

House Bill 2569

Sponsored by Representative NATHANSON; Representatives ALONSO LEON, FAHEY, KENY-GUYER, Senators FAGAN, MANNING JR (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**.

Directs Department of Human Services to assign exactly one universal provider number to persons listed on registry of persons who provide long term care.

Directs department to require fingerprints in conducting criminal records checks of certain long term care workers.

Disallows sharing of fingerprint records of certain long term care workers with Federal Bureau of Investigation.

A BILL FOR AN ACT

1
2 Relating to records checks for long term care workers; amending ORS 181A.195, 181A.200, 181A.205
3 and 443.006.

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

5 **SECTION 1.** ORS 443.006 is amended to read:

6 443.006. (1) As used in this section:

7 (a) "Care" has the meaning given that term in ORS 181A.200.

8 (b) "Facility" means:

9 (A) A long term care facility as defined in ORS 442.015;

10 (B) A residential care facility as defined in ORS 443.400, including but not limited to an assisted
11 living facility; and

12 (C) An adult foster home as defined in ORS 443.705.

13 (c) "Home care worker" has the meaning given that term in ORS 410.600.

14 (2) The Department of Human Services shall augment the department's existing criminal back-
15 ground check system with a regularly updated registry of all persons who work or are seeking to
16 work to provide care.

17 (3) The department shall adopt rules designating the persons who may be listed on the registry.
18 The registry must list persons who work or are seeking to work to provide care:

19 (a) In a facility; or

20 (b) As a home care worker.

21 (4) The department shall adopt rules establishing:

22 (a) The information that must be reported by facilities;

23 (b) The form and frequency of reporting by facilities;

24 (c) Procedures and standards for the administration of the registry; and

25 (d) Guidelines and procedures for requests for and release of information from the registry.

26 **(5) The department shall assign exactly one universal provider number to each person**
27 **listed on the registry.**

28 **SECTION 2.** ORS 443.006, as amended by section 25, chapter 75, Oregon Laws 2018, is amended

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 to read:

2 443.006. (1) As used in this section:

3 (a) "Care" has the meaning given that term in ORS 181A.200.

4 (b) "Facility" means:

5 (A) A long term care facility as defined in ORS 442.015;

6 (B) A residential care facility as defined in ORS 443.400, including but not limited to an assisted
7 living facility; and

8 (C) An adult foster home as defined in ORS 443.705.

9 (c) "Home care worker" has the meaning given that term in ORS 410.600.

10 (d) "Personal support worker" has the meaning given that term in ORS 410.600.

11 (2) The Department of Human Services shall augment the department's existing criminal back-
12 ground check system with a regularly updated registry of all persons who work or are seeking to
13 work to provide care.

14 (3) The department shall adopt rules designating the persons who may be listed on the registry.
15 The registry must list persons who work or are seeking to work to provide care:

16 (a) In a facility; or

17 (b) As a home care worker or personal support worker.

18 (4) The department shall adopt rules establishing:

19 (a) The information that must be reported by facilities;

20 (b) The form and frequency of reporting by facilities;

21 (c) Procedures and standards for the administration of the registry; and

22 (d) Guidelines and procedures for requests for and release of information from the registry.

23 **(5) The department shall assign exactly one universal provider number to each person**
24 **listed on the registry.**

25 **SECTION 3.** ORS 181A.195 is amended to read:

26 181A.195. (1) As used in this section:

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

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

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

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

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

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

42 (4)(a) The Federal Bureau of Investigation shall return or destroy the fingerprint cards used to
43 conduct the criminal records check and may not keep any record of the fingerprints, except that the
44 Federal Bureau of Investigation may retain the fingerprint cards and records of the fingerprints for
45 purposes described in ORS 181A.205. If the federal bureau policy authorizing return or destruction

1 of the fingerprint cards is changed, the Department of State Police shall cease to send the cards to
 2 the federal bureau but shall continue to process the information through other available resources.

3 **(b) Notwithstanding paragraph (a) of this subsection, the Federal Bureau of Investigation**
 4 **may not retain the fingerprint cards and records of the fingerprints of a person who works**
 5 **or is seeking to work to provide care in a facility, as those terms are defined in ORS**
 6 **181A.200, or as a home care worker as defined in ORS 410.600.**

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

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

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

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

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

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

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

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

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

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

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

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

42 (10)(a) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143, 342.223, 443.735,
 43 475B.785 to 475B.949 and 703.090 and paragraph (d) of this subsection, an authorized agency, using
 44 the rules adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall
 45 determine whether a subject individual is fit to hold a position, provide services, be employed or be

1 granted a license, certification, registration or permit. If a subject individual is determined to be
 2 unfit, then the individual may not hold the position, provide services, be employed or be granted a
 3 license, certification, registration or permit.

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

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

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

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

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

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

17 (A) The nature of the crime;

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

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

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

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

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

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

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

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

30 (vi) The recommendation of an employer.

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

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

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

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

43 **SECTION 4.** ORS 181A.200 is amended to read:

44 181A.200. (1) As used in this section:

45 (a) "Care" means the provision of care, treatment, education, training, instruction, supervision,

1 placement services, recreation or support to children, the elderly or persons with disabilities.

2 **(b) "Facility" means:**

3 **(A) A long term care facility as defined in ORS 442.015;**

4 **(B) A residential care facility as defined in ORS 443.400, including but not limited to an**
5 **assisted living facility; and**

6 **(C) An adult foster home as defined in ORS 443.705.**

7 **(c) "Home care worker" has the meaning given that term in ORS 410.600.**

8 [(b)] **(d) "Native American tribe" has the meaning given that term in ORS 181A.210 (4).**

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

14 (2) For the purpose of requesting a state or nationwide criminal records check under ORS
15 181A.195, the Department of Human Services, the Oregon Health Authority and the Employment
16 Department may require the fingerprints of a person:

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

18 (b) Who provides or seeks to provide services to either department or the authority as a con-
19 tractor, subcontractor, vendor or volunteer who:

20 (A) May have contact with recipients of care;

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

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

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

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

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

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

33 (iii) Purchasing or selling property;

34 (F) Provides security, design or construction services for government buildings, grounds or fa-
35 cilities;

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

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

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

41 (d) For the purposes of employment decisions by or for qualified entities that are regulated or
42 otherwise subject to oversight by the Department of Human Services or the Oregon Health Au-
43 thority and that provide care;

44 (e) For the purposes of employment decisions made by a mass transit district or transportation
45 district for qualified entities that, under contracts with the district or the Oregon Health Authority,

1 employ persons to operate motor vehicles for the transportation of medical assistance program cli-
 2 ents; or

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

5 **(3) For the purpose of requesting a state or nationwide criminal records check under**
 6 **ORS 181A.195, the Department of Human Services and the Oregon Health Authority shall**
 7 **require the fingerprints of a person who works or is seeking to work to provide care in a**
 8 **facility or as a home care worker. The Department of Human Services, the Oregon Health**
 9 **Authority and the Department of State Police may not provide fingerprints or facsimiles of**
 10 **fingerprints collected under this subsection to the Federal Bureau of Investigation.**

11 [(3)] (4) The Department of Human Services and the Oregon Health Authority may conduct
 12 criminal records checks on a person through the Law Enforcement Data System maintained by the
 13 Department of State Police, if deemed necessary by the Department of Human Services or the
 14 Oregon Health Authority to protect children, elderly persons, persons with disabilities or other
 15 vulnerable persons.

16 [(4)] (5) The Department of Human Services and the Oregon Health Authority may furnish to
 17 qualified entities, in accordance with the rules of the Department of Human Services or the Oregon
 18 Health Authority and the rules of the Department of State Police, information received from the
 19 Law Enforcement Data System. However, any criminal offender records and information furnished
 20 to the Department of Human Services or the Oregon Health Authority by the Federal Bureau of
 21 Investigation through the Department of State Police may not be disseminated to qualified entities.

22 [(5)(a)] (6)(a) Except as otherwise provided in ORS 443.735 and 475B.785 to 475B.949, a qualified
 23 entity, subject to rules adopted by the Oregon Department of Administrative Services under ORS
 24 181A.215, shall determine under this section whether a person is fit to hold a position, provide ser-
 25 vices, be employed or, if the qualified entity has authority to make such a determination, be licensed,
 26 certified or registered. If a person is determined to be unfit, then that person may not hold the po-
 27 sition, provide services or be employed, licensed, certified or registered.

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

30 (c) In making the fitness determination under this subsection, the qualified entity shall consider:

31 (A) The nature of the crime;

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

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

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

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

40 (ii) The age of the person at the time of the crime;

41 (iii) The likelihood of a repetition of offenses;

42 (iv) The subsequent commission of another relevant crime; and

43 (v) The recommendation of an employer.

44 [(6)] (7) The Department of Human Services and the Oregon Health Authority, subject to rules
 45 adopted by the Oregon Department of Administrative Services under ORS 181A.215, shall develop

1 systems that maintain information regarding criminal records checks in order to minimize the ad-
 2 ministrative burden imposed by this section and ORS 181A.195. Records maintained under this sub-
 3 section are confidential and may not be disseminated except for the purposes of this section and in
 4 accordance with the rules of the Department of Human Services, the Oregon Health Authority and
 5 the Department of State Police. Nothing in this subsection permits the Department of Human Ser-
 6 vices to retain fingerprint cards obtained pursuant to this section.

7 [(7)] (8) In addition to the rules required by ORS 181A.195, the Department of Human Services
 8 and the Oregon Health Authority, in consultation with the Department of State Police, shall adopt
 9 rules:

10 (a) Specifying which qualified entities are subject to this section;

11 (b) Specifying which qualified entities may request criminal offender information;

12 (c) Specifying which qualified entities are responsible for deciding, subject to rules adopted by
 13 the Oregon Department of Administrative Services under ORS 181A.215, whether a subject individ-
 14 ual is not fit for a position, service, license, certification, registration or employment; and

15 (d) Specifying when a qualified entity, in lieu of conducting a completely new criminal records
 16 check, may proceed to make a fitness determination under subsection [(5)] (6) of this section using
 17 the information maintained by the Department of Human Services and the Oregon Health Authority
 18 pursuant to subsection [(6)] (7) of this section.

19 [(8)] (9) If a person refuses to consent to the criminal records check or refuses to be finger-
 20 printed, the qualified entity shall deny or terminate the employment of the person, or revoke or deny
 21 any applicable position, authority to provide services, employment, license, certification or regis-
 22 tration.

23 [(9)] (10) If the qualified entity requires a criminal records check of employees or other persons,
 24 the application forms of the qualified entity must contain a notice that employment is subject to
 25 fingerprinting and a criminal records check.

26 **SECTION 5.** ORS 181A.205 is amended to read:

27 181A.205. (1)(a) The Department of State Police shall establish a voluntary fingerprint retention
 28 program through which the department:

29 (A) Retains fingerprint cards, facsimiles of fingerprints received from the Federal Bureau of In-
 30 vestigation or facsimiles of fingerprints created during a state criminal records check under ORS
 31 181A.190, 181A.195, 181A.200 or 267.237, for the purpose of providing information as described in
 32 subsection (4) of this section; and

33 (B) Provides facsimiles of fingerprints created during a state criminal records check under ORS
 34 181A.190, 181A.195, 181A.200 or 267.237 to the Federal Bureau of Investigation.

35 (b) The department may not use fingerprint cards or facsimiles of fingerprints retained pursuant
 36 to paragraph (a) of this subsection for any purpose other than the purpose of providing information
 37 as described in subsection (4) of this section.

38 (c) **Notwithstanding paragraph (a) of this subsection, the department may not:**

39 (A) **Retain fingerprint cards or facsimiles of fingerprints received from the Federal Bu-**
 40 **reau of Investigation of a person who works or is seeking to work to provide care in a fa-**
 41 **ility, as those terms are defined in ORS 181A.200, or as a home care worker as defined in**
 42 **ORS 410.600.**

43 (B) **Provide to the Federal Bureau of Investigation fingerprints or facsimiles of finger-**
 44 **prints of a person who works or is seeking to work to provide care in a facility, as those**
 45 **terms are defined in ORS 181A.200, or as a home care worker as defined in ORS 410.600.**

1 (2) An authorized agency as defined in ORS 181A.190 or 181A.195, an agency listed in ORS
 2 181A.200 (2), or a district as defined in ORS 267.237 may subscribe to the fingerprint retention pro-
 3 gram.

4 (3)(a) If an authorized agency, agency or district subscribes to the fingerprint retention program,
 5 the authorized agency, agency or district must inform an individual subject to a criminal records
 6 check under ORS 181A.190, 181A.195, 181A.200 or 267.237 about the program in a form and manner
 7 prescribed by the authorized agency, agency or district, provided that the authorized agency, agency
 8 or district includes as part of that information notice of the following:

9 (A) That the individual is not required to participate in the program;

10 (B) That if the individual chooses to participate in the program, the individual may, at any time,
 11 stop participating in the program;

12 (C) That choosing to participate in the program will allow the department to provide information
 13 as described in subsection (4) of this section;

14 (D) The potential consequences of information being provided as described in subsection (4) of
 15 this section; and

16 (E) The process by which the individual may contest the accuracy of information provided as
 17 described in subsection (4) of this section.

18 (b) Notice provided pursuant to paragraph (a) of this subsection must be provided in a clear and
 19 easy to understand manner.

20 (4)(a) An individual subject to a criminal records check under ORS 181A.190, 181A.195, 181A.200
 21 or 267.237 may, but is not required to, participate in the fingerprint retention program.

22 (b) If an individual participates in the program, then the department, upon receiving forms con-
 23 taining the person's fingerprints and other identifying information under ORS 181A.160, or as part
 24 of any other proceeding related to the arrest of the individual, shall provide that information to the
 25 authorized agency, agency or district for which a criminal records check under ORS 181A.190,
 26 181A.195, 181A.200 or 267.237 for the individual was performed.

27 (5) At any time, an individual participating in the fingerprint retention program may inform the
 28 department, in a form and manner prescribed by the department, that the individual is no longer
 29 participating in the program. If an individual informs the department that the individual is no longer
 30 participating in the program, the department shall:

31 (a) Destroy any fingerprint cards and facsimiles of fingerprints that the department has retained
 32 for the individual as part of the program;

33 (b) **If the department has provided fingerprints or facsimiles of fingerprints of the indi-**
 34 **vidual to the Federal Bureau of Investigation**, inform the Federal Bureau of Investigation that
 35 the individual is no longer participating in the program and direct the Federal Bureau of Investi-
 36 gation to destroy any fingerprint cards or facsimiles of fingerprints that the Federal Bureau of In-
 37 vestigation has retained for the individual; and

38 (c) Notify the authorized agency, agency or district who employs the individual that the indi-
 39 vidual is no longer participating in the program.

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

42 (7) Information retained by the department under this section is exempt from public disclosure
 43 under ORS 192.311 to 192.478, and the department may not disclose the information for any purpose
 44 not authorized by this section.

45 (8) The Department of State Police:

1 (a) Shall, in consultation with the Oregon Department of Administrative Services, adopt rules
2 for the administration of this section; and

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

5
