

Senate Bill 553

Sponsored by Senator BOQUIST (at the request of Norm Voshall) (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**.

Removes Department of State Police as designated state point of contact for purposes of National Instant Criminal Background Check System. Requires gun dealer to obtain authorization to transfer firearm directly from system.

A BILL FOR AN ACT

1
2 Relating to firearm criminal background checks; amending ORS 166.412, 166.414, 166.418, 166.422,
3 166.432, 166.435, 166.436 and 166.460 and section 1, chapter 50, Oregon Laws 2015; and repealing
4 ORS 166.434.

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)] (b) "Firearm" has the meaning given that term in ORS 166.210, except that it does not in-
11 clude an antique firearm;

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

14 [(e)] (d) "Firearms transaction thumbprint form" means a form provided by the Department of
15 **State Police** under subsection [(11)] (8) of this section;

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

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

20 [(h)] (f) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a
21 gun dealer[.]; **and**

22 (g) "**System**" means the **National Instant Criminal Background Check System described**
23 **in 18 U.S.C. 922.**

24 (2) **A gun dealer may not transfer a firearm unless:**

25 (a) **The transfer is between two persons who are licensed as dealers under 18 U.S.C. 923;**
26 **or**

27 (b) **The gun dealer complies with subsection (3) of this section and:**

28 (A) **The system provides the gun dealer with a unique identification number for the**
29 **transfer; or**

30 (B) **The system fails to notify the gun dealer within three business days after the date**
31 **the gun dealer requests a criminal background check from the system that the transfer**

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 **would violate state or federal law.**

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

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

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

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

11 (d) The gun dealer shall request, **electronically or** by telephone, that the [department] **system**
12 conduct a criminal [history record] **background** check on the purchaser and shall provide the fol-
13 lowing information to the [department] **system**:

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

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

16 (C) The place of transfer;

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

18 (E) The make, model, caliber and manufacturer's number of the [handgun] **firearm** being trans-
19 ferred;

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

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

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

24 (e) **When** the gun dealer [shall receive] **receives** a unique [approval] **identification** number for
25 the transfer from the [department and] **system, the gun dealer shall** record the [approval] **iden-**
26 **tification** number on the firearms transaction record and on the firearms transaction thumbprint
27 form.

28 (f) The gun dealer may destroy the firearms transaction thumbprint form five years after the
29 completion of the [firearms transaction thumbprint] form.

30 [(3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the depart-
31 ment shall immediately, during the gun dealer's telephone call or by return call:]

32 [(A) Determine, from criminal records and other information available to it, whether the purchaser
33 is disqualified under ORS 166.470 from completing the purchase; and]

34 [(B) Notify the dealer when a purchaser is disqualified from completing the transfer or provide the
35 dealer with a unique approval number indicating that the purchaser is qualified to complete the
36 transfer.]

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

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

44 (4)(a) Identification required of the purchaser under subsection [(2)] (3) of this section shall in-
45 clude one piece of current identification bearing a photograph and the date of birth of the purchaser

1 that:

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

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

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

12 *[(c) The department may require that the dealer verify the identification of the purchaser if that*
13 *identity is in question by sending the thumbprints of the purchaser to the department.]*

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

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

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

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

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

27 [(8)] (5) A law enforcement agency may inspect the records of a gun dealer relating to transfers
28 of [handguns] **firearms** with the consent of a gun dealer in the course of a reasonable inquiry dur-
29 ing a criminal investigation or under the authority of a properly authorized subpoena or search
30 warrant.

31 [(9)] (6) When a [handgun] **firearm** is delivered, it shall be unloaded.

32 [(10)] (7) In accordance with applicable provisions of ORS chapter 183, the Superintendent of
33 State Police may adopt rules necessary for:

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

35 (b) The maintenance of a procedure to correct errors in the criminal records of the Department
36 **of State Police; and**

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

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

40 [(11)] (8) The Department **of State Police** shall publish the firearms transaction thumbprint form
41 and shall furnish the form to gun dealers on application at cost.

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

44 [(13)(a)] (9)(a) If requested by a transferor who is not a gun dealer, a gun dealer may request
45 a criminal background check pursuant to ORS 166.435 or 166.438 and may charge a reasonable fee

1 for providing the service.

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

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

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

9 **(1) The Department of State Police shall establish a telephone number that is operational**
10 **seven days a week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to**
11 **inquiries from persons other than gun dealers for a criminal background check under this**
12 **section. The department is not required to operate the telephone number on Thanksgiving**
13 **Day and Christmas Day.**

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

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

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

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

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

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

22 (f) The type, issuer and identification number of a current piece of identification bearing a re-
23 cent photograph of the recipient presented by the recipient. The identification presented by the re-
24 cipient must meet the requirements of ORS 166.412 (4)(a).

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

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

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

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

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

42 (5)(a) The department may retain a record of the information obtained during a request for a
43 criminal background check under this section for [*the period of time provided in ORS 166.412 (7)*]
44 **no more than five years.**

45 (b) The record of the information obtained during a request for a criminal background check

1 under this section is exempt from disclosure under public records law.

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

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

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

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

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

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

18 **SECTION 3.** ORS 166.414 is amended to read:

19 166.414. (1) The Department of State Police may adopt a fee schedule for [*criminal history record*
20 *checks required under ORS 166.412*] **criminal background checks described in ORS 166.436** and
21 collect a fee for each criminal [*history record*] **background** check requested. The fee schedule shall
22 be calculated to recover the cost of performing [*criminal history record checks required under ORS*
23 *166.412*] **criminal background checks**, but may not exceed \$10 per [*record*] **criminal background**
24 check.

25 **(2) The department shall establish a reduced fee for subsequent criminal background**
26 **checks on the same recipient that are performed during the same day between the hours of**
27 **8 a.m. and 10 p.m.**

28 [(2)] **(3)** Fees collected under this section shall be paid into the State Treasury and deposited in
29 the General Fund to the credit of the State Police Account.

30 **SECTION 4.** ORS 166.418 is amended to read:

31 166.418. (1) A person commits the crime of improperly transferring a firearm if the person is a
32 gun dealer as defined in ORS 166.412 and sells, leases or otherwise transfers a firearm and inten-
33 tionally violates ORS 166.412 [*or 166.434*].

34 (2) Improperly transferring a firearm is a Class A misdemeanor.

35 **SECTION 5.** ORS 166.422 is amended to read:

36 166.422. Where appropriate, a person may enforce the legal duties imposed by ORS [*166.412 (7)(a)*
37 *or (b)*] **166.436 (5)**, by the provisions of ORS 30.260 to 30.300 and ORS chapter 183.

38 **SECTION 6.** ORS 166.432 is amended to read:

39 166.432. (1) As used in ORS [*166.412*] **166.414**, 166.433, [*166.434*,] 166.435, 166.436 and 166.438,
40 "criminal background check" [*or "criminal history record check"*] means determining the eligibility
41 of a person to purchase or possess a firearm by reviewing state and federal databases including, but
42 not limited to, the:

43 (a) Oregon computerized criminal history system;

44 (b) Oregon mental health data system;

45 (c) Law Enforcement Data System;

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

2 (e) Stolen guns system.

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

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

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

7 **SECTION 7.** ORS 166.435 is amended to read:

8 166.435. (1) As used in this section:

9 **(a) “System” has the meaning given that term in ORS 166.412.**

10 [(a)] **(b)** “Transfer” means the delivery of a firearm from a transferor to a transferee, including,
11 but not limited to, the sale, gift, loan or lease of the firearm. “Transfer” does not include the tem-
12 porary provision of a firearm to a transferee if the transferor has no reason to believe the transferee
13 is prohibited from possessing a firearm or intends to use the firearm in the commission of a crime,
14 and the provision occurs:

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

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

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

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

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

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

28 [(b)] **(c)** “Transferee” means a person who is not a gun dealer or licensed as a manufacturer or
29 importer under 18 U.S.C. 923 and who intends to receive a firearm from a transferor.

30 [(c)] **(d)** “Transferor” means a person who is not a gun dealer or licensed as a manufacturer or
31 importer under 18 U.S.C. 923 and who intends to deliver a firearm to a transferee.

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

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

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

42 (c) A gun dealer who agrees to complete a transfer of a firearm under this section shall request
43 a criminal [history record] **background** check on the transferee as described in ORS 166.412 and
44 shall comply with all requirements of federal law.

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

1 (A) Receives a unique [*approval*] **identification** number from the [*Department of State Police*]
 2 **system** indicating that the transferee is qualified to complete the transfer, the gun dealer shall no-
 3 tify the transferor, enter the firearm into the gun dealer’s inventory and transfer the firearm to the
 4 transferee.

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

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

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

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

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

18 (c) The transfer of a firearm to:

19 (A) A transferor’s spouse or domestic partner;

20 (B) A transferor’s parent or stepparent;

21 (C) A transferor’s child or stepchild;

22 (D) A transferor’s sibling;

23 (E) A transferor’s grandparent;

24 (F) A transferor’s grandchild;

25 (G) A transferor’s aunt or uncle;

26 (H) A transferor’s first cousin;

27 (I) A transferor’s niece or nephew; or

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

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

32 (A) The transfer is conducted or facilitated by a personal representative, as defined in ORS
 33 111.005, or a trustee of a trust created in a will; and

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

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

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

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

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

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

1 166.250.

2 **SECTION 8.** Section 1, chapter 50, Oregon Laws 2015, is amended to read:

3 **Sec. 1.** [*Section 2 of this 2015 Act*] **ORS 166.435** and the amendments to ORS 166.250, 166.291,
4 166.412, 166.422, 166.432, 166.433, [*166.434,*] 166.436, 166.438, 166.460, 166.470, 181.150, 181.740 and
5 426.133 by sections 3 to **7 and 9 to 19, chapter 50, Oregon Laws 2015,** [*19 of this 2015 Act*] shall
6 be known and may be cited as the “Oregon Firearms Safety Act.”

7 **SECTION 9.** **ORS 166.434 is repealed.**

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