

(Including Amendments to Resolve Conflicts)

B-Engrossed Senate Bill 490

Ordered by the House May 23
Including Senate Amendments dated April 24 and House Amendments
dated May 23

Sponsored by Senator GELSER, Representative LIVELY; Senator MONNES ANDERSON, Representatives BONHAM, HELT, MITCHELL, NOBLE, ZIKA (Pre-session 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.

Modifies definition of "exempt prohibited individual."

Prohibits permanently from providing child care individuals who have been subject of substantiated report of child abuse in which victim suffered serious harm or death and individuals who are required to report as sex offenders.

Requires certain individuals who have been subject of founded or substantiated report of child abuse to apply and be enrolled in Central Background Registry prior to providing certain types of care. Modifies definition of "subject individual."

Authorizes Office of Child Care to impose civil penalty and file for injunctive relief if subject individual has not applied to and been enrolled in Central Background Registry and the individual provides child care or has child in individual's care.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to individuals prohibited from providing child care; creating new provisions; amending ORS
3 329A.030, 329A.252 and 329A.992; repealing section 3, chapter ___, Oregon Laws 2019 (Enrolled
4 House Bill 2027); and declaring an emergency.

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

6 **SECTION 1.** ORS 329A.252, as amended by section 3, chapter 115, Oregon Laws 2018, is
7 amended to read:

8 329A.252. (1) As used in this section, "exempt prohibited individual" means:

9 (a) An individual whose certification or registration **is suspended**, has been denied for cause
10 or **has been** revoked under ORS 329A.350.

11 (b) An individual whose enrollment in the Central Background Registry established by ORS
12 329A.030 **is suspended**, has been denied for cause or **has been** removed under ORS 329A.030.

13 (c) An individual who voluntarily surrendered the individual's certification, registration or en-
14 rollment in the Central Background Registry while under investigation by the Office of Child Care
15 or at any time after the Office of Child Care has given notice of an administrative proceeding
16 against the individual or the individual's child care facility.

17 (d) **An individual to whom the Office of Child Care has issued a final order to cease and**
18 **desist:**

19 (A) **After a contested proceeding; or**

20 (B) **That has become effective because the individual did not request a hearing.**

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 (2) For five years following the date on which an individual becomes an exempt prohibited in-
2 dividual, the exempt prohibited individual:

3 (a) Is ineligible for enrollment in the Central Background Registry; and

4 (b) May not provide care to a child who is not related to the exempt prohibited individual by
5 blood or marriage within the fourth degree as determined by civil law.

6 (3) After the five-year period described in subsection (2) of this section, an individual ceases to
7 be an exempt prohibited individual if the individual enrolls in the Central Background Registry.

8 **(4) Notwithstanding the five-year period described in subsection (2) of this section, an**
9 **individual shall be permanently considered an exempt prohibited individual and shall be per-**
10 **manently subject to the prohibitions described in subsection (2) of this section if the indi-**
11 **vidual:**

12 **(a) Has been convicted of, in any state, a crime in which a child suffered serious physical**
13 **injury, as defined in ORS 161.015, or death; or**

14 **(b) Is required to report as a sex offender under ORS 163A.010, 163A.015, 163A.020 or**
15 **163A.025 or the laws of another jurisdiction.**

16 **SECTION 1a. If House Bill 2027 becomes law, section 3, chapter ___, Oregon Laws 2019**
17 **(Enrolled House Bill 2027) (amending ORS 329A.252), is repealed and ORS 329A.252, as**
18 **amended by section 3, chapter 115, Oregon Laws 2018, and section 1 of this 2019 Act, is**
19 **amended to read:**

20 329A.252. (1) As used in this section, “exempt prohibited individual” means:

21 (a) An individual whose certification or registration is suspended, has been denied for cause or
22 has been revoked under ORS 329A.350.

23 (b) An individual whose enrollment in the Central Background Registry established by ORS
24 329A.030 is suspended, has been denied for cause or has been removed under ORS 329A.030.

25 **(c) An individual whose certification, registration or enrollment in the Central Back-**
26 **ground Registry is subject to an emergency order of suspension under ORS 183.430 (2).**

27 [(c)] **(d)** An individual who voluntarily surrendered the individual’s certification, registration or
28 enrollment in the Central Background Registry while under investigation by the Office of Child Care
29 or at any time after the Office of Child Care has given notice of an administrative proceeding
30 against the individual or the individual’s child care facility.

31 [(d)] **(e)** An individual to whom the Office of Child Care has issued a final order to cease and
32 desist:

33 (A) After a contested proceeding; or

34 (B) That has become effective because the individual did not request a hearing.

35 (2) For five years following the date on which an individual becomes an exempt prohibited in-
36 dividual, the exempt prohibited individual:

37 (a) Is ineligible for enrollment in the Central Background Registry; and

38 (b) May not provide care to a child who is not related to the exempt prohibited individual by
39 blood or marriage within the fourth degree as determined by civil law.

40 (3) After the five-year period described in subsection (2) of this section, an individual ceases to
41 be an exempt prohibited individual if the individual enrolls in the Central Background Registry.

42 (4) Notwithstanding the five-year period described in subsection (2) of this section, an individual
43 shall be permanently considered an exempt prohibited individual and shall be permanently subject
44 to the prohibitions described in subsection (2) of this section if the individual:

45 (a) Has been convicted of, in any state, a crime in which a child suffered serious physical injury,

1 as defined in ORS 161.015, or death; or

2 (b) Is required to report as a sex offender under ORS 163A.010, 163A.015, 163A.020 or 163A.025
3 or the laws of another jurisdiction.

4 **SECTION 1b. The amendments to ORS 329A.252 by section 1a of this 2019 Act become**
5 **operative on the effective date of chapter __, Oregon Laws 2019 (Enrolled House Bill 2027).**

6 **SECTION 2.** ORS 329A.030, as amended by section 1, chapter 115, Oregon Laws 2018, is
7 amended to read:

8 329A.030. (1) The Office of Child Care shall establish a Central Background Registry and may
9 maintain information in the registry through electronic records systems.

10 (2)(a) A subject individual shall apply to and must be enrolled in the Central Background Reg-
11 istry as part of the individual's application to operate a program or serve in a position described in
12 subsection (10) of this section.

13 **(b) An individual who has been the subject of a founded or substantiated report of child**
14 **abuse shall apply to and be enrolled in the Central Background Registry prior to providing**
15 **any of the types of care identified in ORS 329A.250 (4)(a), (g) or (h) if:**

16 **(A) The child abuse occurred on or after January 1, 2017, and involved a child who died**
17 **or suffered serious physical injury, as defined in ORS 161.015; or**

18 **(B) The child abuse occurred on or after September 1, 2019, and involved any child for**
19 **whom the individual was providing child care, as defined in ORS 329A.250 (4), or care identi-**
20 **fied in ORS 329A.250 (4)(a), (c), (f), (g), (h) or (i).**

21 **(c) Notwithstanding paragraph (a) of this subsection, an individual described in paragraph**
22 **(b)(B) of this subsection is not required to enroll in the Central Background Registry if more**
23 **than seven years has elapsed since the date of the child abuse determination.**

24 (3) Upon receiving an application for enrollment in the Central Background Registry, the office
25 shall complete:

26 (a) A criminal records check under ORS 181A.195;

27 (b) A criminal records check of other registries or databases in accordance with rules adopted
28 by the Early Learning Council;

29 (c) A child abuse and neglect records check in accordance with rules adopted by the council;
30 and

31 (d) A foster care certification check and an adult protective services check in accordance with
32 rules adopted by the council.

33 (4)(a) The office shall enroll the individual in the Central Background Registry if the individual:

34 (A) Is determined to have no criminal, child abuse and neglect, negative adult protective ser-
35 vices or negative foster home certification history, or to have dealt with the issues and provided
36 adequate evidence of suitability for the registry;

37 (B) Has paid the applicable fee established pursuant to ORS 329A.275; and

38 (C) Has complied with the rules of the Early Learning Council adopted pursuant to this section.

39 (b) Notwithstanding subsection (3) of this section and paragraph (a) of this subsection, the office
40 may enroll an individual in the registry if the Department of Human Services has completed a
41 background check on the individual and the individual has received approval from the department
42 for purposes of providing child care.

43 (5)(a) Notwithstanding subsections (3) and (4) of this section, the office may not enroll an indi-
44 vidual in the Central Background Registry if:

45 (A) The individual has a disqualifying condition as defined in rules adopted by the council; or

1 (B) The individual is an exempt prohibited individual, as *[defined in]* **provided by** ORS 329A.252.

2 (b) If an individual *[who has a disqualifying condition or who is an exempt prohibited*
3 *individual]* **prohibited from enrolling in the registry as provided by this subsection** is enrolled
4 in the *[Central Background]* registry, the office shall remove the individual from the registry.

5 (6)(a) The office may conditionally enroll an individual in the Central Background Registry
6 pending the results of a nationwide criminal records check through the Federal Bureau of Investi-
7 gation if the individual has met other requirements of the office for enrollment in the registry.

8 (b) The office may enroll an individual in the registry subject to limitations identified in rules
9 adopted by the council.

10 (7) An enrollment in the Central Background Registry may be renewed upon application to the
11 office, payment of the fee established pursuant to ORS 329A.275 and compliance with rules adopted
12 by the Early Learning Council pursuant to this section. However, an individual who is determined
13 to be ineligible for enrollment in the registry after the date of initial enrollment shall be removed
14 or suspended from the registry by the office.

15 (8)(a) A child care facility shall not hire or employ an individual if the individual is not enrolled
16 in the Central Background Registry.

17 (b) Notwithstanding paragraph (a) of this subsection, a child care facility may employ on a
18 probationary basis an individual who is conditionally enrolled in the Central Background Registry.

19 (9) The Early Learning Council may adopt any rules necessary to carry out the purposes of this
20 section, including but not limited to rules regarding expiration and renewal periods and limitations
21 related to the subject individual's enrollment in the Central Background Registry.

22 (10) For purposes of this section, "subject individual" means a subject individual as defined by
23 the Early Learning Council by rule, **an individual subject to subsection (2)(b) of this section** or
24 a person who applies to be:

25 (a) The operator or an employee of a child care or treatment program;

26 (b) The operator or an employee of an Oregon prekindergarten program under ORS 329.170 to
27 329.200;

28 (c) The operator or an employee of a federal Head Start program regulated by the United States
29 Department of Health and Human Services;

30 (d) An individual in a child care facility who may have unsupervised contact with children as
31 identified by the office;

32 (e) A contractor or an employee of the contractor who provides early childhood special educa-
33 tion or early intervention services pursuant to ORS 343.455 to 343.534;

34 (f) A child care provider who is required to be enrolled in the Central Background Registry by
35 any state agency;

36 (g) A contractor, employee or volunteer of a metropolitan service district organized under ORS
37 chapter 268 who may have unsupervised contact with children and who is required to be enrolled
38 in the Central Background Registry by the metropolitan service district;

39 (h) A provider of respite services, as defined in ORS 418.205, for parents pursuant to a properly
40 executed power of attorney under ORS 109.056 who is providing respite services as a volunteer with
41 a private agency or organization that facilitates the provision of such respite services; or

42 (i) The operator or an employee of an early learning program as defined in rules adopted by the
43 council.

44 (11)(a) Information provided to a metropolitan service district organized under ORS chapter 268
45 about the enrollment status of the persons described in subsection (10)(g) of this section shall be

1 subject to a reciprocal agreement with the metropolitan service district. The agreement must pro-
2 vide for the recovery of administrative, including direct and indirect, costs incurred by the office
3 from participation in the agreement. Any moneys collected under this paragraph shall be deposited
4 in the Child Care Fund established under ORS 329A.010.

5 (b) Information provided to a private agency or organization facilitating the provision of respite
6 services, as defined in ORS 418.205, for parents pursuant to a properly executed power of attorney
7 under ORS 109.056 about the enrollment status of the persons described in subsection (10)(h) of this
8 section shall be subject to an agreement with the private agency or organization. The agreement
9 must provide for the recovery of administrative, including direct and indirect, costs incurred by the
10 office from participation in the agreement. Any moneys collected under this paragraph shall be de-
11 posited in the Child Care Fund established under ORS 329A.010.

12 (c) Information provided to a private agency or organization about the enrollment status of the
13 persons described in subsection (10)(i) of this section shall be subject to an agreement with the pri-
14 vate agency or organization. The agreement must provide for the recovery of administrative, in-
15 cluding direct and indirect, costs incurred by the office from participation in the agreement. Any
16 moneys collected under this paragraph shall be deposited in the Child Care Fund established under
17 ORS 329A.010.

18 **SECTION 3.** ORS 329A.992, as amended by section 13, chapter 115, Oregon Laws 2018, is
19 amended to read:

20 329A.992. (1) In addition to any other provision of law or rule adopted pursuant to ORS 329A.260
21 for enforcement of the provisions of ORS chapter 329A, the Office of Child Care may:

22 (a) Suspend or revoke a certification or registration issued under ORS 329A.030 and 329A.250
23 to 329A.450, or impose a civil penalty in the manner provided in ORS 183.745, for violation of:

24 [(a)] (A) Any of the provisions of ORS 329A.030 and 329A.250 to 329A.450;

25 [(b)] (B) The terms and conditions of a certification or registration issued under ORS 329A.030
26 and 329A.250 to 329A.450; or

27 [(c)] (C) Any rule of the Early Learning Council adopted under ORS 329A.030 and 329A.250 to
28 329A.450.

29 (b) **Impose a civil penalty in the manner provided in ORS 183.745 and file for injunctive**
30 **relief in a circuit court for the provision of child care, or for having a child in an individual's**
31 **care, in violation of ORS 329A.030 (2).**

32 (2) The Early Learning Council may adopt by rule a schedule establishing the civil penalties
33 that may be imposed under this section.

34 (3) Except as provided in subsection (4) of this section, penalties imposed under this section may
35 not exceed:

36 (a) \$750 per violation for a registered family child care home.

37 (b) \$1,200 per violation for a certified family child care home.

38 (c) \$2,500 per violation for a certified child care center that is not a family child care home.

39 (4) The office may impose a civil penalty of not more than \$1,500 for a child care facility that
40 provides child care without a valid:

41 (a) Certification, in violation of ORS 329A.280; or

42 (b) Registration, in violation of ORS 329A.330.

43 (5) Each day that a child care facility is operating in violation of any of the provisions described
44 in subsection (1) of this section is a separate violation.

45 (6) The office may revoke a child care facility's certification or registration or deny a child care

1 facility's renewal application for a certification or registration if the facility fails to pay a civil
2 penalty after the order imposing the penalty becomes final.

3 (7) A civil penalty imposed under this section may be remitted or reduced upon such terms and
4 conditions as the office considers proper and consistent with the public health and safety.

5 (8) All moneys received under this section shall be paid into the State Treasury and credited to
6 the General Fund.

7 **SECTION 4. This 2019 Act being necessary for the immediate preservation of the public**
8 **peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect**
9 **on its passage.**

10