

House Bill 2543

Sponsored by Representatives REYNOLDS, SOLLMAN; Representatives GRAYBER, HUDSON, Senators BURDICK, LIEBER (Presession filed.)

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

A BILL FOR AN ACT

1
2 Relating to firearm transfers; amending ORS 166.412, 166.435 and 166.436.

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

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

5 166.412. (1) As used in this section:

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

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

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

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

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

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

17 (g) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun
18 dealer.

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

21 (a) The purchaser shall present to the gun dealer current identification meeting the require-
22 ments of subsection (4) of this section.

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

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

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

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

31 (B) The business name of the gun dealer;

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 (C) The place of transfer;
- 2 (D) The name of the person making the transfer;
- 3 (E) The make, model, caliber and manufacturer's number of the firearm being transferred;
- 4 (F) The name and date of birth of the purchaser;
- 5 (G) The Social Security number of the purchaser if the purchaser voluntarily provides this
6 number to the gun dealer; and
- 7 (H) The type, issuer and identification number of the identification presented by the purchaser.
- 8 (e) The gun dealer shall receive a unique approval number for the transfer from the department
9 and record the approval number on the firearms transaction record and on the firearms transaction
10 thumbprint form.
- 11 (f) The gun dealer may destroy the firearms transaction thumbprint form five years after the
12 completion of the firearms transaction thumbprint form.
- 13 (3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the de-
14 partment shall immediately, during the gun dealer's telephone call or by return call:
- 15 (A) Determine, from criminal records and other information available to it, whether the pur-
16 chaser is disqualified under ORS 166.470 from completing the purchase; and
- 17 (B) Notify the gun dealer when a purchaser is disqualified from completing the transfer or pro-
18 vide the gun dealer with a unique approval number indicating that the purchaser is qualified to
19 complete the transfer.
- 20 (b) If the department is unable to determine if the purchaser is qualified or disqualified from
21 completing the transfer within 30 minutes, the department shall notify the gun dealer and provide
22 the gun dealer with an estimate of the time when the department will provide the requested infor-
23 mation. **The dealer may not transfer the firearm unless the dealer receives a unique approval**
24 **number from the department.**
- 25 *[(c) If the department fails to provide a unique approval number to a gun dealer or to notify the*
26 *gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close*
27 *of the gun dealer's next business day following the request by the gun dealer for a criminal history*
28 *record check, the gun dealer may deliver the firearm to the purchaser.]*
- 29 (4)(a) Identification required of the purchaser under subsection (2) of this section shall include
30 one piece of current identification bearing a photograph and the date of birth of the purchaser that:
- 31 (A) Is issued under the authority of the United States Government, a state, a political subdivi-
32 sion of a state, a foreign government, a political subdivision of a foreign government, an interna-
33 tional governmental organization or an international quasi-governmental organization; and
- 34 (B) Is intended to be used for identification of an individual or is commonly accepted for the
35 purpose of identification of an individual.
- 36 (b) If the identification presented by the purchaser under paragraph (a) of this subsection does
37 not include the current address of the purchaser, the purchaser shall present a second piece of
38 current identification that contains the current address of the purchaser. The Superintendent of
39 State Police may specify by rule the type of identification that may be presented under this para-
40 graph.
- 41 (c) The department may require that the gun dealer verify the identification of the purchaser if
42 that identity is in question by sending the thumbprints of the purchaser to the department.
- 43 (5) The department shall establish a telephone number that shall be operational seven days a
44 week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from gun
45 dealers for a criminal history record check under this section.

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

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

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

8 (c) If the department determines that a purchaser is prohibited from possessing a firearm under
 9 ORS 166.250 (1)(c), the department shall report the attempted transfer, the purchaser's name and any
 10 other personally identifiable information to all federal, state and local law enforcement agencies and
 11 district attorneys that have jurisdiction over the location or locations where the attempted transfer
 12 was made and where the purchaser resides.

13 (d) If the department determines that, based on the judgment of conviction, the purchaser is
 14 prohibited from possessing a firearm as a condition of probation or that the purchaser is currently
 15 on post-prison supervision or parole, the department shall report the attempted transfer to the
 16 purchaser's supervising officer and the district attorney of the county in which the conviction oc-
 17 curred.

18 (e) If the department determines that the purchaser is prohibited from possessing a firearm due
 19 to a court order described in ORS 166.255 (1)(a), the department shall report the attempted transfer
 20 to the court that issued the order.

21 (f) If the department determines that the purchaser is under the jurisdiction of the Psychiatric
 22 Security Review Board, the department shall report the attempted transfer to the board.

23 (g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24 hours
 24 after the determination is made, unless a report would compromise an ongoing investigation, in
 25 which case the report may be delayed as long as necessary to avoid compromising the investigation.

26 (h) On or before January 31 of each year, a law enforcement agency or a prosecuting attorney's
 27 office that received a report pursuant to paragraph (c) of this subsection during the previous cal-
 28 endar year shall inform the department of any action that was taken concerning the report and the
 29 outcome of the action.

30 (i) The department shall annually publish a written report, based on any information received
 31 under paragraph (h) of this subsection, detailing the following information for the previous year:

32 (A) The number of purchasers whom the department determined were prohibited from possessing
 33 a firearm under ORS 166.250 (1)(c), arranged by category of prohibition;

34 (B) The number of reports made pursuant to paragraph (c) of this subsection;

35 (C) The number of investigations arising from the reports made pursuant to paragraph (c) of this
 36 subsection, the number of investigations concluded and the number of investigations referred for
 37 prosecution, all arranged by category of prohibition; and

38 (D) The number of criminal charges arising from the reports made pursuant to paragraph (c) of
 39 this subsection and the disposition of the charges, both arranged by category of prohibition.

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

43 (9) When a firearm is delivered, it shall be unloaded.

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

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

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

3 (c) The provision of a security system to identify gun dealers that request a criminal history
4 record check under subsection (2) of this section; and

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

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

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

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

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

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

17 166.435. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

43 (3)(a) A transferor may transfer a firearm to a transferee only as provided in this section. Except
44 as provided in paragraph (b) of this subsection, prior to the transfer both the transferor and the
45 transferee must appear in person before a gun dealer, with the firearm, and request that the gun

1 dealer perform a criminal background check on the transferee.

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

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

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

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

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

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

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

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

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

26 (c) The transfer of a firearm to:

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

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

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

30 (D) A transferor's sibling;

31 (E) A transferor's grandparent;

32 (F) A transferor's grandchild;

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

34 (H) A transferor's first cousin;

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

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

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

40 (A) The transfer is conducted or facilitated by a personal representative, as defined in ORS
 41 111.005, or a trustee of a trust created in a will; and

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

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

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

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

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

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

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

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

- 21 (A) Determine from criminal records and other information available to it whether the recipient
 22 is disqualified under ORS 166.470 from completing the transfer or is otherwise prohibited by state
 23 or federal law from possessing a firearm; and
- 24 (B) Notify the transferor when a recipient is disqualified from completing the transfer or provide
 25 the transferor with a unique approval number indicating that the recipient is qualified to complete
 26 the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer.
 27 If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt
 28 of the unique approval number, a new request must be made by the transferor.

29 (b) If the department is unable to determine whether the recipient is qualified for or disqualified
 30 from completing the transfer within 30 minutes of receiving the request, the department shall notify
 31 the transferor and provide the transferor with an estimate of the time when the department will
 32 provide the requested information. **The transferor may not transfer the firearm unless the
 33 transferor receives a unique approval number from the department.**

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

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

41 (c) If the department determines that a recipient is prohibited from possessing a firearm under
 42 ORS 166.250 (1)(c), the department shall report the attempted transfer, the recipient's name and any
 43 other personally identifiable information to all federal, state and local law enforcement agencies and
 44 district attorneys that have jurisdiction over the location or locations where the attempted transfer
 45 was made and where the recipient resides.

1 (d) If the department determines that, based on the judgment of conviction, the recipient is
 2 prohibited from possessing a firearm as a condition of probation or that the recipient is currently
 3 on post-prison supervision or parole, the department shall report the attempted transfer to the
 4 recipient's supervising officer and the district attorney of the county in which the conviction oc-
 5 curred.

6 (e) If the department determines that the recipient is prohibited from possessing a firearm due
 7 to a court order described in ORS 166.255 (1)(a), the department shall report the attempted transfer
 8 to the court that issued the order.

9 (f) If the department determines that the recipient is under the jurisdiction of the Psychiatric
 10 Security Review Board, the department shall report the attempted transfer to the board.

11 (g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24 hours
 12 after the determination is made, unless a report would compromise an ongoing investigation, in
 13 which case the report may be delayed as long as necessary to avoid compromising the investigation.

14 (h) On or before January 31 of each year, a law enforcement agency or a prosecuting attorney's
 15 office that received a report pursuant to paragraph (c) of this subsection during the previous cal-
 16 endar year shall inform the department of any action that was taken concerning the report and the
 17 outcome of the action.

18 (i) The department shall annually publish a written report, based on any information received
 19 under paragraph (h) of this subsection, detailing the following information for the previous year:

20 (A) The number of recipients whom the department determined were prohibited from possessing
 21 a firearm under ORS 166.250 (1)(c), arranged by category of prohibition;

22 (B) The number of reports made pursuant to paragraph (c) of this subsection;

23 (C) The number of investigations arising from the reports made pursuant to paragraph (c) of this
 24 subsection, the number of investigations concluded and the number of investigations referred for
 25 prosecution, all arranged by category of prohibition; and

26 (D) The number of criminal charges arising from the reports made pursuant to paragraph (c) of
 27 this subsection and the disposition of the charges, both arranged by category of prohibition.

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,
 32 has the recipient fill out the form required by ORS 166.438 (1)(a) and retains the form as required
 33 by ORS 166.438 (2) is immune from civil liability for any use of the firearm from the time of the
 34 transfer unless the transferor knows, or reasonably should know, that the recipient is likely to
 35 commit an unlawful act involving the firearm.

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

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

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

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