

D R A F T

SUMMARY

Requires person to request criminal background check before transferring firearm to any other person outside the transferor's immediate family.

Punishes violation with maximum term of 30 days' imprisonment, \$1,250 fine, or both for first offense, maximum term of one year's imprisonment, \$6,250 fine, or both for second offense, and maximum term of five years' imprisonment, \$125,000 fine, or both for third or subsequent offense.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to firearms; amending ORS 166.412, 166.433, 166.436 and 181.150; and
3 declaring an emergency.

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

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

6 166.436. (1) The Department of State Police shall make the telephone
7 number established under ORS 166.412 (5) available for requests from persons
8 other than gun dealers for criminal background checks under this section.

9 (2) [*Prior to transferring a firearm,*] **Except as provided in subsection**
10 **(10) of this section,** a transferor other than a gun dealer may [*request by*
11 *telephone*] **not transfer a firearm unless the transferor requests** that the
12 department conduct a criminal background check on the recipient [*and shall*
13 *provide the following information to the department:*] **by:**

14 (a) **Making the request by telephone to the number described in**
15 **subsection (1) of this section; or**

16 (b) **Completing the criminal background check through a gun dealer**
17 **as provided in ORS 166.412 (13).**

18 (3) **The transferor shall provide the following information to the**

1 **department:**

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

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

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

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

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

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

13 [(3)(a)] **(4)(a)** Upon receipt of a request for a criminal background check
14 under this section, the department shall immediately, during the telephone
15 call or by return call:

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

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

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

1 [(4)] **(5)** A public employee or public agency incurs no criminal or civil
2 liability for performing the criminal background checks required by this
3 section, provided the employee or agency acts in good faith and without
4 malice.

5 [(5)(a)] **(6)(a)** The department [*may*] **shall** retain a record of the informa-
6 tion obtained during a request for a criminal background check under this
7 section for the period of time provided in ORS 166.412 (7).

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

11 [(6)] **(7)** The recipient of the firearm must be present when the transferor
12 requests a criminal background check under this section.

13 [(7)(a)] **(8)(a)** Except as otherwise provided in [*paragraphs (b) and (c)*]
14 **paragraph (b)** of this subsection, a transferor who receives notification un-
15 der this section that the recipient is qualified to complete the transfer of a
16 firearm is immune from civil liability for any use of the firearm from the
17 time of the transfer unless the transferor knows, or reasonably should know,
18 that the recipient is likely to commit an unlawful act involving the firearm.

19 [(b) *If the transferor is required to request a criminal background check*
20 *under ORS 166.438, the immunity provided by paragraph (a) of this subsection*
21 *applies only if, in addition to receiving the notification required by this sec-*
22 *tion, the transferor has the recipient fill out the form required by ORS 166.438*
23 *(1)(a) and retains the form as required by ORS 166.438 (2).]*

24 [(c)] **(b)** The immunity provided by paragraph (a) of this subsection does
25 not apply:

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

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

31 **(9)(a) Failure to comply with the requirements of subsections (2)**

1 **and (3) of this section is a Class C misdemeanor.**

2 **(b) Notwithstanding paragraph (a) of this subsection, failure to**
3 **comply with the requirements of subsections (2) and (3) of this section**
4 **is a Class A misdemeanor if the person has a previous conviction un-**
5 **der this section.**

6 **(c) Notwithstanding paragraphs (a) and (b) of this subsection, fail-**
7 **ure to comply with the requirements of subsections (2) and (3) of this**
8 **section is a Class C felony if the person has two previous convictions**
9 **under this section.**

10 **(10) The requirements of subsections (2) and (3) of this section do**
11 **not apply to a person transferring a firearm to an immediate family**
12 **member, and it is an affirmative defense to a charge under subsection**
13 **(9) of this section that the person transferred the firearm to an im-**
14 **mediate family member.**

15 **SECTION 2.** ORS 166.412 is amended to read:

16 166.412. (1) As used in this section:

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

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

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

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

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

25 (f) "Gun dealer" means a person engaged in the business, as defined in
26 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether
27 the person is a retail dealer, pawnbroker or otherwise;

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

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

31 (2) Except as provided in subsections (3)(c) and (12) of this section, a gun

1 dealer shall comply with the following before a handgun is delivered to a
2 purchaser:

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

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

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

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

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
18 being transferred;

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

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

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

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

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

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

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

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

7 (b) If the department is unable to determine if the purchaser is qualified
8 or disqualified from completing the transfer within 30 minutes, the depart-
9 ment shall notify the dealer and provide the dealer with an estimate of the
10 time when the department will provide the requested information.

11 (c) If the department fails to provide a unique approval number to a gun
12 dealer or to notify the gun dealer that the purchaser is disqualified under
13 paragraph (a) of this subsection before the close of the gun dealer's next
14 business day following the request by the dealer for a criminal history record
15 check, the dealer may deliver the handgun to the purchaser.

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

19 (A) Is issued under the authority of the United States Government, a
20 state, a political subdivision of a state, a foreign government, a political
21 subdivision of a foreign government, an international governmental organ-
22 ization or an international quasi-governmental organization; and

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

25 (b) If the identification presented by the purchaser under paragraph (a)
26 of this subsection does not include the current address of the purchaser, the
27 purchaser shall present a second piece of current identification that contains
28 the current address of the purchaser. The Superintendent of State Police may
29 specify by rule the type of identification that may be presented under this
30 paragraph.

31 (c) The department may require that the dealer verify the identification

1 of the purchaser if that identity is in question by sending the thumbprints
2 of the purchaser to the department.

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

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

10 (7)(a) The department [*may*] **shall** retain a record of the information ob-
11 tained during a request for a criminal records check for no more than five
12 years.

13 (b) The record of the information obtained during a request for a criminal
14 records check by a gun dealer is exempt from disclosure under public records
15 law.

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

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

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

23 (a) The design of the firearms transaction thumbprint form;

24 (b) The maintenance of a procedure to correct errors in the criminal re-
25 cords of the department;

26 (c) The provision of a security system to identify dealers who request a
27 criminal history record check under subsection (2) of this section; and

28 (d) The creation and maintenance of a database of the business hours of
29 gun dealers.

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

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

3 **(13) If requested, a gun dealer shall complete a criminal background**
4 **check on behalf of a transferor other than a gun dealer as required**
5 **by ORS 166.436 and may charge a fee for providing the service.**

6 **SECTION 3.** ORS 166.433 is amended to read:

7 166.433. The people of this state find that:

8 (1) The laws of Oregon regulating the sale of firearms contain a loophole
9 that allows people other than gun dealers to sell firearms at gun shows
10 without first conducting criminal background checks; **and**

11 (2) It is necessary for the safety of the people of Oregon that any person
12 who transfers a firearm at a gun show be required to request a criminal
13 background check before completing the transfer of the firearm[; *and*].

14 *[(3) It is in the best interests of the people of Oregon that any person who*
15 *transfers a firearm at any location other than a gun show be allowed to vol-*
16 *untarily request a criminal background check before completing the transfer*
17 *of the firearm.]*

18 **SECTION 4.** ORS 181.150 is amended to read:

19 181.150. (1) The State of Oregon shall provide the members of the state
20 police with emergency outfits, weapons and motor vehicles and all other
21 emergency and first-aid supplies and equipment necessary to carry out the
22 public safety functions of the Department of State Police.

23 (2)(a) The property described in subsection (1) of this section remains the
24 property of this state with the exception of a retiring or deceased officer's
25 department-issued service weapon, which may be sold by the department to
26 the officer or, in the case of a deceased officer, to a member of the officer's
27 family, upon the officer's retirement or death, and the officer's badge, which
28 may be given to the officer or, in the case of a deceased officer, to a member
29 of the deceased officer's family, upon the officer's retirement or death.

30 (b) A service weapon sold pursuant to this subsection must be sold for its
31 fair market value.

1 (c) A badge given to an officer or an officer's family member pursuant to
2 this subsection must be marked to indicate the officer's retirement status and
3 may not be used for official police identification other than as a memento
4 of service to the department.

5 (3) Surplus, obsolete or unused property, supplies or equipment must be
6 disposed of by the Oregon Department of Administrative Services as provided
7 in ORS 279A.280.

8 (4)(a) For purposes of ORS chapters 279A and 279B, the sale of a service
9 weapon to a retiring officer by the department is not a public contract and
10 is not subject to the competitive bidding requirements of ORS chapters 279A
11 and 279B.

12 (b) The provisions of ORS 166.412 **and 166.436** do not apply to transfers
13 of firearms pursuant to this section.

14 **SECTION 5. This 2013 Act being necessary for the immediate pres-**
15 **ervation of the public peace, health and safety, an emergency is de-**
16 **clared to exist, and this 2013 Act takes effect on its passage.**

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