

SB 725-2
(LC 1849)
4/3/19 (LHF/ps)

Requested by Representative NATHANSON

**PROPOSED AMENDMENTS TO
SENATE BILL 725**

1 On page 1 of the printed bill, line 2, after “ORS” delete the rest of the
2 line and delete line 3 and insert “181A.195, 181A.200, 181A.400, 181A.875,
3 443.004 and 703.090 and section 42, chapter 837, Oregon Laws 2009.”.

4 Delete lines 5 through 30 and delete page 2.

5 On page 3, delete lines 1 through 10 and insert:

6 **“SECTION 1.** ORS 181A.195 is amended to read:

7 “181A.195. (1) As used in this section:

8 “(a) ‘Authorized agency’ means state government as defined in ORS
9 174.111 and the Oregon State Bar. ‘Authorized agency’ does not include:

10 “(A) The Oregon State Lottery Commission or the Oregon State Lottery;
11 or

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

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

18 “(2) An authorized agency may request that the Department of State Po-
19 lice conduct a criminal records check on a subject individual for non-
20 criminal justice purposes. If a nationwide criminal records check of a subject
21 individual is necessary, the authorized agency may request that the Depart-

1 ment of State Police conduct the check, including fingerprint identification,
2 through the Federal Bureau of Investigation.

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

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

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

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

27 “(7) An authorized agency may conduct criminal records checks on sub-
28 ject individuals through the Law Enforcement Data System maintained by
29 the Department of State Police in accordance with rules adopted, and pro-
30 cedures established, by the Department of State Police.

1 “(8) An authorized agency and the Department of State Police shall per-
2 mit a subject individual for whom a fingerprint-based criminal records check
3 was conducted to inspect the individual’s own state and national criminal
4 offender records and, if requested by the subject individual, provide the in-
5 dividual with a copy of the individual’s own state and national criminal
6 offender records.

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

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

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

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

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

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

22 “(B) Defining the conditions under which a subject individual may par-
23 ticipate in training, orientation and work activities pending completion of
24 a criminal records check.

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

27 **“(10) A subject individual is not entitled to a fitness determination**
28 **under subsection (11) of this section, and the subject individual may**
29 **not hold a position, provide services, be employed or be granted a li-**
30 **cence, certification, registration or permit, in the following circum-**

1 **stances:**

2 **“(a) A person who has been convicted for any crime listed in ORS**
3 **443.004 (3) or (5) may not be employed in any capacity having contact**
4 **with a recipient of support services or a resident of a residential fa-**
5 **cility or adult foster home as provided in ORS 443.004 (1).**

6 **“(b)(A) A person with a conviction described in subparagraph (C)**
7 **of this paragraph may not be approved, licensed, certified, employed**
8 **or hold a position:**

9 **“(i) Described in ORS 418.016; or**

10 **“(ii) In a child-caring agency, as defined in ORS 418.205.**

11 **“(B) A person with a conviction described in subparagraph (C) of**
12 **this paragraph, or who has a household member with a conviction**
13 **described in subparagraph (C) of this paragraph, may not be approved,**
14 **licensed, certified, employed or hold a position:**

15 **“(i) As a proctor foster parent; or**

16 **“(ii) As an adoptive parent.**

17 **“(C) Paragraph (b) of this subsection applies to:**

18 **“(i) A felony conviction involving child abuse or neglect or any**
19 **other crime against a child, spousal abuse or a crime involving vi-**
20 **olence, including rape, sexual assault or homicide but excluding**
21 **physical assault or battery.**

22 **“(ii) A felony conviction, within five years of the date of the request**
23 **for a criminal records check, involving physical assault or battery.**

24 **“[(10)(a)] (11)(a) Except as otherwise provided in ORS 181A.400, 181A.875,**
25 **342.143, 342.223, 443.735, 475B.785 to 475B.949 and 703.090 and [paragraph (d)**
26 **of this subsection] subsection (10) of this section, an authorized agency,**
27 **using the rules adopted by the Oregon Department of Administrative Ser-**
28 **vices under ORS 181A.215, shall determine whether a subject individual is**
29 **fit to hold a position, provide services, be employed or be granted a license,**
30 **certification, registration or permit. If a subject individual is determined to**

1 be unfit, then the individual may not hold the position, provide services, be
2 employed or be granted a license, certification, registration or permit.

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

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

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

13 “(ii) Who are in a category of individuals as specified by the Oregon De-
14 partment of Administrative Services by rule under ORS 181A.215; and

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

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

18 “(A) The nature of the crime;

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

21 “(C) The relevancy, if any, of the crime or the false statement to the
22 specific requirements of the subject individual’s present or proposed position,
23 services, employment, license, certification or registration; and

24 “(D) Intervening circumstances relevant to the responsibilities and cir-
25 cumstances of the position, services, employment, license, certification, reg-
26 istration or permit, such as:

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

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

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

1 “(iv) The subsequent commission of another relevant crime;

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

4 “(vi) The recommendation of an employer.

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

8 “**(d) In making the fitness determination under this subsection, the**
9 **authorized agency may not consider:**

10 “(A) **Convictions that are more than 10 years old, except as provided**
11 **in subsection (10) of this section;**

12 “(B) **Charges or arrests for which there was no conviction, unless**
13 **the subject individual is an individual described in ORS 443.004 (1) and**
14 **the charge or arrest was for a crime listed in ORS 443.004 (3) or (5);**

15 “(C) **A conviction on a charge relating to marijuana if the charge**
16 **is no longer a criminal offense;**

17 “(D) **A conviction under ORS 813.010, if the conviction occurred**
18 **more than five years prior to the date of the criminal records check;**

19 “(E) **A deferred sentence, conditional discharge or participation in**
20 **a diversion program for any crime, except as provided in subsection**
21 **(10) of this section; or**

22 “(F) **A pending indictment for a crime, unless the subject individual**
23 **is an individual described in ORS 443.004 (1) and the pending**
24 **indictment is for a crime listed in ORS 443.004 (3) or (5).**

25 “*[(11)]* **(12)** Criminal offender information is confidential. Authorized
26 agencies and the Department of State Police shall adopt rules to restrict
27 dissemination of information received under this section to persons with a
28 demonstrated and legitimate need to know the information.

29 “*[(12)]* **(13)** If a subject individual refuses to consent to the criminal re-
30 cords check or refuses to be fingerprinted, the authorized agency shall deny

1 the employment of the individual, or revoke or deny any applicable position,
2 authority to provide services, license, certification, registration or permit.

3 “[~~(13)~~] **(14)** If an authorized agency requires a criminal records check of
4 employees, prospective employees, contractors, vendors or volunteers or ap-
5 plicants for a license, certification, registration or permit, the application
6 forms of the authorized agency must contain a notice that the person is
7 subject to fingerprinting and a criminal records check.”.

8 On page 5, line 36, after “(1)” insert “(a)”.

9 In line 37, delete the boldfaced material.

10 In line 38, delete “(a)” and insert “(A)”.

11 In line 39, delete “(b)” and insert “(B)”.

12 In line 42, delete “(c)” and insert “(C)”.

13 After line 43, insert:

14 “(b) The department or the authority shall complete the criminal records
15 check under paragraph (a) of this subsection not more than once during a
16 two-year period unless the department or the authority:

17 “(A) Receives credible evidence of a new criminal conviction;

18 “(B) Receives credible evidence to substantiate a complaint of abuse or
19 neglect;

20 “(C) Is required by federal law to conduct more frequent criminal records
21 checks; or

22 “(D) Is notified that a subject individual has changed positions or duties
23 for which there are different criminal records check requirements.”.

24 On page 6, line 42, delete “(10)” and insert “(11)”.

25 On page 7, line 19, after “(1)” insert “(a)”.

26 In line 20, delete the boldfaced material.

27 In line 21, delete “(a)” and insert “(A)”.

28 In line 22, delete “(b)” and insert “(B)”.

29 In line 25, delete “(c)” and insert “(C)”.

30 After line 26, insert:

1 “(b) The department or the authority shall complete the criminal records
2 check under paragraph (a) of this subsection not more than once during a
3 two-year period unless the department or the authority:

4 “(A) Receives credible evidence of a new criminal conviction;

5 “(B) Receives credible evidence to substantiate a complaint of abuse or
6 neglect;

7 “(C) Is required by federal law to conduct more frequent criminal records
8 checks; or

9 “(D) Is notified that a subject individual has changed positions or duties
10 for which there are different criminal records check requirements.”.

11 On page 8, line 25, delete “(10)” and insert “(11)”.

12 On page 9, after line 6, insert:

13 **“SECTION 6.** ORS 181A.400 is amended to read:

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

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

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

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

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

27 “(3) ORS 181A.195 [(10)] (11) does not apply to the Department of Public
28 Safety Standards and Training when the department makes denial or revo-
29 cation decisions regarding persons described in subsection (1)(c) of this sec-
30 tion.

1 “(4) The department and an employee of the department acting within the
2 course and scope of employment are immune from any civil liability that
3 might otherwise be incurred or imposed for making denial or revocation de-
4 cisions regarding persons described in subsection (1)(c) of this section. The
5 department, an employee of the department acting within the course and
6 scope of employment and an employer or employer’s agent who in good faith
7 comply with the requirements of ORS 181A.640, any rules adopted by the
8 department and the decision of the department or employee of the department
9 acting within the course and scope of employment are not liable for
10 employment-related decisions based on decisions made under ORS 181A.640.
11 The department or an employee of the department acting within the course
12 and scope of employment is not liable for defamation or invasion of privacy
13 in connection with the lawful dissemination of information lawfully obtained
14 under ORS 181A.195.

15 **“SECTION 7.** ORS 181A.875 is amended to read:

16 “181A.875. (1) A license or certificate issued by the Department of Public
17 Safety Standards and Training under ORS 181A.870 expires two years fol-
18 lowing the date of issuance or on the assigned renewal date.

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

22 “(3) Upon receipt of an application for certification or licensure under
23 ORS 181A.860, the department shall forward a complete set of the applicant’s
24 fingerprints to the Department of State Police and request that the Depart-
25 ment of State Police conduct a nationwide criminal records check of the
26 applicant as provided in ORS 181A.195.

27 “(4) ORS 181A.195 [(10)] (11) does not apply to the Department of Public
28 Safety Standards and Training when the department makes a denial or re-
29 vocation decision as a result of information received pursuant to subsection
30 (3) this section.

1 “(5) The department and an employee of the department acting within the
2 course and scope of employment are immune from any civil liability that
3 might otherwise be incurred or imposed for making a denial or revocation
4 decision regarding an applicant pursuant to subsection (3) of this section.
5 The department, an employee of the department acting within the course and
6 scope of employment and an employer or employer’s agent who in good faith
7 comply with the requirements of ORS 181A.855 or 181A.860, any rules
8 adopted by the department and the decision of the department or employee
9 of the department acting within the course and scope of employment are not
10 liable for employment-related decisions based on decisions made under ORS
11 181A.855 or 181A.860. The department or an employee of the department
12 acting within the course and scope of employment is not liable for
13 defamation or invasion of privacy in connection with the lawful dissem-
14 ination of information lawfully obtained under ORS 181A.195.

15 **“SECTION 8.** ORS 703.090 is amended to read:

16 “703.090. (1) All of the following requirements apply to an applicant for
17 a license as a general polygraph examiner. The applicant must:

18 “(a) Be at least 18 years of age.

19 “(b) Be a citizen of the United States.

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

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

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

1 “(B) Have graduated from high school or have been awarded a certificate
2 for passing an approved high school equivalency test such as the General
3 Educational Development (GED) test, and have at least five years of active
4 investigative experience before the date of application.

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

11 “(g) Have successfully completed an examination conducted by the de-
12 partment to determine, consistent with any standards approved by the board,
13 competency to act as a polygraph examiner.

14 “(2) An applicant meets the requirements of subsection (1)(e) or (f) of this
15 section if the applicant provides the department with documentation of mil-
16 itary training or experience that the department determines is substantially
17 equivalent to the education or experience required by subsection (1)(e) or (f)
18 of this section.

19 “(3) For the purpose of requesting a state or nationwide criminal records
20 check under ORS 181A.195, the department shall require each applicant to
21 be fingerprinted as part of the licensing procedure.

22 “(4) When the department refuses to issue a license based upon an
23 applicant’s failure to meet the requirements of subsection (1)(c) of this sec-
24 tion, the department shall prepare a concise, specific written statement of
25 the facts supporting the department’s conclusion that there is a high degree
26 of probability that the applicant will be unlikely to perform required duties
27 in a manner that would serve the interests of the public. A copy of the
28 statement must be given to the applicant. ORS 181A.195 [(10)] (11) does not
29 apply to the department when the department refuses to issue a license under
30 this subsection.

1 “(5) The department and an employee of the department acting within the
2 course and scope of employment are immune from any civil liability that
3 might otherwise be incurred or imposed for refusing to issue a license under
4 subsection (4) of this section. The department, an employee of the depart-
5 ment acting within the course and scope of employment and an employer or
6 employer’s agent who in good faith comply with the requirements of this
7 section, any rules adopted by the department and the decision of the de-
8 partment or employee of the department acting within the course and scope
9 of employment are not liable for employment-related decisions based on de-
10 cisions made under this section. The department or an employee of the de-
11 partment acting within the course and scope of employment is not liable for
12 defamation or invasion of privacy in connection with the lawful dissem-
13 ination of information lawfully obtained under ORS 181A.195.”.

14
