

Requested by Representative NATHANSON

**PROPOSED AMENDMENTS TO
A-ENGROSSED SENATE BILL 725**

- 1 On page 1 of the printed A-engrossed bill, line 2, delete “181A.200,”.
- 2 In line 3, delete “181A.400, 181A.875,” and delete “703.090 and” and after
3 “2009” insert “; and prescribing an effective date”.
- 4 Delete lines 5 through 25 and delete pages 2 through 6.
- 5 On page 7, delete lines 1 through 11 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) Except as otherwise provided in ORS 181A.400, 181A.875, 342.143,
28 342.223, 443.735, 475B.785 to 475B.949 and 703.090 and paragraph (d) of this
29 subsection, an authorized agency, using the rules adopted by the Oregon
30 Department of Administrative Services under ORS 181A.215, shall determine

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

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

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

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

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

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

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

21 “(A) The nature of the crime;

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

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

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

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

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

2 “(iii) The likelihood of a repetition of offenses or of the commission of

3 another crime;

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

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

6 aside the conviction; and

7 “(vi) The recommendation of an employer.

8 “(d) [*An individual prohibited from receiving public funds for employment*

9 *under ORS 443.004 (3) is not entitled to a determination of fitness as a subject*

10 *individual under this subsection]* **A subject individual is not entitled to a**

11 **fitness determination under this subsection if the subject individual:**

12 “(A) **Is or seeks to be employed in any capacity having contact with**

13 **a recipient of support services or a resident of a residential facility or**

14 **adult foster home, as provided in ORS 443.004 (3), and has been con-**

15 **victed of any crime listed in ORS 443.004 (3) or (5).**

16 “(B) **Is prohibited by federal law from holding a position, providing**

17 **services, being employed or being granted a license, certification, reg-**

18 **istration or permit for which the fitness determination is requested**

19 **by an authorized agency.**

20 “(11)(a) **In conducting a fitness determination regarding a subject**

21 **individual other than an individual described in paragraph (b) of this**

22 **subsection, the Department of Human Services or the Oregon Health**

23 **Authority may not consider:**

24 “(A) **A conviction that is more than 10 years old unless the con-**

25 **viction is for a crime listed in ORS 443.004 (3) or (5);**

26 “(B) **A charge or arrest for which there was no conviction unless**

27 **the charge or arrest is for a crime listed in ORS 443.004 (3) or (5);**

28 “(C) **A conviction on a charge relating to marijuana if the charge**

29 **is no longer a criminal offense;**

30 “(D) **A conviction under ORS 813.010, if the subject individual had**

1 no more than one conviction under ORS 813.010 in the five-year period
2 prior to the date of the criminal records check;

3 “(E) A deferred sentence, conditional discharge or participation in
4 a diversion program for any crime unless the crime is listed in ORS
5 443.004 (3) and (5); and

6 “(F) A pending indictment for a crime unless the crime is listed in
7 ORS 443.004 (3) or (5).

8 “(b) The department or the authority may consider a charge, arrest,
9 conviction, deferred sentence, conditional discharge, participation in
10 a diversion program or pending indictment that may not be considered
11 under paragraph (a) of this subsection in making a fitness determi-
12 nation for a subject individual who is:

13 “(A) Described in ORS 418.016;

14 “(B) An employee, volunteer, contractor or provider in, or an agent
15 of, a proctor foster home as defined in ORS 418.205 or a child-caring
16 agency as defined in ORS 418.205;

17 “(C) An exempt family child care provider, as defined in ORS
18 329A.430, the provider’s household members who are 16 years of age
19 or older or a frequent visitor of a provider who is subject to a criminal
20 records check;

21 “(D) An employee or volunteer in a facility that:

22 “(i) Provides care to children and is operated by a school district,
23 as defined in ORS 332.002, a political subdivision of this state, a pre-
24 school recorded program, as defined in ORS 329A.250, or a government
25 agency; and

26 “(ii) Is not required to be certified under ORS 329A.280; or

27 “(E) An emergency medical services provider, as defined in ORS
28 682.025, for the purpose of determining the fitness of the emergency
29 medical services provider to receive or hold a license under ORS
30 670.280.

1 “[~~(11)~~] **(12)** Criminal offender information is confidential. Authorized
2 agencies and the Department of State Police shall adopt rules to restrict
3 dissemination of information received under this section to persons with a
4 demonstrated and legitimate need to know the information.

5 “[~~(12)~~] **(13)** If a subject individual refuses to consent to the criminal re-
6 cords check or refuses to be fingerprinted, the authorized agency shall deny
7 the employment of the individual, or revoke or deny any applicable position,
8 authority to provide services, license, certification, registration or permit.

9 “[~~(13)~~] **(14)** If an authorized agency requires a criminal records check of
10 employees, prospective employees, contractors, vendors or volunteers or ap-
11 plicants for a license, certification, registration or permit, the application
12 forms of the authorized agency must contain a notice that the person is
13 subject to fingerprinting and a criminal records check.”.

14 In line 12, delete “3” and insert “2”.

15 On page 8, line 27, restore the bracketed material and delete the boldfaced
16 material.

17 On page 9, line 2, delete “4” and insert “3”.

18 On page 10, line 18, restore the bracketed material and delete the bold-
19 faced material.

20 In line 39, delete “5” and insert “4”.

21 Delete line 45 and delete pages 11 through 13 and insert:

22 **“SECTION 5. This 2019 Act takes effect on the 91st day after the**
23 **date on which the 2019 regular session of the Eightieth Legislative**
24 **Assembly adjourns sine die.”.**

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