

C-Engrossed
Senate Bill 315

Ordered by the House July 3
Including Senate Amendments dated April 22 and House Amendments
dated June 9 and July 3

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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.

Extends exemption for private firearm criminal background check requirement when firearm provided to transferee preparing to engage in or in process of completing activities related to hunting, trapping or target shooting.

Authorizes person temporarily transferring firearm for period of no more than seven days to conduct criminal background check on transferee by telephone. Requires transferor to retain form documenting transfer. [*Provides that transferor commits crime if, as result of temporary transfer, firearm is used in commission of crime or possessed by prohibited person. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.*] **Provides transferor with limited civil immunity for use of firearm if transferor, after requesting criminal background check, receives notification that transferee is qualified to receive firearm and retains completed form.**

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to transfers of used firearms; amending ORS 166.436 and section 2, chapter 50, Oregon
3 Laws 2015 (Enrolled Senate Bill 941); and declaring an emergency.

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

5 **SECTION 1.** Section 2, chapter 50, Oregon Laws 2015 (Enrolled Senate Bill 941), is amended to
6 read:

7 **Sec. 2.** (1) As used in this section:

8 (a) "Transfer" means the delivery of a firearm from a transferor to a transferee, including, but
9 not limited to, the sale, gift, loan or lease of the firearm. "Transfer" does not include the temporary
10 provision of a firearm to a transferee if the transferor has no reason to believe the transferee is
11 prohibited from possessing a firearm or intends to use the firearm in the commission of a crime, and
12 the provision occurs:

13 (A) At a shooting range, shooting gallery or other area designed for the purpose of target
14 shooting, for use during target practice, a firearms safety or training course or class or a similar
15 lawful activity;

16 (B) For the purpose of hunting, trapping or target shooting, during the time in which the
17 transferee is **preparing to engage in, is engaged in or is in the process of completing** activities
18 related to hunting, trapping or target shooting;

19 (C) Under circumstances in which the transferee and the firearm are in the presence of the
20 transferor;

21 (D) To a transferee who is in the business of repairing firearms, for the time during which the

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 firearm is being repaired;

2 (E) To a transferee who is in the business of making or repairing custom accessories for
3 firearms, for the time during which the accessories are being made or repaired; or

4 (F) For the purpose of preventing imminent death or serious physical injury, and the provision
5 lasts only as long as is necessary to prevent the death or serious physical injury.

6 (b) "Transferee" means a person who is not a gun dealer or licensed as a manufacturer or
7 importer under 18 U.S.C. 923 and who intends to receive a firearm from a transferor.

8 (c) "Transferor" means a person who is not a gun dealer or licensed as a manufacturer or
9 importer under 18 U.S.C. 923 and who intends to deliver a firearm to a transferee.

10 (2) Except as provided in ORS 166.436 and 166.438 and [subsection (4)] **subsections (4) and (5)**
11 of this section, a transferor may not transfer a firearm to a transferee unless the transfer is com-
12 pleted through a gun dealer as described in subsection (3) of this section.

13 (3)(a) A transferor may transfer a firearm to a transferee only as provided in this section. Except
14 as provided in paragraph (b) of this subsection, prior to the transfer both the transferor and the
15 transferee must appear in person before a gun dealer, with the firearm, and request that the gun
16 dealer perform a criminal background check on the transferee.

17 (b) If the transferor and the transferee reside over 40 miles from each other, the transferor may
18 ship or deliver the firearm to a gun dealer located near the transferee or a gun dealer designated
19 by the transferee, and the transferor need not appear before the gun dealer in person.

20 (c) A gun dealer who agrees to complete a transfer of a firearm under this section shall request
21 a criminal history record check on the transferee as described in ORS 166.412 and shall comply with
22 all requirements of federal law.

23 (d) If, upon completion of a criminal background check, the gun dealer:

24 (A) Receives a unique approval number from the Department of State Police indicating that the
25 transferee is qualified to complete the transfer, the gun dealer shall notify the transferor, enter the
26 firearm into the gun dealer's inventory and transfer the firearm to the transferee.

27 (B) Receives notification that the transferee is prohibited by state or federal law from possessing
28 or receiving the firearm, the gun dealer shall notify the transferor and neither the transferor nor
29 the gun dealer shall transfer the firearm to the transferee. If the transferor shipped or delivered the
30 firearm to the gun dealer pursuant to paragraph (b) of this subsection, the gun dealer shall comply
31 with federal law when returning the firearm to the transferor.

32 (e) A gun dealer may charge a reasonable fee for facilitating a firearm transfer pursuant to this
33 section.

34 (4) The requirements of subsections (2) and (3) of this section do not apply to:

35 (a) The transfer of a firearm by or to a law enforcement agency, or by or to a law enforcement
36 officer, private security professional or member of the Armed Forces of the United States, while that
37 person is acting within the scope of official duties.

38 (b) The transfer of a firearm as part of a firearm turn-in or buyback event, in which a law
39 enforcement agency receives or purchases firearms from members of the public.

40 (c) The transfer of a firearm to:

41 (A) A transferor's spouse or domestic partner;

42 (B) A transferor's parent or stepparent;

43 (C) A transferor's child or stepchild;

44 (D) A transferor's sibling;

45 (E) A transferor's grandparent;

1 (F) A transferor's grandchild;

2 (G) A transferor's aunt or uncle;

3 (H) A transferor's first cousin;

4 (I) A transferor's niece or nephew; or

5 (J) The spouse or domestic partner of a person specified in subparagraphs (B) to (I) of this par-
6 agraph.

7 (d) The transfer of a firearm that occurs because of the death of the firearm owner, provided
8 that:

9 (A) The transfer is conducted or facilitated by a personal representative, as defined in ORS
10 111.005, or a trustee of a trust created in a will; and

11 (B) The transferee is related to the deceased firearm owner in a manner specified in paragraph
12 (c) of this subsection.

13 **(5)(a) A transferor temporarily transferring a firearm without consideration for a period**
14 **of no more than seven calendar days to a transferee who is personally known to the**
15 **transferor may request a criminal background check under ORS 166.436 instead of complet-**
16 **ing the transfer through a gun dealer as described in subsections (2) and (3) of this section.**

17 **(b) A transferor who requests a criminal background check under paragraph (a) of this**
18 **subsection instead of completing the transfer through a gun dealer:**

19 **(A) Shall have the transferee complete the form described in ORS 166.441, shall retain**
20 **the completed form and shall make the completed form available to law enforcement agen-**
21 **cies for the purpose of a criminal investigation.**

22 **(B) May not transfer the firearm to the transferee unless the transferor receives a**
23 **unique approval number from the Department of State Police indicating that the transferee**
24 **is qualified to complete the transfer.**

25 ~~[(5)(a)]~~ **(6)(a)** A transferor who fails to comply with the requirements of this section commits a
26 Class A misdemeanor.

27 (b) Notwithstanding paragraph (a) of this subsection, a transferor who fails to comply with the
28 requirements of this section commits a Class B felony if the transferor has a previous conviction
29 under this section at the time of the offense.

30 **SECTION 2.** ORS 166.436, as amended by section 3, chapter 50, Oregon Laws 2015 (Enrolled
31 Senate Bill 941), is amended to read:

32 166.436. (1) The Department of State Police shall make the telephone number established under
33 ORS 166.412 (5) available for requests for criminal background checks under this section from per-
34 sons who are not gun dealers and who are transferring firearms at gun shows **and from**
35 **transferors temporarily transferring firearms under section 2 (5), chapter 50, Oregon Laws**
36 **2015 (Enrolled Senate Bill 941).**

37 (2) Prior to transferring a firearm at a gun show **or in accordance with section 2 (5), chapter**
38 **50, Oregon Laws 2015 (Enrolled Senate Bill 941)**, a transferor who is not a gun dealer may request
39 by telephone that the department conduct a criminal background check on the recipient and shall
40 provide the following information to the department:

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

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

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

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

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

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

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

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

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

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

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

21 (5)(a) The department may retain a record of the information obtained during a request for a
22 criminal background check under this section for the period of time provided in ORS 166.412 (7).

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

25 (c) If the department determines that a recipient is prohibited from possessing a firearm under
26 ORS 166.250 (1)(c), as soon as practicable, the department may report the attempted transfer and the
27 recipient's name to the appropriate law enforcement agency.

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

30 *[(7)(a) Except as otherwise provided in paragraph (b) of this subsection, a transferor who receives*
31 *notification under this section that the recipient is qualified to complete the transfer of a firearm, has*
32 *the recipient fill out the form required by ORS 166.438 (1)(a) and retains the form as required by ORS*
33 *166.438 (2) is immune from civil liability for any use of the firearm from the time of the transfer unless*
34 *the transferor knows, or reasonably should know, that the recipient is likely to commit an unlawful act*
35 *involving the firearm.]*

36 **(7)(a) Except as otherwise provided in paragraph (b) of this subsection, a transferor who**
37 **receives notification under this section that the recipient is qualified to complete the trans-**
38 **fer of a firearm, has the recipient fill out the form required by ORS 166.438 (1)(a) or section**
39 **2 (5)(b), chapter 50, Oregon Laws 2015 (Enrolled Senate Bill 941), and retains the form as**
40 **required by ORS 166.438 (2) or section 2 (5)(b), chapter 50, Oregon Laws 2015 (Enrolled Senate**
41 **Bill 941), is immune from civil liability for any use of the firearm from the time of the**
42 **transfer unless the transferor knows, or reasonably should know, that the recipient is likely**
43 **to commit an unlawful act involving the firearm.**

44 (b) The immunity provided by paragraph (a) of this subsection does not apply:

45 (A) If the transferor knows, or reasonably should know, that the recipient of the firearm intends

1 to deliver the firearm to a third person who the transferor knows, or reasonably should know, may
2 not lawfully possess the firearm; or

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

4 **SECTION 3. This 2015 Act being necessary for the immediate preservation of the public**
5 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
6 **on its passage.**

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