

Enrolled Senate Bill 62

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CHAPTER

AN ACT

Relating to Department of Public Safety Standards and Training; creating new provisions; and amending ORS 181.640, 181.661 and 181.662.

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

SECTION 1. ORS 181.640 is amended to read:

181.640. (1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law and fire services by improving the competence of public safety personnel and their support staffs, and in consultation with the agencies for which the Board on Public Safety Standards and Training and Department of Public Safety Standards and Training provide standards, certification, accreditation and training:

(a) The department shall recommend and the board shall establish by rule reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

(b) The department shall recommend and the board shall establish by rule reasonable minimum training for all levels of professional development, basic through executive, including but not limited to courses or subjects for instruction and qualifications for public safety personnel and instructors. Training requirements shall be consistent with the funding available in the department's legislatively approved budget.

(c) The department, in consultation with the board, shall establish by rule a procedure or procedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth Authority to determine whether public safety personnel meet minimum standards or have minimum training.

(d) Subject to such terms and conditions as the department may impose, the department shall certify instructors and public safety personnel, except youth correction officers, as being qualified under the rules established by the board.

(e) The department shall **suspend and** revoke certification in the manner provided in ORS 181.661, 181.662 and 181.664 (1).

(f) The department shall cause inspection of standards and training for instructors and public safety personnel, except youth correction officers, to be made.

(g) The department may recommend and the board may establish by rule accreditation standards, levels and categories for mandated and nonmandated public safety personnel training or educational programs. The department and board, in consultation, may establish to what extent training

or educational programs provided by an accredited university, college, community college or public safety agency may serve as equivalent to mandated training or as a prerequisite to mandated training. Programs offered by accredited universities, colleges or community colleges may be considered equivalent to mandated training only in academic areas.

(2) The department may:

(a) Contract or otherwise cooperate with any person or agency of government for the procurement of services or property;

(b) Accept gifts or grants of services or property;

(c) Establish fees for determining whether a training or educational program meets the accreditation standards established under subsection (1)(g) of this section;

(d) Maintain and furnish to law enforcement units and public and private safety agencies information on applicants for appointment as instructors or public safety personnel, except youth correction officers, in any part of the state; and

(e) Establish fees to allow recovery of the full costs incurred in providing services to private entities or in providing services as experts or expert witnesses.

(3) The department, in consultation with the board, may:

(a) Upon the request of a law enforcement unit or public safety agency, conduct surveys or aid cities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(b) Upon the request of law enforcement units or public safety agencies, conduct studies and make recommendations concerning means by which requesting units can coordinate or combine their resources.

(c) Stimulate research by public and private agencies to improve police, fire service, corrections and adult parole and probation administration and law enforcement.

(d) Provide grants from funds appropriated or available therefor, to law enforcement units, public safety agencies, special districts, cities, [and] counties **and private entities** to carry out the provisions of this subsection.

(e) Provide optional training programs for persons who operate lockups. The term "lockup" has the meaning given it in ORS 169.005.

(f) Provide optional training programs for public safety personnel and their support staffs.

(g) Enter into agreements with federal, state or other governmental agencies to provide training or other services in exchange for receiving training, fees or services of generally equivalent value.

(h) Upon the request of a law enforcement unit or public safety agency employing public safety personnel, except youth correction officers, grant an officer, fire service professional, telecommunicator or emergency medical dispatcher a multidiscipline certification consistent with the minimum requirements adopted or approved by the board. Multidiscipline certification authorizes an officer, fire service professional, telecommunicator or emergency medical dispatcher to work in any of the disciplines for which the officer, fire service professional, telecommunicator or emergency medical dispatcher is certified. The provisions of ORS 181.652, 181.653 and 181.667 relating to lapse of certification do not apply to an officer or fire service professional certified under this paragraph as long as the officer or fire service professional maintains full-time employment in one of the certified disciplines and meets the training standards established by the board.

(4) Pursuant to ORS chapter 183, the board, in consultation with the department, shall adopt rules necessary to carry out the board's duties and powers.

(5) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt rules necessary to carry out the department's duties and powers.

(6) For efficiency, board and department rules may be adopted jointly as a single set of combined rules with the approval of the board and the department.

(7) The department shall obtain approval of the board before submitting its legislative concepts, Emergency Board request or budget requests to the Oregon Department of Administrative Services.

SECTION 1a. If Senate Bill 63 becomes law, section 1 of this 2005 Act (amending ORS 181.640) is repealed and ORS 181.640, as amended by section 3, chapter _____, Oregon Laws 2005 (Enrolled Senate Bill 63), is amended to read:

181.640. (1) In accordance with any applicable provision of ORS chapter 183, to promote enforcement of law and fire services by improving the competence of public safety personnel and their support staffs, and in consultation with the agencies for which the Board on Public Safety Standards and Training and Department of Public Safety Standards and Training provide standards, certification, accreditation and training:

(a) The department shall recommend and the board shall establish by rule reasonable minimum standards of physical, emotional, intellectual and moral fitness for public safety personnel and instructors.

(b) The department shall recommend and the board shall establish by rule reasonable minimum training for all levels of professional development, basic through executive, including but not limited to courses or subjects for instruction and qualifications for public safety personnel and instructors. Training requirements shall be consistent with the funding available in the department's legislatively approved budget.

(c) The department, in consultation with the board, shall establish by rule a procedure or procedures to be used by law enforcement units, public or private safety agencies or the Oregon Youth Authority to determine whether public safety personnel meet minimum standards or have minimum training.

(d) Subject to such terms and conditions as the department may impose, the department shall certify instructors and public safety personnel, except youth correction officers, as being qualified under the rules established by the board.

(e) The department shall deny applications for training and deny, **suspend** and revoke certification in the manner provided in ORS 181.661, 181.662 and 181.664 (1).

(f) The department shall cause inspection of standards and training for instructors and public safety personnel, except youth correction officers, to be made.

(g) The department may recommend and the board may establish by rule accreditation standards, levels and categories for mandated and nonmandated public safety personnel training or educational programs. The department and board, in consultation, may establish to what extent training or educational programs provided by an accredited university, college, community college or public safety agency may serve as equivalent to mandated training or as a prerequisite to mandated training. Programs offered by accredited universities, colleges or community colleges may be considered equivalent to mandated training only in academic areas.

(2) The department may:

(a) Contract or otherwise cooperate with any person or agency of government for the procurement of services or property;

(b) Accept gifts or grants of services or property;

(c) Establish fees for determining whether a training or educational program meets the accreditation standards established under subsection (1)(g) of this section;

(d) Maintain and furnish to law enforcement units and public and private safety agencies information on applicants for appointment as instructors or public safety personnel, except youth correction officers, in any part of the state; and

(e) Establish fees to allow recovery of the full costs incurred in providing services to private entities or in providing services as experts or expert witnesses.

(3) The department, in consultation with the board, may:

(a) Upon the request of a law enforcement unit or public safety agency, conduct surveys or aid cities and counties to conduct surveys through qualified public or private agencies and assist in the implementation of any recommendations resulting from such surveys.

(b) Upon the request of law enforcement units or public safety agencies, conduct studies and make recommendations concerning means by which requesting units can coordinate or combine their resources.

(c) Stimulate research by public and private agencies to improve police, fire service, corrections and adult parole and probation administration and law enforcement.

(d) Provide grants from funds appropriated or available therefor, to law enforcement units, public safety agencies, special districts, cities, [and] counties **and private entities** to carry out the provisions of this subsection.

(e) Provide optional training programs for persons who operate lockups. The term "lockup" has the meaning given it in ORS 169.005.

(f) Provide optional training programs for public safety personnel and their support staffs.

(g) Enter into agreements with federal, state or other governmental agencies to provide training or other services in exchange for receiving training, fees or services of generally equivalent value.

(h) Upon the request of a law enforcement unit or public safety agency employing public safety personnel, except youth correction officers, grant an officer, fire service professional, telecommunicator or emergency medical dispatcher a multidiscipline certification consistent with the minimum requirements adopted or approved by the board. Multidiscipline certification authorizes an officer, fire service professional, telecommunicator or emergency medical dispatcher to work in any of the disciplines for which the officer, fire service professional, telecommunicator or emergency medical dispatcher is certified. The provisions of ORS 181.652, 181.653 and 181.667 relating to lapse of certification do not apply to an officer or fire service professional certified under this paragraph as long as the officer or fire service professional maintains full-time employment in one of the certified disciplines and meets the training standards established by the board.

(4) Pursuant to ORS chapter 183, the board, in consultation with the department, shall adopt rules necessary to carry out the board's duties and powers.

(5) Pursuant to ORS chapter 183, the department, in consultation with the board, shall adopt rules necessary to carry out the department's duties and powers.

(6) For efficiency, board and department rules may be adopted jointly as a single set of combined rules with the approval of the board and the department.

(7) The department shall obtain approval of the board before submitting its legislative concepts, Emergency Board request or budget requests to the Oregon Department of Administrative Services.

SECTION 2. ORS 181.662 is amended to read:

181.662. (1) The Department of Public Safety Standards and Training may deny, **suspend** or revoke the certification of any instructor or public safety officer, except a youth correction officer or fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that:

(a) The public safety officer or instructor falsified any information submitted on the application for certification or on any documents submitted to the Board on Public Safety Standards and Training or the department.

(b) The public safety officer or instructor has been convicted of a crime in this state or any other jurisdiction.

(c) The public safety officer or instructor does not meet the applicable minimum standards, minimum training or the terms and conditions established under ORS 181.640 (1)(a) to (d).

(2) The department shall deny, suspend or revoke the certification of a fire service professional, after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that the fire service professional has been convicted in this state of a crime listed in ORS 137.700 or in any other jurisdiction of a crime that, if committed in this state, would constitute a crime listed in ORS 137.700.

[(2)] **(3)** The department may deny, **suspend** or revoke the certification of any fire service professional after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding [that]:

(a) **That** the fire service professional falsified any information submitted on the application for certification or on any documents submitted to the board or the department; or

(b) **Consistent with ORS 670.280, that** the fire service professional [*has been discharged for cause from employment in the fire service*] **is not fit to receive or hold the certification as a result**

of conviction of a crime in this state, or in any other jurisdiction, other than a crime described in subsection (2) of this section.

[3] (4) The department shall deny, **suspend** or revoke the certification of any public safety officer or instructor, except a youth correction officer [*or fire service professional*], after written notice and hearing consistent with the provisions of ORS 181.661, based upon a finding that the public safety officer or instructor has been discharged for cause from employment as a public safety officer.

[4] (5) The department, in consultation with the board, shall adopt rules specifying those crimes for which a conviction requires the denial, **suspension** or revocation of the certification of a public safety officer or instructor.

[5] (6) Notwithstanding the lapse, suspension, revocation or surrender of the certification of a public safety officer or instructor, the department may:

(a) Proceed with any investigation of, or any action or disciplinary proceedings against, the public safety officer or instructor; or

(b) Revise or render void an order suspending or revoking the certification.

[6] (7) The department shall deny, **suspend** or revoke the accreditation of a training or educational program or any course, subject, facility or instruction thereof if the program, course, subject, facility or instruction is not in compliance with rules adopted or conditions prescribed under ORS 181.640 (1)(g) or 181.650 (3).

SECTION 3. ORS 181.661 is amended to read:

181.661. When the Department of Public Safety Standards and Training denies application or certification or the department or Board on Public Safety Standards and Training believes there is a reasonable basis for **suspending or** revoking the certification of an instructor or a public safety officer, except a youth correction officer or fire service professional, notice and opportunity for a hearing shall be provided in accordance with rules approved by the board and in accordance with ORS 183.415 prior to [*such*] **suspension or** revocation.

SECTION 4. (1) For the purpose of requesting a state or nationwide criminal records check under this section, the Department of Public Safety Standards and Training may require the fingerprints of a person described in paragraphs (a) to (c) of this subsection. The Department of Public Safety Standards and Training may request that the Department of State Police conduct a state or nationwide criminal records check on a subject individual if the subject individual:

(a) **Is employed or applying for employment by the Department of Public Safety Standards and Training;**

(b) **Provides services or seeks to provide services to the Department of Public Safety Standards and Training 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 of Public Safety Standards and Training or the individual is under investigation by the Department of Public Safety Standards and Training.**

(2) **If a nationwide criminal records check is necessary for a subject individual, the Department of Public Safety Standards and Training shall request the Department of State Police to conduct the check, including fingerprint identification, through the Federal Bureau of Investigation. The Department of State Police shall report the results to the Department of Public Safety Standards and Training. The Department of State Police shall also furnish any information that the Department of State Police may have in its possession from its central bureau of criminal identification, including but not limited to manual or computerized information.**

(3) **The Federal Bureau of Investigation shall either return or destroy the fingerprint cards used to conduct the criminal records check and shall not keep any record of the fingerprints. However, if the federal bureau policy authorizing return or destruction of the fingerprint cards is changed, the Department of Public Safety Standards and Training shall**

cease to send the cards to the federal bureau but shall continue to process the information through other available resources.

(4) If the Federal Bureau of Investigation returns the fingerprint cards to the Department of State Police, the department shall return the fingerprint cards to the Department of Public Safety Standards and Training. The Department of Public Safety Standards and Training shall destroy the fingerprint cards and shall retain no facsimiles or other material from which a fingerprint can be reproduced.

(5)(a) The Department of Public Safety Standards and Training, using rules adopted by the department, shall determine whether a subject individual is fit to hold a position, provide services or be certified based on the criminal offender information obtained pursuant to this section, any false statements made by the individual regarding the criminal history of the individual and any refusal to submit or consent to a criminal records check including fingerprint identification. If a subject individual is determined to be unfit, then that person shall not hold the position, provide the services or be certified.

(b) In determining whether a subject individual described in subsection (1)(a) or (b) of this section is fit to hold a position or provide services, the department shall consider:

(A) The nature of the crime;

(B) The facts that support the conviction or pending indictment or indicate the making of the 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 or authority to provide services; and

(D) Intervening circumstances relevant to the responsibilities and circumstances of the position or services. Intervening circumstances include but are not limited to the passage of time since the commission of the crime, the age of the person at the time of the crime, the likelihood of a repetition of offenses, the subsequent commission of another relevant crime and a recommendation of an employer.

(c) The department and employees of the department are immune from any civil liability that might otherwise be incurred or imposed for making a good-faith determination pursuant to this subsection that a subject individual is not fit to hold a position, provide services or be certified.

(6)(a) The Department of Public Safety Standards and Training shall establish by rule a contested case process by which a subject individual may appeal the determination that the subject individual is disqualified for a position pursuant to this section. Challenges to the accuracy or completeness of information provided by the Department of State Police, the Federal Bureau of Investigation and agencies reporting information to the Department of State Police or the Federal Bureau of Investigation must be made through the Department of State Police, the Federal Bureau of Investigation or the agency and not through the contested case process required by this paragraph.

(b) A subject individual who is also employed by the Department of Public Safety Standards and Training and who is determined disqualified for a position may appeal the determination through either the contested case process adopted under this subsection or applicable personnel rules, policies and collective bargaining provisions. A subject individual's decision to appeal a determination through personnel rules, policies and collective bargaining provisions is an election of remedies as to the rights of the subject individual with respect to the disqualification determination, and is a waiver of the contested case process.

(7) The Department of Public Safety Standards and Training, in consultation with the Department of State Police, shall adopt rules to implement this section. The rules may include but are not limited to:

(a) Specifying which employees are authorized to make criminal record inquiries;

(b) Specifying categories of subject individuals who are subject to criminal records checks;

(c) Specifying the information, including fingerprints, that may be required from a subject individual to permit a criminal records check;

(d) Specifying which crimes may be considered in reviewing criminal offender information for a subject individual;

(e) Specifying when a nationwide criminal records check must be conducted on a subject individual through the Department of State Police;

(f) Determining when a subject individual may be hired on a probationary basis pending a criminal records check; and

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

(8) Criminal offender information is confidential. 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. The Department of Public Safety Standards and Training is bound by the rules of disclosure adopted by the department.

(9) If the Department of Public Safety Standards and Training requires a criminal records check of employees or other persons, the application forms of the department must contain a notice that employment is subject to fingerprinting and a criminal records check as required by this section.

(10) As used in this section, "subject individual" means a person subject to a criminal records check as specified by rule of the Department of Public Safety Standards and Training.

Passed by Senate February 22, 2005

Received by Governor:

Repassed by Senate July 5, 2005

.....M.,....., 2005

Approved:

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Secretary of Senate

.....M.,....., 2005

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President of Senate

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Governor

Passed by House June 30, 2005

Filed in Office of Secretary of State:

.....M.,....., 2005

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Speaker of House

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Secretary of State