

House Bill 4147

Sponsored by Representative WILLIAMSON; Representatives BARNHART, KENY-GUYER, LIVELY, PILUSO, TAYLOR

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**.

Prohibits transfer of firearm by dealer or private party if Department of State Police is unable to determine whether recipient is qualified to receive firearm.

Requires Department of State Police to notify appropriate law enforcement agency when, during criminal background check performed prior to transfer of firearm, department determines that recipient is prohibited from possessing firearm.

A BILL FOR AN ACT

1
2 Relating to firearm transfer criminal background checks; amending ORS 166.412, 166.435 and
3 166.436.

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

5 **SECTION 1.** ORS 166.412 is amended to read:

6 166.412. (1) As used in this section:

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

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

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

11 (d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C.
12 921 to 929;

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

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

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

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

21 (2) Except as provided in [*subsections (3)(c) and*] **subsection** (12) of this section, a gun dealer
22 shall comply with the following before a handgun is delivered to a purchaser:

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

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

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

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

- 3 (A) The federal firearms license number of the gun dealer;
- 4 (B) The business name of the gun dealer;
- 5 (C) The place of transfer;
- 6 (D) The name of the person making the transfer;
- 7 (E) The make, model, caliber and manufacturer's number of the handgun being transferred;
- 8 (F) The name and date of birth of the purchaser;
- 9 (G) The Social Security number of the purchaser if the purchaser voluntarily provides this
 10 number to the gun dealer; and
- 11 (H) The type, issuer and identification number of the identification presented by the purchaser.

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

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

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

19 (A) Determine, from criminal records and other information available to it, whether the pur-
 20 chaser is disqualified under ORS 166.470 from completing the purchase; and

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

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

27 **The dealer may not transfer the handgun unless the dealer receives a unique approval**
 28 **number from the department.**

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

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

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

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

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

45 (c) The department may require that the dealer verify the identification of the purchaser if that

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

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

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

8 (7)(a) The department may retain a record of the information obtained during a request for a
 9 criminal history record check for no more than five years.

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

12 (c) If the department determines that a purchaser is prohibited from possessing a firearm under
 13 ORS 166.250 (1)(c), as soon as practicable, the department [*may*] **shall** report the attempted transfer
 14 and the purchaser's name to the appropriate law enforcement agency.

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

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

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

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

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

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

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

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

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

30 (13)(a) If requested by a transferor who is not a gun dealer, a gun dealer may request a criminal
 31 background check pursuant to ORS 166.435 or 166.438 and may charge a reasonable fee for providing
 32 the service.

33 (b) A gun dealer that requests a criminal background check under this subsection is immune
 34 from civil liability for any use of the firearm by the recipient or transferee, provided that the gun
 35 dealer requests the criminal background check as described in this section.

36 **SECTION 2.** ORS 166.435 is amended to read:

37 166.435. (1) As used in this section:

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

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

1 (B) For the purpose of hunting, trapping or target shooting, during the time in which the
 2 transferee is engaged in activities related to hunting, trapping or target shooting;

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

5 (D) To a transferee who is in the business of repairing firearms, for the time during which the
 6 firearm is being repaired;

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

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

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

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

15 (2) Except as provided in ORS 166.436 and 166.438 and subsection (4) of this section, a transferor
 16 may not transfer a firearm to a transferee unless the transfer is completed through a gun dealer as
 17 described in subsection (3) of this section.

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

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

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

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

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

32 (B) Receives notification that the transferee is prohibited by state or federal law from possessing
 33 or receiving the firearm, **or that the department is unable to determine if the transferee is**
 34 **qualified or disqualified from completing the transfer**, the gun dealer shall notify the transferor
 35 and neither the transferor nor the gun dealer shall transfer the firearm to the transferee. If the
 36 transferor shipped or delivered the firearm to the gun dealer pursuant to paragraph (b) of this sub-
 37 section, the gun dealer shall comply with federal law when returning the firearm to the transferor.

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

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

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

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

- 1 (c) The transfer of a firearm to:
- 2 (A) A transferor's spouse or domestic partner;
- 3 (B) A transferor's parent or stepparent;
- 4 (C) A transferor's child or stepchild;
- 5 (D) A transferor's sibling;
- 6 (E) A transferor's grandparent;
- 7 (F) A transferor's grandchild;
- 8 (G) A transferor's aunt or uncle;
- 9 (H) A transferor's first cousin;
- 10 (I) A transferor's niece or nephew; or
- 11 (J) The spouse or domestic partner of a person specified in subparagraphs (B) to (I) of this par-
- 12 agraph.

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

15 (A) The transfer is conducted or facilitated by a personal representative, as defined in ORS
16 111.005, or a trustee of a trust created in a will; and

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

19 (5)(a) A transferor who fails to comply with the requirements of this section commits a Class
20 A misdemeanor.

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

24 **SECTION 3.** ORS 166.436 is amended to read:

25 166.436. (1) The Department of State Police shall make the telephone number established under
26 ORS 166.412 (5) available for requests for criminal background checks under this section from per-
27 sons who are not gun dealers and who are transferring firearms at gun shows.

28 (2) Prior to transferring a firearm at a gun show, a transferor who is not a gun dealer may re-
29 quest by telephone that the department conduct a criminal background check on the recipient and
30 shall provide the following information to the department:

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

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

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

44 (B) Notify the transferor when a recipient is disqualified from completing the transfer or provide
45 the transferor with a unique approval number indicating that the recipient is qualified to complete

1 the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer.
2 If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt
3 of the unique approval number, a new request must be made by the transferor.

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

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

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

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

15 (c) If the department determines that a recipient is prohibited from possessing a firearm under
16 ORS 166.250 (1)(c), as soon as practicable, the department [*may*] **shall** report the attempted transfer
17 and the recipient's name to the appropriate law enforcement agency.

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

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

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

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

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

31