

Senate Bill 700

Sponsored by COMMITTEE ON JUDICIARY

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**.

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 declaring an emer-
3 gency.

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 number established under
7 ORS 166.412 (5) available for requests from persons other than gun dealers for criminal background
8 checks under this section.

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

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

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

17 (3) **The transferor shall provide the following information to the department:**

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

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

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

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

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

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

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

28 (A) Determine from criminal records and other information available to it whether the recipient
29 is disqualified under ORS 166.470 from completing the transfer or is otherwise prohibited by state

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 or federal law from possessing a firearm; and

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

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

11 [(4)] (5) A public employee or public agency incurs no criminal or civil liability for performing
12 the criminal background checks required by this section, provided the employee or agency acts in
13 good faith and without malice.

14 [(5)(a)] (6)(a) The department [may] **shall** retain a record of the information obtained during a
15 request for a criminal background check under this section for the period of time provided in ORS
16 166.412 (7).

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

19 [(6)] (7) The recipient of the firearm must be present when the transferor requests a criminal
20 background check under this section.

21 [(7)(a)] (8)(a) Except as otherwise provided in [paragraphs (b) and (c)] **paragraph (b)** of this
22 subsection, a transferor who receives notification under this section that the recipient is qualified
23 to complete the transfer of a firearm is immune from civil liability for any use of the firearm from
24 the time of the transfer unless the transferor knows, or reasonably should know, that the recipient
25 is likely to commit an unlawful act involving the firearm.

26 [(b) *If the transferor is required to request a criminal background check under ORS 166.438, the*
27 *immunity provided by paragraph (a) of this subsection applies only if, in addition to receiving the no-*
28 *tification required by this section, the transferor has the recipient fill out the form required by ORS*
29 *166.438 (1)(a) and retains the form as required by ORS 166.438 (2).]*

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

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

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

35 (9)(a) **Failure to comply with the requirements of subsections (2) and (3) of this section**
36 **is a Class C misdemeanor.**

37 (b) **Notwithstanding paragraph (a) of this subsection, failure to comply with the require-**
38 **ments of subsections (2) and (3) of this section is a Class A misdemeanor if the person has**
39 **a previous conviction under this section.**

40 (c) **Notwithstanding paragraphs (a) and (b) of this subsection, failure to comply with the**
41 **requirements of subsections (2) and (3) of this section is a Class C felony if the person has**
42 **two previous convictions under this section.**

43 (10) **The requirements of subsections (2) and (3) of this section do not apply to a person**
44 **transferring a firearm to an immediate family member, and it is an affirmative defense to**
45 **a charge under subsection (9) of this section that the person transferred the firearm to an**

1 **immediate family member.**

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

3 166.412. (1) As used in this section:

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

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

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

8 (d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C.
9 921 to 929;

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

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

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

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

18 (2) Except as provided in subsections (3)(c) and (12) of this section, a gun dealer shall comply
19 with the following before a handgun is delivered to a purchaser:

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

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

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

27 (d) The gun dealer shall request by telephone that the department conduct a criminal history
28 record check on the purchaser and shall provide the following information to the department:

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

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

31 (C) The place of transfer;

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

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

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

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

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

38 (e) The gun dealer shall receive a unique approval number for the transfer from the department
39 and record the approval number on the firearms transaction record and on the firearms transaction
40 thumbprint form.

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

43 (3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the de-
44 partment shall immediately, during the gun dealer's telephone call or by return call:

45 (A) Determine, from criminal records and other information available to it, whether the pur-

1 chaser is disqualified under ORS 166.470 from completing the purchase; and

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

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

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

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

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

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

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

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

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

29 (6) No public employee, official or agency shall be held criminally or civilly liable for performing
30 the investigations required by this section provided the employee, official or agency acts in good
31 faith and without malice.

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

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

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

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

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

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

43 (b) The maintenance of a procedure to correct errors in the criminal records of the department;

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

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

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

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

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

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

10 166.433. The people of this state find that:

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

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

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

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

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

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

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

31 (c) A badge given to an officer or an officer's family member pursuant to this subsection must
32 be marked to indicate the officer's retirement status and may not be used for official police iden-
33 tification other than as a memento of service to the department.

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

36 (4)(a) For purposes of ORS chapters 279A and 279B, the sale of a service weapon to a retiring
37 officer by the department is not a public contract and is not subject to the competitive bidding re-
38 quirements of ORS chapters 279A and 279B.

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

41 **SECTION 5. This 2013 Act being necessary for the immediate preservation of the public**
42 **peace, health and safety, an emergency is declared to exist, and this 2013 Act takes effect**
43 **on its passage.**