

House Bill 2973

Sponsored by Representatives POST, SMITH DB; Representatives ESQUIVEL, HEARD, HUFFMAN, NEARMAN, NOBLE, OLSON, RESCHKE, SPRENGER, STARK, WHISNANT, WILSON

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**.

Repeals requirement that person who is not gun dealer obtain criminal background check prior to transferring firearm to another person who is not gun dealer.

A BILL FOR AN ACT

1
2 Relating to repealing the private firearm transfer criminal background check requirement; amending
3 ORS 166.412, 166.432, 166.434, 166.436 and 181A.115; and repealing ORS 166.435 and section 1,
4 chapter 50, Oregon Laws 2015.

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

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

7 166.412. (1) As used in this section:

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

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

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

12 (d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C.
13 921 to 929;

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

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

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

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

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

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

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

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

31 (d) The gun dealer shall request by telephone that the department conduct a criminal history

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 record check on the purchaser and shall provide the following information to the department:

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

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

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

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

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

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

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

26 (c) If the department fails to provide a unique approval number to a gun dealer or to notify the
 27 gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close
 28 of the gun dealer's next business day following the request by the dealer for a criminal history re-
 29 cord check, the dealer may deliver the handgun to the purchaser.

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

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

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

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

42 (c) The department may require that the dealer verify the identification of the purchaser if that
 43 identity is in question by sending the thumbprints of the purchaser to the department.

44 (5) The department shall establish a telephone number that shall be operational seven days a
 45 week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from

1 dealers for a criminal history record check under this section.

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (13)(a) If requested by a transferor who is not a gun dealer, a gun dealer may request a criminal
 28 background check pursuant to ORS [166.435 or] 166.438 and may charge a reasonable fee for pro-
 29 viding the service.

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

33 **SECTION 2.** ORS 166.432 is amended to read:

34 166.432. (1) As used in ORS 166.412, 166.433, 166.434, [166.435,] 166.436 and 166.438, "criminal
 35 background check" or "criminal history record check" means determining the eligibility of a person
 36 to purchase or possess a firearm by reviewing state and federal databases including, but not limited
 37 to, the:

38 (a) Oregon computerized criminal history system;

39 (b) Oregon mental health data system;

40 (c) Law Enforcement Data System;

41 (d) National Instant Criminal Background Check System; and

42 (e) Stolen guns system.

43 (2) As used in ORS 166.433, 166.434, [166.435,] 166.436, 166.438 and 166.441:

44 (a) "Gun dealer" has the meaning given that term in ORS 166.412.

45 (b) "Gun show" means an event at which more than 25 firearms are on site and available for

1 transfer.

2 **SECTION 3.** ORS 166.434 is amended to read:

3 166.434. (1) Notwithstanding the fact that ORS 166.412 requires a gun dealer to request a crim-
 4 inal history record check only when transferring a handgun, a gun dealer shall comply with the
 5 requirements of ORS 166.412 before transferring any firearm to a purchaser. The provisions of ORS
 6 166.412 apply to the transfer of firearms other than handguns to the same extent that they apply to
 7 the transfer of handguns.

8 (2) In addition to the determination required by ORS 166.412 (3)(a)(A), in conducting a criminal
 9 background check or criminal history record check, the Department of State Police shall also de-
 10 termine whether the recipient is otherwise prohibited by state or federal law from possessing a
 11 firearm.

12 (3) Notwithstanding ORS 166.412 (5), the department is not required to operate the telephone
 13 number established under ORS 166.412 (5) on Thanksgiving Day or Christmas Day.

14 (4)(a) The department may charge a fee, not to exceed the amount authorized under ORS 166.414,
 15 for criminal background checks required under this section or ORS [166.435 or] 166.436.

16 (b) The department shall establish a reduced fee for subsequent criminal background checks on
 17 the same recipient that are performed during the same day between the hours of 8 a.m. and 10 p.m.

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

19 166.436. (1) The Department of State Police shall make the telephone number established under
 20 ORS 166.412 (5) available for requests for criminal background checks under this section from per-
 21 sons **intending to transfer firearms** who are not gun dealers [*and who are transferring firearms*
 22 *at gun shows*].

23 (2) Prior to transferring a firearm [*at a gun show*], a transferor who is not a gun dealer may
 24 request by telephone that the department conduct a criminal background check on the recipient and
 25 shall provide the following information to the department:

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

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

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

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

44 (b) If the department is unable to determine whether the recipient is qualified for or disqualified
 45 from completing the transfer within 30 minutes of receiving the request, the department shall notify

1 the transferor and provide the transferor with an estimate of the time when the department will
 2 provide the requested information.

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

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

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

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

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

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

21 **(b) If the transferor is required to request a criminal background check under ORS**
 22 **166.438, the immunity provided by paragraph (a) of this subsection applies only if, in addition**
 23 **to receiving the notification required by this section, the transferor has the recipient fill out**
 24 **the form required by ORS 166.438 (1)(a) and retains the form as required by ORS 166.438 (2).**

25 *[(b)] (c)* The immunity provided by paragraph (a) of this subsection does not apply:

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

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

30 **SECTION 5.** ORS 181A.115 is amended to read:

31 181A.115. (1) The State of Oregon shall provide the members of the state police with emergency
 32 outfits, weapons and motor vehicles and all other emergency and first-aid supplies and equipment
 33 necessary to carry out the public safety functions of the Department of State Police.

34 (2)(a) The property described in subsection (1) of this section remains the property of this state
 35 with the exception of a retiring or deceased officer's department-issued service weapon, which may
 36 be sold by the department to the officer or, in the case of a deceased officer, to a member of the
 37 officer's family, upon the officer's retirement or death, and the officer's badge, which may be given
 38 to the officer or, in the case of a deceased officer, to a member of the deceased officer's family, upon
 39 the officer's retirement or death.

40 (b) A service weapon sold pursuant to this subsection must be sold for its fair market value.

41 (c) A badge given to an officer or an officer's family member pursuant to this subsection must
 42 be marked to indicate the officer's retirement status and may not be used for official police iden-
 43 tification other than as a memento of service to the department.

44 (3) Surplus, obsolete or unused property, supplies or equipment must be disposed of by the
 45 Oregon Department of Administrative Services as provided in ORS 279A.280.

1 (4)(a) For purposes of ORS chapters 279A and 279B, the sale of a service weapon to a retiring
2 officer by the department is not a public contract and is not subject to the competitive bidding re-
3 quirements of ORS chapters 279A and 279B.

4 (b) The provisions of ORS 166.412 [*and 166.435*] do not apply to transfers of firearms pursuant
5 to this section.

6 **SECTION 6. ORS 166.435 and section 1, chapter 50, Oregon Laws 2015, are repealed.**

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