

Secretary of State
STATEMENT OF NEED AND FISCAL IMPACT
A Notice of Proposed Rulemaking Hearing or a Notice of Proposed Rulemaking accompanies this form.

Oregon Department of Consumer and Business Services
Agency and Division

Insurance Division

836

Administrative Rules Chapter Number

In the Matter of: Proposed Adoption of OAR 836-072-0001 to 836-072-0050, Relating to Criminal Record Checks and Fingerprinting of Licensees under the Insurance Code

Rule Caption: Criminal Record Checks and Fingerprinting of Licensees under the Insurance Code

Statutory Authority: ORS 181.534, 705.135, and 731.244

Other Authority:

Stats. Implemented: ORS 181.534, 705.141, 744.001, 744.059, and 744.326

Need for the Rule(s): ORS 705.141 (sec. 1, chapter 619, Oregon Laws 2007) authorizes the Department of Consumer and Business Services, for the purpose of requesting a state or nationwide criminal records check in connection with licensing under the Insurance Code, to require the fingerprints of a person who applies for a license or renewal of a license as an insurance consultant, adjuster or insurance producer, or as a life settlement provider or broker. This proposed rulemaking implements this legislation with respect to those applicants. Under ORS 181.534, the Department may request that the Department of State Police conduct a criminal records check, including fingerprint identification, on a subject individual for non-criminal justice purposes. ORS 181.534(9) requires an authorized agency, such as the Department, in consultation with the Department of State Police, to adopt rules to implement this and other statutes relating to criminal offender information obtained through fingerprint-based criminal records checks. In relevant part, the statute in relevant part requires the rules do at least the following:

- (a) Specify categories of subject individuals who are subject to criminal records checks.
- (b) Specify the information that may be required from a subject individual to permit a criminal records check.
- (c) Specify which programs or services are subject to this section.
- (d) Specify the types of crimes that may be considered in reviewing criminal offender information of a subject individual.
- (e) Specify when a nationwide fingerprint-based criminal records check must be conducted. An authorized agency shall consider the additional cost of obtaining a nationwide fingerprint-based criminal records check when adopting rules under this subsection.
- (g) Establish fees in an amount not to exceed the actual cost of acquiring and furnishing criminal offender information.

Finally, under ORS 181.534(10), the Department of State Police must verify that an authorized agency has adopted the required rules.

The Director proposes this rulemaking to implement ORS 705.141, as this section applies to insurance license applicants. The proposed rules incorporate the several matters required to be included in the rules by ORS 181.534(9). The rules are needed to enable the Director to request complete criminal checks at the state or federal level and facilitate the Department's responsibility to ensure that license applicants under the Insurance Code meet all licensing requirements and to determine, with available information, whether applicants' past behaviors might indicate potential hazards to the insurance-buying public. Failure to adopt rulemaking on this topic will result in the Department's failure to carry out the authority granted by section 1, chapter 619, Oregon Laws 2007 and the consequent failure to properly inquire into possible criminal histories of applicants for renewal or issuance. This rulemaking provides that the Director may perform the fingerprinting activities through a vendor. The Department has submitted its initial draft of the proposed rules to the Oregon State Police for review and will submit them again before adoption.

Documents Relied Upon, and where they are available: Department of Justice, Sample Criminal Records Check and Fitness Determination Rules for Employment Purposes; DCBS draft of Criminal Records Check and Fitness Determination Rules for Employment Purposes, dated 2/20/08. FBI Congressional Testimony of Michael D. Kirkpatrick, Assistant Director in Charge, Criminal Justice Information Services Division, March 30, 2004. These documents are available for public inspection at the Insurance Division, 350 Winter Street, NE, Room 440, Salem, Oregon 97301-3883, during regular business hours, 8:00 a.m. to 5:00 p.m., Monday through Friday.

Fiscal and Economic Impact, including Statement of Cost of Compliance: There is no fiscal or economic impact from this rulemaking either for the Department or for other state agencies or local governments. Any costs incurred by the Department from the collection of applicant information and fingerprints are a standard part of the Department's licensing functions and will be absorbed

with existing resources. The costs are unknown because of a lack of data. According to the last fiscal impact statement for this legislation (HB 2252), it is anticipated that the Department of State Police will expend \$85,955 for the 2007-2009 biennium and the same amount for the 2009-2011 biennium. For each biennium, the State Police expects revenue of \$230,608 from fingerprint fees. This review function is a part of the statutory functions of the State Police.

The FBI fee for fingerprint card requests ranges from \$16 to \$22, according to the type of service requested. This fee will be paid by the applicant, the insurance agency employing the applicant or the insurer for which the applicant will act as an insurance producer, when a license issuance or renewal application is made. The Director anticipates contracting with the vendor so that the vendor collects the fingerprints and sends them to the appropriate law enforcement agency. The vendor will incur some costs for that activity. The costs are not known, because of a lack of data, but allocation and recovery of costs are expected to be one of the items addressed in the Department's contract with the vendor. The vendor may charge and collect a fee to cover the cost of its services in connection with fingerprint collection. If so, the vendor will receive revenue in the amount of the fee received for each fingerprinting request. Alternatively, if the Director handles the fingerprinting requests to the FBI or other agency, the cost may be included in the current license application fee or may be collected as a separate fee. Each requester of fingerprinting will incur this fee. As noted earlier, this cost will be borne by the applicant, the insurance agency employing the applicant or the insurer. The amount of the fee is unknown because it is not yet determined.

The statement of cost of compliance effect on small businesses (defined in ORS 183.310 generally to be a legal entity that is for-profit, independently-owned and operated and has 50 or fewer employees) required by ORS 183.335(2)(b)(E) is as follows:

(a) An estimate of the number of small businesses subject to the proposed rule and identification of the types of businesses and industries with small businesses subject to the proposed rule: The fingerprinting requirement affects only license applicants and some renewal applicants. If there is approximately the same number of license applicants in 2008 as in 2007, we can anticipate that approximately 2,000 applicants will complete the application process. Of this number, however, it is not known, because of a lack of data, how many of the license applicants will be small businesses. The vendor that would provide for the fingerprinting is not a small employer.

(b) A brief description of the projected reporting, record keeping and other administrative activities required for compliance with the proposed rule, including costs of professional services: None.

(c) An identification of equipment, supplies, labor and increased administration required for compliance with the proposed rule: None.

(d) A description of the manner in which the agency proposing the rule involved small businesses in the development of the rule: Representatives of organizations representing insurance producers, adjusters and insurance consultants, and small businesses engaging in those activities, were invited to participate in this advisory committee.

How were small businesses involved in the development of this rule? See (d), immediately above.

Administrative Rule Advisory Committee consulted? Yes. The Division invited representatives of organizations of insurance producers, adjusters and insurance consultants, and organizations representing consumers, to participate as members of the advisory committee for this rulemaking. The advisory committee met on April 9, 2008, to discuss the proposed rulemaking and the draft statement of need.

(Signed)
Authorized Signer

Scott Kipper, Insurance Administrator
Printed Name

April 14, 2008
Date