

House Bill 4028

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of House Interim Committee on Rules)

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**.

Extends exemption from private firearm criminal background check requirement when firearm is 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 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 firearm transfers; amending ORS 166.435 and 166.436; and declaring an emergency.

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

4 **SECTION 1.** ORS 166.435 is amended to read:

5 166.435. (1) As used in this section:

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

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

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

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

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

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

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

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

27 (c) "Transferor" means a person who is not a gun dealer or licensed as a manufacturer or

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 importer under 18 U.S.C. 923 and who intends to deliver a firearm to a transferee.

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

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

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

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

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

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

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

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

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

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

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

32 (c) The transfer of a firearm to:

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

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

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

36 (D) A transferor's sibling;

37 (E) A transferor's grandparent;

38 (F) A transferor's grandchild;

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

40 (H) A transferor's first cousin;

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

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

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

1 (A) The transfer is conducted or facilitated by a personal representative, as defined in ORS
2 111.005, or a trustee of a trust created in a will; and

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

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

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

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

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

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

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

22 **SECTION 2.** ORS 166.436 is amended to read:

23 166.436. (1) The Department of State Police shall make the telephone number established under
24 ORS 166.412 (5) available for requests for criminal background checks under this section from per-
25 sons who are not gun dealers and who are transferring firearms at gun shows **and from
26 transferors temporarily transferring firearms under ORS 166.435 (5).**

27 (2) Prior to transferring a firearm at a gun show **or in accordance with ORS 166.435 (5)**, a
28 transferor who is not a gun dealer may request by telephone that the department conduct a criminal
29 background check on the recipient and shall provide the following information to the department:

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

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

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

43 (B) Notify the transferor when a recipient is disqualified from completing the transfer or provide
44 the transferor with a unique approval number indicating that the recipient is qualified to complete
45 the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer.

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

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

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

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

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

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

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

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

25 **(7)(a) Except as otherwise provided in paragraph (b) of this subsection, a transferor who**
 26 **receives notification under this section that the recipient is qualified to complete the trans-**
 27 **fer of a firearm, has the recipient fill out the form required by ORS 166.435 (5)(b) or 166.438**
 28 **(1)(a) and retains the form as required by ORS 166.435 (5)(b) or 166.438 (2) is immune from**
 29 **civil liability for any use of the firearm from the time of the transfer unless the transferor**
 30 **knows, or reasonably should know, that the recipient is likely to commit an unlawful act**
 31 **involving the firearm.**

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

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

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

37 **SECTION 3. This 2016 Act being necessary for the immediate preservation of the public**
 38 **peace, health and safety, an emergency is declared to exist, and this 2016 Act takes effect**
 39 **on its passage.**