

D R A F T

SUMMARY

Prohibits transfer of firearm by dealer or private party if Department of State Police is unable to determine whether recipient is qualified to receive firearm.

Requires Department of State Police to notify appropriate law enforcement agency when, during criminal background check performed prior to transfer of firearm, department determines that recipient is prohibited from possessing firearm.

A BILL FOR AN ACT

1
2 Relating to firearm transfer criminal background checks; amending ORS
3 166.412, 166.435 and 166.436.

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

4 **SECTION 1.** ORS 166.412 is amended to read:

5 166.412. (1) As used in this section:

6 (a) "Antique firearm" has the meaning given that term in 18 U.S.C. 921;

7 (b) "Department" means the Department of State Police;

8 (c) "Firearm" has the meaning given that term in ORS 166.210, except that
9 it does not include an antique firearm;

10 (d) "Firearms transaction record" means the firearms transaction record
11 required by 18 U.S.C. 921 to 929;

12 (e) "Firearms transaction thumbprint form" means a form provided by the
13 department under subsection (11) of this section;

14 (f) "Gun dealer" means a person engaged in the business, as defined in
15 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether
16 the person is a retail dealer, pawnbroker or otherwise;

17 (g) "Handgun" has the meaning given that term in ORS 166.210; and
18

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 (h) "Purchaser" means a person who buys, leases or otherwise receives a
2 firearm from a gun dealer.

3 (2) Except as provided in [*subsections (3)(c) and*] **subsection** (12) of this
4 section, a gun dealer shall comply with the following before a handgun is
5 delivered to a purchaser:

6 (a) The purchaser shall present to the dealer current identification meet-
7 ing the requirements of subsection (4) of this section.

8 (b) The gun dealer shall complete the firearms transaction record and
9 obtain the signature of the purchaser on the record.

10 (c) The gun dealer shall obtain the thumbprints of the purchaser on the
11 firearms transaction thumbprint form and attach the form to the gun dealer's
12 copy of the firearms transaction record to be filed with that copy.

13 (d) The gun dealer shall request by telephone that the department conduct
14 a criminal history record check on the purchaser and shall provide the fol-
15 lowing information to the department:

16 (A) The federal firearms license number of the gun dealer;

17 (B) The business name of the gun dealer;

18 (C) The place of transfer;

19 (D) The name of the person making the transfer;

20 (E) The make, model, caliber and manufacturer's number of the handgun
21 being transferred;

22 (F) The name and date of birth of the purchaser;

23 (G) The Social Security number of the purchaser if the purchaser volun-
24 tarily provides this number to the gun dealer; and

25 (H) The type, issuer and identification number of the identification pre-
26 sented by the purchaser.

27 (e) The gun dealer shall receive a unique approval number for the transfer
28 from the department and record the approval number on the firearms trans-
29 action record and on the firearms transaction thumbprint form.

30 (f) The gun dealer may destroy the firearms transaction thumbprint form
31 five years after the completion of the firearms transaction thumbprint form.

1 (3)(a) Upon receipt of a request of the gun dealer for a criminal history
2 record check, the department shall immediately, during the gun dealer's
3 telephone call or by return call:

4 (A) Determine, from criminal records and other information available to
5 it, whether the purchaser is disqualified under ORS 166.470 from completing
6 the purchase; and

7 (B) Notify the dealer when a purchaser is disqualified from completing
8 the transfer or provide the dealer with a unique approval number indicating
9 that the purchaser is qualified to complete the transfer.

10 (b) If the department is unable to determine if the purchaser is qualified
11 or disqualified from completing the transfer within 30 minutes, the depart-
12 ment shall notify the dealer and provide the dealer with an estimate of the
13 time when the department will provide the requested information. **The**
14 **dealer may not transfer the handgun unless the dealer receives a**
15 **unique approval number from the department.**

16 *[(c) If the department fails to provide a unique approval number to a gun*
17 *dealer or to notify the gun dealer that the purchaser is disqualified under*
18 *paragraph (a) of this subsection before the close of the gun dealer's next*
19 *business day following the request by the dealer for a criminal history record*
20 *check, the dealer may deliver the handgun to the purchaser.]*

21 (4)(a) Identification required of the purchaser under subsection (2) of this
22 section shall include one piece of current identification bearing a photograph
23 and the date of birth of the purchaser that:

24 (A) Is issued under the authority of the United States Government, a
25 state, a political subdivision of a state, a foreign government, a political
26 subdivision of a foreign government, an international governmental organ-
27 ization or an international quasi-governmental organization; and

28 (B) Is intended to be used for identification of an individual or is com-
29 monly accepted for the purpose of identification of an individual.

30 (b) If the identification presented by the purchaser under paragraph (a)
31 of this subsection does not include the current address of the purchaser, the

1 purchaser shall present a second piece of current identification that contains
2 the current address of the purchaser. The Superintendent of State Police may
3 specify by rule the type of identification that may be presented under this
4 paragraph.

5 (c) The department may require that the dealer verify the identification
6 of the purchaser if that identity is in question by sending the thumbprints
7 of the purchaser to the department.

8 (5) The department shall establish a telephone number that shall be op-
9 erational seven days a week between the hours of 8 a.m. and 10 p.m. for the
10 purpose of responding to inquiries from dealers for a criminal history record
11 check under this section.

12 (6) No public employee, official or agency shall be held criminally or
13 civilly liable for performing the investigations required by this section pro-
14 vided the employee, official or agency acts in good faith and without malice.

15 (7)(a) The department may retain a record of the information obtained
16 during a request for a criminal history record check for no more than five
17 years.

18 (b) The record of the information obtained during a request for a criminal
19 history record check by a gun dealer is exempt from disclosure under public
20 records law.

21 (c) If the department determines that a purchaser is prohibited from pos-
22 sessing a firearm under ORS 166.250 (1)(c), as soon as practicable, the de-
23 partment [*may*] **shall** report the attempted transfer and the purchaser's name
24 to the appropriate law enforcement agency.

25 (8) A law enforcement agency may inspect the records of a gun dealer
26 relating to transfers of handguns with the consent of a gun dealer in the
27 course of a reasonable inquiry during a criminal investigation or under the
28 authority of a properly authorized subpoena or search warrant.

29 (9) When a handgun is delivered, it shall be unloaded.

30 (10) In accordance with applicable provisions of ORS chapter 183, the
31 Superintendent of State Police may adopt rules necessary for:

- 1 (a) The design of the firearms transaction thumbprint form;
2 (b) The maintenance of a procedure to correct errors in the criminal re-
3 cords of the department;
4 (c) The provision of a security system to identify dealers who request a
5 criminal history record check under subsection (2) of this section; and
6 (d) The creation and maintenance of a database of the business hours of
7 gun dealers.

8 (11) The department shall publish the firearms transaction thumbprint
9 form and shall furnish the form to gun dealers on application at cost.

10 (12) This section does not apply to transactions between persons licensed
11 as dealers under 18 U.S.C. 923.

12 (13)(a) If requested by a transferor who is not a gun dealer, a gun dealer
13 may request a criminal background check pursuant to ORS 166.435 or 166.438
14 and may charge a reasonable fee for providing the service.

15 (b) A gun dealer that requests a criminal background check under this
16 subsection is immune from civil liability for any use of the firearm by the
17 recipient or transferee, provided that the gun dealer requests the criminal
18 background check as described in this section.

19 **SECTION 2.** ORS 166.435 is amended to read:

20 166.435. (1) As used in this section:

21 (a) "Transfer" means the delivery of a firearm from a transferor to a
22 transferee, including, but not limited to, the sale, gift, loan or lease of the
23 firearm. "Transfer" does not include the temporary provision of a firearm to
24 a transferee if the transferor has no reason to believe the transferee is pro-
25 hibited from possessing a firearm or intends to use the firearm in the com-
26 mission of a crime, and the provision occurs:

27 (A) At a shooting range, shooting gallery or other area designed for the
28 purpose of target shooting, for use during target practice, a firearms safety
29 or training course or class or a similar lawful activity;

30 (B) For the purpose of hunting, trapping or target shooting, during the
31 time in which the transferee is engaged in activities related to hunting,

1 trapping or target shooting;

2 (C) Under circumstances in which the transferee and the firearm are in
3 the presence of the transferor;

4 (D) To a transferee who is in the business of repairing firearms, for the
5 time during which the firearm is being repaired;

6 (E) To a transferee who is in the business of making or repairing custom
7 accessories for firearms, for the time during which the accessories are being
8 made or repaired; or

9 (F) For the purpose of preventing imminent death or serious physical in-
10 jury, and the provision lasts only as long as is necessary to prevent the death
11 or serious physical injury.

12 (b) "Transferee" means a person who is not a gun dealer or licensed as
13 a manufacturer or importer under 18 U.S.C. 923 and who intends to receive
14 a firearm from a transferor.

15 (c) "Transferor" means a person who is not a gun dealer or licensed as
16 a manufacturer or importer under 18 U.S.C. 923 and who intends to deliver
17 a firearm to a transferee.

18 (2) Except as provided in ORS 166.436 and 166.438 and subsection (4) of
19 this section, a transferor may not transfer a firearm to a transferee unless
20 the transfer is completed through a gun dealer as described in subsection (3)
21 of this section.

22 (3)(a) A transferor may transfer a firearm to a transferee only as provided
23 in this section. Except as provided in paragraph (b) of this subsection, prior
24 to the transfer both the transferor and the transferee must appear in person
25 before a gun dealer, with the firearm, and request that the gun dealer per-
26 form a criminal background check on the transferee.

27 (b) If the transferor and the transferee reside over 40 miles from each
28 other, the transferor may ship or deliver the firearm to a gun dealer located
29 near the transferee or a gun dealer designated by the transferee, and the
30 transferor need not appear before the gun dealer in person.

31 (c) A gun dealer who agrees to complete a transfer of a firearm under this

1 section shall request a criminal history record check on the transferee as
2 described in ORS 166.412 and shall comply with all requirements of federal
3 law.

4 (d) If, upon completion of a criminal background check, the gun dealer:

5 (A) Receives a unique approval number from the Department of State
6 Police indicating that the transferee is qualified to complete the transfer, the
7 gun dealer shall notify the transferor, enter the firearm into the gun dealer's
8 inventory and transfer the firearm to the transferee.

9 (B) Receives notification that the transferee is prohibited by state or
10 federal law from possessing or receiving the firearm, **or that the depart-**
11 **ment is unable to determine if the transferee is qualified or disquali-**
12 **fied from completing the transfer,** the gun dealer shall notify the
13 transferor and neither the transferor nor the gun dealer shall transfer the
14 firearm to the transferee. If the transferor shipped or delivered the firearm
15 to the gun dealer pursuant to paragraph (b) of this subsection, the gun dealer
16 shall comply with federal law when returning the firearm to the transferor.

17 (e) A gun dealer may charge a reasonable fee for facilitating a firearm
18 transfer pursuant to this section.

19 (4) The requirements of subsections (2) and (3) of this section do not apply
20 to:

21 (a) The transfer of a firearm by or to a law enforcement agency, or by
22 or to a law enforcement officer, private security professional or member of
23 the Armed Forces of the United States, while that person is acting within
24 the scope of official duties.

25 (b) The transfer of a firearm as part of a firearm turn-in or buyback event,
26 in which a law enforcement agency receives or purchases firearms from
27 members of the public.

28 (c) The transfer of a firearm to:

29 (A) A transferor's spouse or domestic partner;

30 (B) A transferor's parent or stepparent;

31 (C) A transferor's child or stepchild;

- 1 (D) A transferor's sibling;
- 2 (E) A transferor's grandparent;
- 3 (F) A transferor's grandchild;
- 4 (G) A transferor's aunt or uncle;
- 5 (H) A transferor's first cousin;
- 6 (I) A transferor's niece or nephew; or
- 7 (J) The spouse or domestic partner of a person specified in subparagraphs
- 8 (B) to (I) of this paragraph.

9 (d) The transfer of a firearm that occurs because of the death of the
10 firearm owner, provided that:

11 (A) The transfer is conducted or facilitated by a personal representative,
12 as defined in ORS 111.005, or a trustee of a trust created in a will; and

13 (B) The transferee is related to the deceased firearm owner in a manner
14 specified in paragraph (c) of this subsection.

15 (5)(a) A transferor who fails to comply with the requirements of this
16 section commits a Class A misdemeanor.

17 (b) Notwithstanding paragraph (a) of this subsection, a transferor who
18 fails to comply with the requirements of this section commits a Class B fel-
19 ony if the transferor has a previous conviction under this section at the time
20 of the offense.

21 **SECTION 3.** ORS 166.436 is amended to read:

22 166.436. (1) The Department of State Police shall make the telephone
23 number established under ORS 166.412 (5) available for requests for criminal
24 background checks under this section from persons who are not gun dealers
25 and who are transferring firearms at gun shows.

26 (2) Prior to transferring a firearm at a gun show, a transferor who is not
27 a gun dealer may request by telephone that the department conduct a crim-
28 inal background check on the recipient and shall provide the following in-
29 formation to the department:

- 30 (a) The name, address and telephone number of the transferor;
- 31 (b) The make, model, caliber and manufacturer's number of the firearm

1 being transferred;

2 (c) The name, date of birth, race, sex and address of the recipient;

3 (d) The Social Security number of the recipient if the recipient voluntar-
4 ily provides that number;

5 (e) The address of the place where the transfer is occurring; and

6 (f) The type, issuer and identification number of a current piece of iden-
7 tification bearing a recent photograph of the recipient presented by the re-
8 cipient. The identification presented by the recipient must meet the
9 requirements of ORS 166.412 (4)(a).

10 (3)(a) Upon receipt of a request for a criminal background check under
11 this section, the department shall immediately, during the telephone call or
12 by return call:

13 (A) Determine from criminal records and other information available to
14 it whether the recipient is disqualified under ORS 166.470 from completing
15 the transfer or is otherwise prohibited by state or federal law from possess-
16 ing a firearm; and

17 (B) Notify the transferor when a recipient is disqualified from completing
18 the transfer or provide the transferor with a unique approval number indi-
19 cating that the recipient is qualified to complete the transfer. The unique
20 approval number is a permit valid for 24 hours for the requested transfer. If
21 the firearm is not transferred from the transferor to the recipient within 24
22 hours after receipt of the unique approval number, a new request must be
23 made by the transferor.

24 (b) If the department is unable to determine whether the recipient is
25 qualified for or disqualified from completing the transfer within 30 minutes
26 of receiving the request, the department shall notify the transferor and pro-
27 vide the transferor with an estimate of the time when the department will
28 provide the requested information.

29 (4) A public employee or public agency incurs no criminal or civil liabil-
30 ity for performing the criminal background checks required by this section,
31 provided the employee or agency acts in good faith and without malice.

1 (5)(a) The department may retain a record of the information obtained
2 during a request for a criminal background check under this section for the
3 period of time provided in ORS 166.412 (7).

4 (b) The record of the information obtained during a request for a criminal
5 background check under this section is exempt from disclosure under public
6 records law.

7 (c) If the department determines that a recipient is prohibited from pos-
8 sessing a firearm under ORS 166.250 (1)(c), as soon as practicable, the de-
9 partment [*may*] **shall** report the attempted transfer and the recipient's name
10 to the appropriate law enforcement agency.

11 (6) The recipient of the firearm must be present when the transferor re-
12 quests a criminal background check under this section.

13 (7)(a) Except as otherwise provided in paragraph (b) of this subsection, a
14 transferor who receives notification under this section that the recipient is
15 qualified to complete the transfer of a firearm, has the recipient fill out the
16 form required by ORS 166.438 (1)(a) and retains the form as required by ORS
17 166.438 (2) is immune from civil liability for any use of the firearm from the
18 time of the transfer unless the transferor knows, or reasonably should know,
19 that the recipient is likely to commit an unlawful act involving the firearm.

20 (b) The immunity provided by paragraph (a) of this subsection does not
21 apply:

22 (A) If the transferor knows, or reasonably should know, that the recipient
23 of the firearm intends to deliver the firearm to a third person who the
24 transferor knows, or reasonably should know, may not lawfully possess the
25 firearm; or

26 (B) In any product liability civil action under ORS 30.900 to 30.920.

27
