

Senate Bill 1551

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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 **as introduced**.

Requires person to request criminal background check before transferring firearm to any other person. Specifies exceptions to background check requirement for family members, inherited firearms and antique firearms.

Punishes violation with maximum term of 30 days' imprisonment, \$1,250 fine, or both, for first offense, maximum term of one year's imprisonment, \$6,250 fine, or both, for second offense and maximum term of five years' imprisonment, \$125,000 fine, or both, for third or subsequent offense.

A BILL FOR AN ACT

Relating to firearms; creating new provisions; and amending ORS 166.412, 166.432, 166.433, 166.436, 166.438, 166.441, 166.460 and 181.150.

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

SECTION 1. ORS 166.436 is amended to read:

166.436. (1) The Department of State Police shall make the telephone number established under ORS 166.412 (5) available for requests from persons other than gun dealers for criminal background checks under this section.

(2) *[Prior to transferring a firearm,]* **Except as provided in subsection (10) of this section and ORS 166.438**, a transferor other than a gun dealer may *[request by telephone]* **not transfer a firearm unless the transferor completes and retains the form described in ORS 166.441 and requests** that the department conduct a criminal background check on the recipient *[and shall provide the following information to the department]* **by:**

(a) **Making the request by telephone to the number described in subsection (1) of this section; or**

(b) **Completing the criminal background check through a gun dealer as described in ORS 166.412 (13).**

(3) **Except as provided in subsection (10) of this section, the transferor shall provide the following information to the department:**

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

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

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

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

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

(f) The type, issuer and identification number of a current piece of identification bearing a recent photograph of the recipient presented by the recipient. The identification presented by the recipient must meet the requirements of ORS 166.412 (4)(a).

[(3)(a)] **(4)(a)** Upon receipt of a request for a criminal background check under this section, 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.

department shall immediately, during the telephone call or by return call:

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

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

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

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

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

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

[(6)] (7) The recipient of the firearm must be present when the transferor requests a criminal background check under this section.

[(7)(a)] (8)(a) Except as otherwise provided in [paragraphs (b) and (c)] **paragraph (b)** of this subsection, a transferor who receives [notification] **a unique approval number from the department** under this section **indicating** that the recipient is qualified to complete the transfer of a firearm, **has the recipient fill out the form required by ORS 166.438 (1)(a) and retains the form as required by ORS 166.438 (2)** is immune from civil liability for any use of the firearm from the time of the transfer unless the transferor knows, or reasonably should know, that the recipient is likely to commit an unlawful act involving the firearm.

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

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

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

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

(9)(a) Except as provided in this subsection, a person who fails to comply with the requirements of subsection (2) of this section commits a Class C misdemeanor.

(b) A person who fails to comply with the requirements of subsection (2) of this section commits a Class A misdemeanor if the person has a previous conviction under this section at the time of the offense.

(c) A person who fails to comply with the requirements of subsection (2) of this section

commits a Class C felony if the person has two or more previous convictions under this section at the time of the offense.

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

(a) A person transferring a firearm to:

(A) The person's spouse or domestic partner;

(B) The person's parent or stepparent;

(C) The person's child or stepchild;

(D) The person's sibling;

(E) The person's grandparent;

(F) The person's grandchild;

(G) The person's niece or nephew; or

(H) The spouse or domestic partner of a person specified in subparagraphs (B) to (G) of this paragraph.

(b) A transfer that occurs because of the death of a firearm owner, if the transferor is a personal representative as defined in ORS 111.005 or a trustee of a trust created in a will.

(11) As used in subsection (10) of this section, "domestic partner" means a partner joined in a domestic partnership as defined in ORS 106.310.

SECTION 2. ORS 166.412 is amended to read:

166.412. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2 (C) The place of transfer;

3 (D) The name of the person making the transfer;

4 (E) The make, model, caliber and manufacturer's number of the handgun being transferred;

5 (F) The name and date of birth of the purchaser;

6 (G) The Social Security number of the purchaser if the purchaser voluntarily provides this
7 number to the gun dealer; and

8 (H) The type, issuer and identification number of the identification presented by the purchaser.

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

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

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

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

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

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

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

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

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

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

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

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

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

45 (6) No public employee, official or agency shall be held criminally or civilly liable for performing

the investigations required by this section provided the employee, official or agency acts in good faith and without malice.

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

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

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

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

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

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

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

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

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

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

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

(13)(a) If requested, a gun dealer may complete a criminal history record check on behalf of a transferor other than a gun dealer as required by ORS 166.436 and may charge a fee for providing a service.

(b) A gun dealer who completes a criminal history record check for a transferor other than a gun dealer is immune from civil liability for any use of the firearm by the recipient, provided that the gun dealer completes the criminal history record check as described in this section.

SECTION 3. ORS 166.432 is amended to read:

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

(a) Oregon computerized criminal history system;

(b) Oregon mental health data system;

(c) Law Enforcement Data System;

(d) National Instant Criminal Background Check System; and

(e) Stolen guns system.

(2) As used in ORS 166.433, 166.434, 166.436, 166.438 and 166.441:

(a) “Gun dealer” has the meaning given that term in ORS 166.412.

(b) “Gun show” means an event at which more than 25 firearms are on site and available for transfer.

(c) “Transfer” means the sale, gift or lease of a firearm.

SECTION 4. ORS 166.433 is amended to read:

166.433. The people of this state find that:

(1) The laws of Oregon regulating the sale of firearms contain a loophole that allows people

1 other than gun dealers to sell firearms at gun shows without first conducting criminal background
2 checks; **and**

3 (2) It is necessary for the safety of the people of Oregon that any person who transfers a firearm
4 at a gun show be required to request a criminal background check before completing the transfer
5 of the firearm[; *and*].

6 *[(3) It is in the best interests of the people of Oregon that any person who transfers a firearm at
7 any location other than a gun show be allowed to voluntarily request a criminal background check
8 before completing the transfer of the firearm.]*

9 **SECTION 5.** ORS 166.438 is amended to read:

10 166.438. (1) A transferor other than a gun dealer may not transfer a firearm at a gun show un-
11 less the transferor:

12 (a)(A) Requests a criminal background check under ORS 166.436 prior to completing the trans-
13 fer;

14 (B) Receives [*notification*] **a unique approval number from the Department of State Police**
15 **indicating** that the recipient is qualified to complete the transfer; and

16 (C) Has the recipient complete the form described in ORS 166.441; or

17 (b) Completes the transfer through a gun dealer.

18 (2) The transferor shall retain the completed form referred to in subsection (1) of this section
19 for at least five years and shall make the completed form available to law enforcement agencies for
20 the purpose of criminal investigations.

21 (3) A person who organizes a gun show shall post in a prominent place at the gun show a notice
22 explaining the requirements of subsections (1) and (2) of this section. The person shall provide the
23 form required by subsection (1) of this section to any person transferring a firearm at the gun show.

24 (4) Subsection (1) of this section does not apply if the transferee is licensed as a dealer under
25 18 U.S.C. 923.

26 (5)(a) Failure to comply with the requirements of subsection (1), (2) or (3) of this section is a
27 Class A misdemeanor.

28 (b) Notwithstanding paragraph (a) of this subsection, failure to comply with the requirements
29 of subsection (1), (2) or (3) of this section is a Class C felony if the person has two or more previous
30 convictions under this section.

31 (6) It is an affirmative defense to a charge of violating subsection (1) or (3) of this section that
32 the person did not know, or reasonably could not know, that more than 25 firearms were at the site
33 and available for transfer.

34 **SECTION 6.** ORS 166.441 is amended to read:

35 166.441. (1) The Department of State Police shall develop a form to be completed by a person
36 seeking to obtain a firearm [*at a gun show*] from a transferor other than a gun dealer. The depart-
37 ment shall consider including in the form all of the requirements for disclosure of information that
38 are required by federal law for over-the-counter firearms transactions.

39 (2) The department shall make the form available to the public at no cost.

40 **SECTION 7.** ORS 166.460 is amended to read:

41 166.460. (1) ORS 166.250, 166.260, 166.291 to 166.295, 166.410, 166.412, 166.425, 166.434, **166.436,**
42 **166.438** and 166.450 do not apply to antique firearms.

43 (2) Notwithstanding the provisions of subsection (1) of this section, possession of an antique
44 firearm by a person described in ORS 166.250 (1)(c)(B) to (D) or (F) constitutes a violation of ORS
45 166.250.

SECTION 8. ORS 181.150 is amended to read:

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

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

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

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

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

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

(b) The provisions of ORS 166.412 **and 166.436** do not apply to transfers of firearms pursuant to this section.

SECTION 9. The amendments to ORS 166.436 by section 1 of this 2014 Act apply to transfers of firearms occurring on or after the effective date of this 2014 Act.