

**PROPOSED AMENDMENTS TO
SENATE BILL 700**

1 On page 1 of the printed bill, line 2, after “firearms;” delete the rest of
2 the line and delete line 3 and insert “creating new provisions; amending ORS
3 166.412, 166.432, 166.433, 166.436, 166.438, 166.441, 166.460, and 181.150; and
4 declaring an emergency.”.

5 Delete lines 5 through 29 and delete pages 2 through 5 and insert:

6 **“SECTION 1.** ORS 166.436 is amended to read:

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

10 “(2) [*Prior to transferring a firearm,*] **Except as provided in subsection**
11 **(10) of this section and ORS 166.438,** a transferor other than a gun dealer
12 may [*request by telephone*] **not transfer a firearm unless the transferor**
13 **completes and retains the form described in ORS 166.441 and requests**
14 that the department conduct a criminal background check on the recipient
15 [*and shall provide the following information to the department*] **by:**

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

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

20 **“(3) Except as provided in subsection (10) of this section, the**
21 **transferor shall provide the following information to the department:**

22 **“(a) The name, address and telephone number of the transferor;**

1 “(b) The make, model, caliber and manufacturer’s number of the firearm
2 being transferred;

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

4 “(d) The Social Security number of the recipient if the recipient volun-
5 tarily provides that number;

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

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

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

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

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

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

30 “[(4)] **(5)** A public employee or public agency incurs no criminal or civil

1 liability for performing the criminal background checks required by this
2 section, provided the employee or agency acts in good faith and without
3 malice.

4 “[5(a)] **(6)(a)** The department may retain a record of the information
5 obtained during a request for a criminal background check under this section
6 for the period of time provided in ORS 166.412 (7).

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

10 “[6] **(7)** The recipient of the firearm must be present when the transferor
11 requests a criminal background check under this section.

12 “[7(a)] **(8)(a)** Except as otherwise provided in [paragraphs (b) and (c)]
13 **paragraph (b)** of this subsection, a transferor who receives [notification] **a**
14 **unique approval number from the department** under this section **indi-**
15 **cating** that the recipient is qualified to complete the transfer of a firearm,
16 **has the recipient fill out the form required by ORS 166.438 (1)(a) and**
17 **retains the form as required by ORS 166.438 (2)** is immune from civil li-
18 ability for any use of the firearm from the time of the transfer unless the
19 transferor knows, or reasonably should know, that the recipient is likely to
20 commit an unlawful act involving the firearm.

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

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

28 “(A) If the transferor knows, or reasonably should know, that the recipi-
29 ent of the firearm intends to deliver the firearm to a third person who the
30 transferor knows, or reasonably should know, may not lawfully possess the

1 firearm; or

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

3 “(9)(a) **Except as provided in this subsection, a person who fails to**
4 **comply with the requirements of subsection (2) of this section commits**
5 **a Class C misdemeanor.**

6 “(b) **A person who fails to comply with the requirements of sub-**
7 **section (2) of this section commits a Class A misdemeanor if the per-**
8 **son has a previous conviction under this section at the time of the**
9 **offense.**

10 “(c) **A person who fails to comply with the requirements of sub-**
11 **section (2) of this section commits a Class C felony if the person has**
12 **two or more previous convictions under this section at the time of the**
13 **offense.**

14 “(10) **The requirements of subsections (2) and (3) of this section do**
15 **not apply to:**

16 “(a) **A person transferring a firearm to:**

17 “(A) **The person’s spouse;**

18 “(B) **The person’s parent;**

19 “(C) **The person’s child;**

20 “(D) **The person’s sibling;**

21 “(E) **The person’s grandparent;**

22 “(F) **The person’s grandchild; or**

23 “(G) **The spouse of a person specified in subparagraphs (B) to (F)**
24 **of this paragraph.**

25 “(b) **A transfer that occurs because of the death of a firearm owner**
26 **and the transferor is a personal representative as defined in ORS**
27 **111.005 or a trustee of a trust created in a will.**

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

29 “166.412. (1) As used in this section:

30 “(a) ‘Antique firearm’ has the meaning given that term in 18 U.S.C. 921;

1 “(b) ‘Department’ means the Department of State Police;

2 “(c) ‘Firearm’ has the meaning given that term in ORS 166.210, except
3 that it does not include an antique firearm;

4 “(d) ‘Firearms transaction record’ means the firearms transaction record
5 required by 18 U.S.C. 921 to 929;

6 “(e) ‘Firearms transaction thumbprint form’ means a form provided by the
7 department under subsection (11) of this section;

8 “(f) ‘Gun dealer’ means a person engaged in the business, as defined in
9 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether
10 the person is a retail dealer, pawnbroker or otherwise;

11 “(g) ‘Handgun’ has the meaning given that term in ORS 166.210; and

12 “(h) ‘Purchaser’ means a person who buys, leases or otherwise receives a
13 firearm from a gun dealer.

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

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

19 “(b) The gun dealer shall complete the firearms transaction record and
20 obtain the signature of the purchaser on the record.

21 “(c) The gun dealer shall obtain the thumbprints of the purchaser on the
22 firearms transaction thumbprint form and attach the form to the gun dealer’s
23 copy of the firearms transaction record to be filed with that copy.

24 “(d) The gun dealer shall request by telephone that the department con-
25 duct a criminal history record check on the purchaser and shall provide the
26 following information to the department:

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

28 “(B) The business name of the gun dealer;

29 “(C) The place of transfer;

30 “(D) The name of the person making the transfer;

1 “(E) The make, model, caliber and manufacturer’s number of the handgun
2 being transferred;

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

4 “(G) The Social Security number of the purchaser if the purchaser vol-
5 untarily provides this number to the gun dealer; and

6 “(H) The type, issuer and identification number of the identification pre-
7 sented by the purchaser.

8 “(e) The gun dealer shall receive a unique approval number for the
9 transfer from the department and record the approval number on the firearms
10 transaction record and on the firearms transaction thumbprint form.

11 “(f) The gun dealer may destroy the firearms transaction thumbprint form
12 five years after the completion of the firearms transaction thumbprint form.

13 “(3)(a) Upon receipt of a request of the gun dealer for a criminal history
14 record check, the department shall immediately, during the gun dealer’s
15 telephone call or by return call:

16 “(A) Determine, from criminal records and other information available to
17 it, whether the purchaser is disqualified under ORS 166.470 from completing
18 the purchase; and

19 “(B) Notify the dealer when a purchaser is disqualified from completing
20 the transfer or provide the dealer with a unique approval number indicating
21 that the purchaser is qualified to complete the transfer.

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

26 “(c) If the department fails to provide a unique approval number to a gun
27 dealer or to notify the gun dealer that the purchaser is disqualified under
28 paragraph (a) of this subsection before the close of the gun dealer’s next
29 business day following the request by the dealer for a criminal history record
30 check, the dealer may deliver the handgun to the purchaser.

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

4 “(A) Is issued under the authority of the United States Government, a
5 state, a political subdivision of a state, a foreign government, a political
6 subdivision of a foreign government, an international governmental organ-
7 ization or an international quasi-governmental organization; and

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

10 “(b) If the identification presented by the purchaser under paragraph (a)
11 of this subsection does not include the current address of the purchaser, the
12 purchaser shall present a second piece of current identification that contains
13 the current address of the purchaser. The Superintendent of State Police may
14 specify by rule the type of identification that may be presented under this
15 paragraph.

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

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

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

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

29 “(b) The record of the information obtained during a request for a crimi-
30 nal [*records*] **history record** check by a gun dealer is exempt from disclosure

1 under public records law.

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

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

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

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

10 “(b) The maintenance of a procedure to correct errors in the criminal re-
11 cords of the department;

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

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

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

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

20 **“(13) If requested, a gun dealer may complete a criminal back-
21 ground check on behalf of a transferor other than a gun dealer as re-
22 quired by ORS 166.436 and may charge a fee for providing the service.**

23 **“SECTION 3.** ORS 166.432 is amended to read:

24 “166.432. (1) As used in ORS 166.412, 166.433, 166.434, 166.436 and 166.438,
25 ‘criminal background check’ or ‘criminal history record check’ means deter-
26 mining the eligibility of a person to purchase or possess a firearm by re-
27 viewing state and federal databases including, but not limited to, the:

28 “(a) Oregon computerized criminal history system;

29 “(b) Oregon mental health data system;

30 “(c) Law Enforcement Data System;

1 “(d) National Instant Criminal Background Check System; and
2 “(e) Stolen guns system.
3 “(2) As used in ORS 166.433, 166.434, 166.436, 166.438 and 166.441:
4 “(a) ‘Gun dealer’ has the meaning given that term in ORS 166.412.
5 “(b) ‘Gun show’ means an event at which more than 25 firearms are on
6 site and available for transfer.
7 “(c) **‘Transfer’ means the sale, gift or lease of a firearm.**
8 **“SECTION 4.** ORS 166.433 is amended to read:
9 “166.433. The people of this state find that:
10 “(1) The laws of Oregon regulating the sale of firearms contain a loophole
11 that allows people other than gun dealers to sell firearms at gun shows
12 without first conducting criminal background checks; **and**
13 “(2) It is necessary for the safety of the people of Oregon that any person
14 who transfers a firearm at a gun show be required to request a criminal
15 background check before completing the transfer of the firearm[; *and*].
16 “[*(3) It is in the best interests of the people of Oregon that any person who*
17 *transfers a firearm at any location other than a gun show be allowed to vol-*
18 *untarily request a criminal background check before completing the transfer*
19 *of the firearm.*]
20 **“SECTION 5.** ORS 166.438 is amended to read:
21 “166.438. (1) A transferor other than a gun dealer may not transfer a
22 firearm at a gun show unless the transferor:
23 “(a)(A) Requests a criminal background check under ORS 166.436 prior to
24 completing the transfer;
25 “(B) Receives [*notification*] **a unique approval number from the De-**
26 **partment of State Police indicating** that the recipient is qualified to
27 complete the transfer; and
28 “(C) Has the recipient complete the form described in ORS 166.441; or
29 “(b) Completes the transfer through a gun dealer.
30 “(2) The transferor shall retain the completed form referred to in sub-

1 section (1) of this section for at least five years and shall make the completed
2 form available to law enforcement agencies for the purpose of criminal in-
3 vestigations.

4 “(3) A person who organizes a gun show shall post in a prominent place
5 at the gun show a notice explaining the requirements of subsections (1) and
6 (2) of this section. The person shall provide the form required by subsection
7 (1) of this section to any person transferring a firearm at the gun show.

8 “(4) Subsection (1) of this section does not apply if the transferee is li-
9 censed as a dealer under 18 U.S.C. 923.

10 “(5)(a) Failure to comply with the requirements of subsection (1), (2) or
11 (3) of this section is a Class A misdemeanor.

12 “(b) Notwithstanding paragraph (a) of this subsection, failure to comply
13 with the requirements of subsection (1), (2) or (3) of this section is a Class
14 C felony if the person has two or more previous convictions under this sec-
15 tion.

16 “(6) It is an affirmative defense to a charge of violating subsection (1) or
17 (3) of this section that the person did not know, or reasonably could not
18 know, that more than 25 firearms were at the site and available for transfer.

19 “**SECTION 6.** ORS 166.441 is amended to read:

20 166.441. (1) The Department of State Police shall develop a form to be
21 completed by a person seeking to obtain a firearm [*at a gun show*] from a
22 transferor other than a gun dealer. The department shall consider including
23 in the form all of the requirements for disclosure of information that are
24 required by federal law for over-the-counter firearms transactions.

25 “(2) The department shall make the form available to the public at no
26 cost.

27 “**SECTION 7.** ORS 166.460 is amended to read:

28 “166.460. (1) ORS 166.250, 166.260, 166.291 to 166.295, 166.410, 166.412,
29 166.425, 166.434, **166.436**, 166.438 and 166.450 do not apply to antique firearms.

30 “(2) Notwithstanding the provisions of subsection (1) of this section, pos-

1 session of an antique firearm by a person described in ORS 166.250 (1)(c)(B)
2 to (D) or (F) constitutes a violation of ORS 166.250.

3 **SECTION 8.** ORS 181.150 is amended to read:

4 “181.150. (1) The State of Oregon shall provide the members of the state
5 police with emergency outfits, weapons and motor vehicles and all other
6 emergency and first-aid supplies and equipment necessary to carry out the
7 public safety functions of the Department of State Police.

8 “(2)(a) The property described in subsection (1) of this section remains the
9 property of this state with the exception of a retiring or deceased officer’s
10 department-issued service weapon, which may be sold by the department to
11 the officer or, in the case of a deceased officer, to a member of the officer’s
12 family, upon the officer’s retirement or death, and the officer’s badge, which
13 may be given to the officer or, in the case of a deceased officer, to a member
14 of the deceased officer’s family, upon the officer’s retirement or death.

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

17 “(c) A badge given to an officer or an officer’s family member pursuant
18 to this subsection must be marked to indicate the officer’s retirement status
19 and may not be used for official police identification other than as a
20 memento of service to the department.

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

24 “(4)(a) For purposes of ORS chapters 279A and 279B, the sale of a service
25 weapon to a retiring officer by the department is not a public contract and
26 is not subject to the competitive bidding requirements of ORS chapters 279A
27 and 279B.

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

30 **SECTION 9.** **The amendments to ORS 166.436 by section 1 of this**

1 2013 Act apply to transfers of firearms occurring on or after the ef-
2 fective date of this 2013 Act.

3 **“SECTION 10. This 2013 Act being necessary for the immediate
4 preservation of the public peace, health and safety, an emergency is
5 declared to exist, and this 2013 Act takes effect on its passage.”.**

6
