

Senate Bill 852

Sponsored by Senator GEORGE

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 **as introduced**.

Removes Department of State Police as designated state point of contact for purposes of National Instant Criminal Background Check System. Requires gun dealer to obtain authorization to transfer firearm directly from system.

A BILL FOR AN ACT

1
2 Relating to the national instant criminal background check system; amending ORS 166.412, 166.414,
3 166.418, 166.422, 166.432, 166.436 and 166.460; and repealing ORS 166.434.

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

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

6 166.412. (1) As used in this section:

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

8 *[(b) "Department" means the Department of State Police;]*

9 *[(c)]* **(b)** "Firearm" has the meaning given that term in ORS 166.210, except that it does not in-
10 clude an antique firearm;

11 *[(d)]* **(c)** "Firearms transaction record" means the firearms transaction record required by 18
12 U.S.C. 921 to 929;

13 *[(e) "Firearms transaction thumbprint form" means a form provided by the department under sub-*
14 *section (12) of this section;]*

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

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

19 *[(h)]* **(e)** "Purchaser" means a person who buys, leases or otherwise receives a firearm from a
20 gun dealer[.]; **and**

21 **(f) "System" means the National Instant Criminal Background Check System described**
22 **in 18 U.S.C. 922.**

23 **(2) A gun dealer may not transfer a firearm unless:**

24 **(a) The transfer is between two persons who are licensed as dealers under 18 U.S.C. 923;**

25 **or**

26 **(b) The gun dealer complies with subsection (3) of this section and:**

27 **(A) The system provides the gun dealer with a unique identification number for the**
28 **transfer; or**

29 **(B) The system fails to notify the gun dealer within three business days after the date**
30 **the gun dealer requested a background check from the system that the transfer would vio-**
31 **late state or federal law.**

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)] **(3)** Except as provided in [*subsections (3)(c) and (13)*] **subsection (2)(a)** of this section, a
 2 gun dealer shall comply with the following before a [*handgun*] **firearm** is delivered to a purchaser:

3 (a) The purchaser shall present to the dealer current identification meeting the requirements
 4 of subsection (4) of this section.

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

7 [(c) *The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction*
 8 *thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to be*
 9 *filed with that copy.*]

10 [(d)] (c) The gun dealer shall request, **electronically or** by telephone, that the [*department*]
 11 **system** conduct a [*criminal history record*] **background** check on the purchaser and shall provide
 12 the following information to the [*department*] **system**:

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

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

15 (C) The place of transfer;

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

17 (E) The make, model, caliber and manufacturer's number of the [*handgun*] **firearm** being trans-
 18 ferred;

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

20 (G) The Social Security number of the purchaser if the purchaser voluntarily provides this
 21 number to the gun dealer; and

22 (H) The type, issuer and identification number of the identification presented by the purchaser.

23 [(e)] (d) **When** the gun dealer [*shall receive*] **receives** a unique [*approval*] **identification** number
 24 for the transfer from the [*department and*] **system, the gun dealer shall** record the [*approval*]
 25 **identification** number on the firearms transaction record [*and on the firearms transaction thumbprint*
 26 *form*].

27 [(f) *The gun dealer may destroy the firearms transaction thumbprint form five years after the*
 28 *completion of the firearms transaction thumbprint form.*]

29 [(3)(a) *Upon receipt of a request of the gun dealer for a criminal history record check, the depart-*
 30 *ment shall immediately, during the gun dealer's telephone call or by return call:*]

31 [(A) *Determine, from criminal records and other information available to it, whether the purchaser*
 32 *is disqualified under ORS 166.470 from completing the purchase; and*]

33 [(B) *Notify the dealer when a purchaser is disqualified from completing the transfer or provide the*
 34 *dealer with a unique approval number indicating that the purchaser is qualified to complete the*
 35 *transfer.*]

36 [(b) *If the department is unable to determine if the purchaser is qualified or disqualified from*
 37 *completing the transfer within 30 minutes, the department shall notify the dealer and provide the dealer*
 38 *with an estimate of the time when the department will provide the requested information.*]

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

43 (4)(a) Identification required of the purchaser under subsection [(2)] **(3)** of this section shall in-
 44 clude one piece of current identification bearing a photograph and the date of birth of the purchaser
 45 that:

1 (A) Is issued under the authority of the United States Government, a state, a political subdivi-
2 sion of a state, a foreign government, a political subdivision of a foreign government, an interna-
3 tional governmental organization or an international quasi- governmental organization; and

4 (B) Is intended to be used for identification of an individual or is commonly accepted for the
5 purpose of identification of an individual.

6 (b) If the identification presented by the purchaser under paragraph (a) of this subsection does
7 not include the current address of the purchaser, the purchaser shall present a second piece of
8 current identification that contains the current address of the purchaser. The Superintendent of
9 State Police may specify by rule the type of identification that may be presented under this para-
10 graph.

11 *[(c) The department may require that the dealer verify the identification of the purchaser if that*
12 *identity is in question by sending the thumbprints of the purchaser to the department.]*

13 *[(5) The department shall establish a telephone number that shall be operational seven days a week*
14 *between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from dealers for*
15 *a criminal history record check under this section.]*

16 *[(6) No public employee, official or agency shall be held criminally or civilly liable for performing*
17 *the investigations required by this section provided the employee, official or agency acts in good faith*
18 *and without malice.]*

19 *[(7)(a) The department may retain a record of the information obtained during a request for a*
20 *criminal records check for no more than five years.]*

21 *[(b) The record of the information obtained during a request for a criminal records check by a gun*
22 *dealer is exempt from disclosure under public records law.]*

23 [(8)] (5) The Department of Human Services shall provide the Department of State Police with
24 direct electronic access to information from the Department of Human Services' database of infor-
25 mation identifying persons meeting the criteria in ORS 166.470 (1)(e) and (f) who were committed
26 or subject to an order under ORS 426.130. The Department of State Police and the Department of
27 Human Services shall enter into an agreement describing the access to information under this sub-
28 section.

29 [(9)] (6) A law enforcement agency may inspect the records of a gun dealer relating to transfers
30 of [*handguns*] **firearms** with the consent of a gun dealer in the course of a reasonable inquiry dur-
31 ing a criminal investigation or under the authority of a properly authorized subpoena or search
32 warrant.

33 [(10)] (7) When a [*handgun*] **firearm** is delivered, it shall be unloaded.

34 [(11)] (8) In accordance with applicable provisions of ORS chapter 183, the Superintendent of
35 State Police may adopt rules necessary for:

36 [(a) *The design of the firearms transaction thumbprint form;*]

37 [(b)] (a) The maintenance of a procedure to correct errors in the criminal records of the De-
38 partment **of State Police; and**

39 [(c) *The provision of a security system to identify dealers who request a criminal history record*
40 *check under subsection (2) of this section; and]*

41 [(d)] (b) The creation and maintenance of a database of the business hours of gun dealers.

42 [(12) *The department shall publish the firearms transaction thumbprint form and shall furnish the*
43 *form to gun dealers on application at cost.*]

44 [(13) *This section does not apply to transactions between persons licensed as dealers under 18*
45 *U.S.C. 923.*]

1 **SECTION 2.** ORS 166.436 is amended to read:

2 166.436. [(1) *The Department of State Police shall make the telephone number established under*
3 *ORS 166.412 (5) available for requests from persons other than gun dealers for criminal background*
4 *checks under this section.*]

5 **(1) The Department of State Police shall establish a telephone number that shall be op-**
6 **erational seven days a week between the hours of 8 a.m. and 10 p.m. for the purpose of re-**
7 **sponding to inquiries from persons other than gun dealers for a criminal background check**
8 **under this section. The department is not required to operate the telephone number on**
9 **Thanksgiving Day and Christmas Day.**

10 (2) Prior to transferring a firearm, a transferor other than a gun dealer may request by tele-
11 phone that the department conduct a criminal background check on the recipient and shall provide
12 the following information to the department:

13 (a) The name, address and telephone number of the transferor;

14 (b) The make, model, caliber and manufacturer's number of the firearm being transferred;

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

16 (d) The Social Security number of the recipient if the recipient voluntarily provides that number;

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

18 (f) The type, issuer and identification number of a current piece of identification bearing a re-
19 cent photograph of the recipient presented by the recipient. The identification presented by the re-
20 cipient must meet the requirements of ORS 166.412 (4)(a).

21 (3)(a) Upon receipt of a request for a criminal background check under this section, the de-
22 partment shall immediately, during the telephone call or by return call:

23 (A) Determine from criminal records and other information available to it whether the recipient
24 is disqualified under ORS 166.470 from completing the transfer or is otherwise prohibited by state
25 or federal law from possessing a firearm; and

26 (B) Notify the transferor when a recipient is disqualified from completing the transfer or provide
27 the transferor with a unique approval number indicating that the recipient is qualified to complete
28 the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer.
29 If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt
30 of the unique approval number, a new request must be made by the transferor.

31 (b) If the department is unable to determine whether the recipient is qualified for or disqualified
32 from completing the transfer within 30 minutes of receiving the request, the department shall notify
33 the transferor and provide the transferor with an estimate of the time when the department will
34 provide the requested information.

35 (4) A public employee or public agency incurs no criminal or civil liability for performing the
36 criminal background checks required by this section, provided the employee or agency acts in good
37 faith and without malice.

38 (5)(a) The department may retain a record of the information obtained during a request for a
39 criminal background check under this section for [*the period of time provided in ORS 166.412 (7)*]
40 **no more than five years.**

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

43 (6) The recipient of the firearm must be present when the transferor requests a criminal back-
44 ground check under this section.

45 (7)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, a transferor who

1 receives notification under this section that the recipient is qualified to complete the transfer of a
 2 firearm is immune from civil liability for any use of the firearm from the time of the transfer unless
 3 the transferor knows, or reasonably should know, that the recipient is likely to commit an unlawful
 4 act involving the firearm.

5 (b) If the transferor is required to request a criminal background check under ORS 166.438, the
 6 immunity provided by paragraph (a) of this subsection applies only if, in addition to receiving the
 7 notification required by this section, the transferor has the recipient fill out the form required by
 8 ORS 166.438 (1)(a) and retains the form as required by ORS 166.438 (2).

9 (c) The immunity provided by paragraph (a) of this subsection does not apply:

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

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

14 **SECTION 3.** ORS 166.414 is amended to read:

15 166.414. (1) The Department of State Police may adopt a fee schedule for criminal [*history record*
 16 *checks required under ORS 166.412*] **background checks described in ORS 166.436** and collect a
 17 fee for each criminal [*history record*] **background** check requested. The fee schedule shall be cal-
 18 culated to recover the cost of performing criminal [*history record checks required under ORS*
 19 *166.412*] **background checks**, but may not exceed \$10 per [*record*] **background** check.

20 **(2) The department shall establish a reduced fee for subsequent criminal background**
 21 **checks on the same recipient that are performed during the same day between the hours of**
 22 **8 a.m. and 10 p.m.**

23 [(2)] **(3)** Fees collected under this section shall be paid into the State Treasury and deposited in
 24 the General Fund to the credit of the State Police Account.

25 **SECTION 4.** ORS 166.422 is amended to read:

26 166.422. Where appropriate, a person may enforce the legal duties imposed by ORS [*166.412 (7)*]
 27 **166.436 (5)**, by the provisions of ORS 30.260 to 30.300 and ORS chapter 183.

28 **SECTION 5.** ORS 166.432 is amended to read:

29 166.432. (1) As used in ORS [*166.412,*] **166.414**, 166.433, [*166.434,*] 166.436 and 166.438, “criminal
 30 background check” [*or “criminal history record check”*] means determining the eligibility of a person
 31 to purchase or possess a firearm by reviewing state and federal databases including, but not limited
 32 to, the:

- 33 (a) Oregon computerized criminal history system;
- 34 (b) Oregon mental health data system;
- 35 (c) Law Enforcement Data System;
- 36 (d) National Instant Criminal Background Check System; and
- 37 (e) Stolen guns system.

38 (2) As used in ORS 166.433, [*166.434,*] 166.436, 166.438 and 166.441:

39 (a) “Gun dealer” has the meaning given that term in ORS 166.412.

40 (b) “Gun show” means an event at which more than 25 firearms are on site and available for
 41 transfer.

42 **SECTION 6.** ORS 166.418 is amended to read:

43 166.418. (1) A person commits the crime of improperly transferring a firearm if the person is a
 44 gun dealer as defined in ORS 166.412 and sells, leases or otherwise transfers a firearm and inten-
 45 tionally violates ORS 166.412 [*or 166.434*].

1 (2) Improperly transferring a firearm is a Class A misdemeanor.

2 **SECTION 7.** ORS 166.460 is amended to read:

3 166.460. (1) ORS 166.250, 166.260, 166.291 to 166.295, 166.410, 166.412, 166.425, [166.434,] 166.438
4 and 166.450 do not apply to antique firearms.

5 (2) Notwithstanding the provisions of subsection (1) of this section, possession of an antique
6 firearm by a person described in ORS 166.250 (1)(c)(B), (C) or (D) constitutes a violation of ORS
7 166.250.

8 **SECTION 8.** ORS 166.434 is repealed.

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