meet the requirements of this section, the Department of State Police and other govern-
44 mental agencies described in subsection (1) of this section may:

45 (a) Directly provide electronic fingerprint capture services;

1 (b) Enter into a contract described in subsection (4) of this section for the provision of elec-
2 tronic fingerprint capture services; or

3 (c) Provide electronic fingerprint capture services in any other manner allowed by the Oregon
4 Department of Administrative Services by rule or order.

5 (4) The Oregon Department of Administrative Services shall develop a standard contract by
6 which the Department of State Police and other governmental agencies described in subsection (1)
7 of this section may contract for the provision of electronic fingerprint capture services. Contracts
8 developed under this subsection must account for the variety of uses and levels of service necessary
9 to accommodate the needs of the Department of State Police, other governmental agencies described
10 in subsection (1) of this section, qualified entities as defined in ORS 181A.190, qualified entities as
11 defined in ORS 181A.200, qualified entities as defined in ORS 267.237 and any other entity required
12 by law or rule to conduct criminal records checks for purposes not related to the administration of
13 the criminal justice system.

14 **SECTION 8.** ORS 181A.195 is amended to read:

15 181A.195. (1) As used in this section:

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

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

19 (B) A criminal justice agency, as defined in ORS 181A.010, that is authorized by federal law to
20 receive fingerprint-based criminal records checks from the Federal Bureau of Investigation.

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

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

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

31 (4) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
32 conduct the criminal records check and may not keep any record of the fingerprints, except that the
33 Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for
34 purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction
35 of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to
36 the federal bureau but shall continue to process the information through other available resources.

37 (5) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of
38 State Police, the Department of State Police shall destroy the fingerprint cards and may not retain
39 facsimiles or other material from which a fingerprint can be reproduced, except that the Department
40 of State Police may retain the fingerprint cards or create facsimiles for the purpose of providing
41 information under ORS 181A.205.

42 (6) If only a state criminal records check is conducted, after the criminal records check is
43 completed, the Department of State Police shall destroy the fingerprint cards and the results of the
44 criminal records check provided to the authorized agency and may not retain facsimiles or other
45 material from which a fingerprint can be reproduced, except that the Department of State Police

1 may retain the fingerprint cards and results or create facsimiles for the purpose of providing infor-
 2 mation under ORS 181A.205.

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

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

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

13 (a) Identifying applicable categories of subject individuals as specified by the Oregon Depart-
 14 ment of Administrative Services under ORS 181A.215 who are subject to criminal records checks
 15 by the authorized agency.

16 (b) Identifying applicable information that may be required from a subject individual to permit
 17 a criminal records check as specified by the Oregon Department of Administrative Services under
 18 ORS 181A.215.

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

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

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

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

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

27 (10)(a) Except as otherwise provided in ORS 181A.400, **181A.875**, 342.143, 342.223, 443.735
 28 [*and*], 475B.400 to 475B.525 **and 703.090** and paragraph [(b)] (d) of this subsection, an authorized
 29 agency, using the rules adopted by the Oregon Department of Administrative Services under ORS
 30 181A.215, shall determine whether a subject individual is fit to hold a position, provide services, be
 31 employed or be granted a license, certification, registration or permit. If a subject individual is de-
 32 termined to be unfit, then the individual may not hold the position, provide services, be employed
 33 or be granted a license, certification, registration or permit.

34 [(b) *An individual prohibited from receiving public funds for employment under ORS 443.004 (3)*
 35 *is not entitled to a determination of fitness as a subject individual under this subsection.*]

36 [(c)(A)] (b)(A) Subject to subparagraph (B) of this paragraph, an authorized agency making a
 37 fitness determination of an individual under this subsection may request results of a previously made
 38 fitness determination from an authorized agency that has already made a fitness determination for
 39 the individual. An authorized agency that receives a request under this paragraph shall provide the
 40 requested information.

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

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

44 (ii) Who are in a category of individuals as specified by the Oregon Department of Administra-
 45 tive Services by rule under ORS 181A.215; and

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

2 [(d)] (c) Except as otherwise provided in ORS 181A.400, in making the fitness determination
3 under this subsection, the authorized agency shall consider:

4 (A) The nature of the crime;

5 (B) The facts that support the conviction or pending indictment or that indicate the making of
6 a false statement;

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

10 (D) Intervening circumstances relevant to the responsibilities and circumstances of the position,
11 services, employment, license, certification, registration or permit, such as:

12 (i) The passage of time since the commission of the crime;

13 (ii) The age of the subject individual at the time of the crime;

14 (iii) The likelihood of a repetition of offenses or of the commission of another crime;

15 (iv) The subsequent commission of another relevant crime;

16 (v) Whether the conviction was set aside and the legal effect of setting aside the conviction; and

17 (vi) The recommendation of an employer.

18 [(e)] (d) An individual prohibited from receiving public funds for employment under ORS 443.004
19 (3) is not entitled to a determination of fitness as a subject individual under this subsection.

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

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

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

30 **SECTION 9. (1) The amendments to ORS 181A.860 by section 1 of this 2017 Act apply to**
31 **applications for licensure received by the Department of Public Safety Standards and Train-**
32 **ing on and after the effective date of this 2017 Act.**

33 **(2) The amendments to ORS 181A.400, 181A.875, 703.090 and 703.425 by sections 3 to 6 of**
34 **this 2017 Act apply to applications for licensure received by the Department of Public Safety**
35 **Standards and Training before, on and after the effective date of this 2017 Act.**

36