

Enrolled Senate Bill 40

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with pre-session filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Governor Kate Brown for Department of Public Safety Standards and Training)

CHAPTER

AN ACT

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

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

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

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

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

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

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

(a) The department requests access to the records;

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

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

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

(4) If a public or private safety agency **or other employer of a public safety officer** fails or refuses to comply with a request made pursuant to subsection (2) of this section, the Director of the

Department of Public Safety Standards and Training may apply to a court having jurisdiction over the matter for an order to compel compliance.

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

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

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

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

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

(c) Is applying to be certified as a public safety officer, is applying to be reissued certification as a public safety officer or is an applicant or public safety officer who is under investigation by the department.

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

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

[(3)] (4) The department and an employee of the department acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for making denial or revocation decisions regarding persons described in subsection (1)(c) of this section [or ORS 181A.875 or 703.090]. The department, an employee of the department acting within the course and scope of employment and an employer or employer's agent who in good faith comply with the requirements of ORS 181A.640, [181A.855 or 703.090,] any rules adopted by the department and the decision of the department or employee of the department acting within the course and scope of employment are not liable for employment-related decisions based on decisions made under ORS 181A.640[, 181A.855 or 703.090]. The department or an employee of the department 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 ORS 181A.195.

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

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

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

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

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

(5) The department and an employee of the department acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for making a denial or revocation decision regarding an applicant pursuant to subsection (3) of this section. The department, an employee of the department acting within the course and scope of employment and an employer or employer's agent who in good faith

comply with the requirements of ORS 181A.855 or 181A.860, any rules adopted by the department and the decision of the department or employee of the department acting within the course and scope of employment are not liable for employment-related decisions based on decisions made under ORS 181A.855 or 181A.860. The department or an employee of the department 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 ORS 181A.195.

SECTION 5. ORS 703.090 is amended to read:

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

- (a) Be at least 18 years of age.
- (b) Be a citizen of the United States.

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

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

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

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

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

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

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

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

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

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

(5) The department and an employee of the department acting within the course and scope of employment are immune from any civil liability that might otherwise be incurred or imposed for refusing to issue a license under subsection (4) of this section. The department, an employee of the department acting within the course and scope of employment and

an employer or employer's agent who in good faith comply with the requirements of this section, any rules adopted by the department and the decision of the department or employee of the department acting within the course and scope of employment are not liable for employment-related decisions based on decisions made under this section. The department or an employee of the department 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 ORS 181A.195.

SECTION 6. ORS 703.425 is amended to read:

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

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

(2) The application must be accompanied by:

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

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

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

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

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

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

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

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

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

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

181A.170. (1)(a) Except as provided in subsection (2) of this section, the Department of State Police and any other governmental agency authorized to report, receive or disseminate criminal offender information shall use electronic fingerprint capture technology to take and submit a

person's fingerprints for purposes of conducting criminal records checks under ORS 181A.190, 181A.195 or 267.237 or for any other purpose authorized by law.

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

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

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

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

(c) This section does not apply to the Department of Public Safety Standards and Training.

(3) To meet the requirements of this section, the Department of State Police and other governmental agencies described in subsection (1) of this section may:

(a) Directly provide electronic fingerprint capture services;

(b) Enter into a contract described in subsection (4) of this section for the provision of electronic fingerprint capture services; or

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

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

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

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

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

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

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

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

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

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

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

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

(6) If only a state criminal records check is conducted, after the criminal records check is completed, the Department of State Police shall destroy the fingerprint cards and the results of the criminal records check provided to the authorized agency and may not retain facsimiles or other material from which a fingerprint can be reproduced, except that the Department of State Police may retain the fingerprint cards and results or create facsimiles for the purpose of providing information under ORS 181A.205.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(A) The nature of the crime;

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

(C) The relevancy, if any, of the crime or the false statement to the specific requirements of the subject individual'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, registration or permit, such as:

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

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

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

(iv) The subsequent commission of another relevant crime;

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

(vi) The recommendation of an employer.

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

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

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

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

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

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

Passed by Senate February 21, 2017

.....
Lori L. Brocker, Secretary of Senate

.....
Peter Courtney, President of Senate

Passed by House May 24, 2017

.....
Tina Kotek, Speaker of House

Received by Governor:

.....M,....., 2017

Approved:

.....M,....., 2017

.....
Kate Brown, Governor

Filed in Office of Secretary of State:

.....M,....., 2017

.....
Dennis Richardson, Secretary of State