

House Bill 3528

Sponsored by Representative POST

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 requirement that state, during prosecution for unlawful transfer of firearm, prove defendant knew or should have known that recipient of transferred firearm was prohibited from possessing firearms. Provides that second conviction of unlawful transfer of firearm to prohibited possessor is punishable by maximum of 10 years' imprisonment, \$250,000 fine, or both. Creates immunity from prosecution for unlawful transfer of firearm to prohibited possessor if person requests criminal background check.

Prohibits Department of State Police from retaining manufacturer's number of firearm when number obtained from transferor other than gun dealer requesting criminal background check and transfer is approved by department.

A BILL FOR AN ACT

1
2 Relating to firearms; amending ORS 166.436 and 166.470.

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

4 **SECTION 1.** ORS 166.470 is amended to read:

5 166.470. (1) Unless relief has been granted under ORS 166.274 or section 5, chapter 826, Oregon
6 Laws 2009, or 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another
7 jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm [*when the*
8 *transferor knows or reasonably should know that the*] **to a recipient who:**

9 (a) Is under 18 years of age;

10 (b) Has been convicted of a felony;

11 (c) Has any outstanding felony warrants for arrest;

12 (d) Is free on any form of pretrial release for a felony;

13 (e) Was committed to the Oregon Health Authority under ORS 426.130;

14 (f) After January 1, 1990, was found to be a person with mental illness and subject to an order
15 under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result
16 of that mental illness;

17 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity
18 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in
19 this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160,
20 163.187, 163.190, 163.195 or 166.155 (1)(b); or

21 (h) Has been found guilty except for insanity under ORS 161.295 of a felony.

22 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or
23 reasonably should know is stolen.

24 (3) Subsection (1)(a) of this section does not prohibit:

25 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a
26 minor from transferring to the minor a firearm, other than a handgun; or

27 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other

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 lawful purpose.

2 (4)(a) Violation of this section is a Class A misdemeanor.

3 **(b) Notwithstanding paragraph (a) of this subsection, violation of subsection (1) of this**
 4 **section is a Class B felony if the person has a previous conviction for violating subsection**
 5 **(1) of this section at the time of the offense.**

6 **(5) In a prosecution under subsection (1) of this section, the state need not prove that**
 7 **the person knew or should have known that the recipient was prohibited by law from pos-**
 8 **sessing a firearm.**

9 **(6) A person is immune from prosecution under subsection (1) of this section if, prior to**
 10 **the transfer, the person requests a criminal background check as described in ORS 166.436**
 11 **and receives a unique approval number indicating that the recipient is qualified to complete**
 12 **the transfer.**

13 **SECTION 2.** ORS 166.470, as amended by section 11, chapter 826, Oregon Laws 2009, and sec-
 14 tion 11, chapter 360, Oregon Laws 2013, is amended to read:

15 166.470. (1) Unless relief has been granted under ORS 166.274 or 18 U.S.C. 925(c) or the
 16 expunction laws of this state or an equivalent law of another jurisdiction, a person may not inten-
 17 tionally sell, deliver or otherwise transfer any firearm [*when the transferor knows or reasonably*
 18 *should know that the*] **to a recipient who:**

19 (a) Is under 18 years of age;

20 (b) Has been convicted of a felony;

21 (c) Has any outstanding felony warrants for arrest;

22 (d) Is free on any form of pretrial release for a felony;

23 (e) Was committed to the Oregon Health Authority under ORS 426.130;

24 (f) After January 1, 1990, was found to be a person with mental illness and subject to an order
 25 under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result
 26 of that mental illness;

27 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity
 28 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in
 29 this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160,
 30 163.187, 163.190, 163.195 or 166.155 (1)(b); or

31 (h) Has been found guilty except for insanity under ORS 161.295 of a felony.

32 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or
 33 reasonably should know is stolen.

34 (3) Subsection (1)(a) of this section does not prohibit:

35 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a
 36 minor from transferring to the minor a firearm, other than a handgun; or

37 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other
 38 lawful purpose.

39 (4)(a) Violation of this section is a Class A misdemeanor.

40 **(b) Notwithstanding paragraph (a) of this subsection, violation of subsection (1) of this**
 41 **section is a Class B felony if the person has a previous conviction for violating subsection**
 42 **(1) of this section at the time of the offense.**

43 **(5) In a prosecution under subsection (1) of this section, the state need not prove that**
 44 **the person knew or should have known that the recipient was prohibited by law from pos-**
 45 **sessing a firearm.**

1 **(6) A person is immune from prosecution under subsection (1) of this section if, prior to**
 2 **the transfer, the person requests a criminal background check as described in ORS 166.436**
 3 **and receives a unique approval number indicating that the recipient is qualified to complete**
 4 **the transfer.**

5 **SECTION 3.** 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, a transferor other than a gun dealer may request by tele-
 10 phone that the department conduct a criminal background check on the recipient and shall provide
 11 the following information to the department:

- 12 (a) The name, address and telephone number of the transferor;
- 13 (b) The make, model, caliber and manufacturer's number of the firearm being transferred;
- 14 (c) The name, date of birth, race, sex and address of the recipient;
- 15 (d) The Social Security number of the recipient if the recipient voluntarily provides that number;
- 16 (e) The address of the place where the transfer is occurring; and
- 17 (f) The type, issuer and identification number of a current piece of identification bearing a re-
 18 cent photograph of the recipient presented by the recipient. The identification presented by the re-
 19 cipient must meet the requirements of ORS 166.412 (4)(a).

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

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

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

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

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

37 (5)(a) **Except as provided in paragraph (c) of this subsection,** the department may retain a
 38 record of the information obtained during a request for a criminal background check under this
 39 section for the period of time provided in ORS 166.412 (7).

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

42 **(c) The department may not retain the manufacturer's number of a firearm obtained**
 43 **during a request for a criminal background check under this section if the department pro-**
 44 **vided the transferor with a unique approval number indicating that the recipient is qualified**
 45 **to complete the transfer.**

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

3 (7)(a) Except as otherwise provided in paragraphs (b) and (c) of this subsection, a transferor who
4 receives notification under this section that the recipient is qualified to complete the transfer of a
5 firearm is immune from civil liability for any use of the firearm from the time of the transfer unless
6 the transferor knows, or reasonably should know, that the recipient is likely to commit an unlawful
7 act involving the firearm.

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

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

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

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