

A-Engrossed
House Bill 4147

Ordered by the House February 16
Including House Amendments dated February 16

Sponsored by Representative WILLIAMSON; Representatives BARNHART, FAGAN, KENY-GUYER, LININGER, LIVELY, PILUSO, SMITH WARNER, TAYLOR, VEGA PEDERSON

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.

Prohibits transfer of firearm by dealer or private party **for 10 business days** if Department of State Police is unable to determine whether recipient is qualified to receive firearm.

Requires Department of State Police to notify [*appropriate*] **United States Attorney for District of Oregon and all state and local law enforcement [*agency*] agencies with jurisdiction** when, during criminal background check performed prior to transfer of firearm, department determines that recipient is prohibited from possessing firearm. **Requires department to notify attempted unlawful purchaser's probation officer or court that issued protective order, if applicable. Requires department to make notification within 24 hours unless investigation would be compromised. Requires law enforcement agency or prosecuting attorney's office receiving notification to report to department on action taken after notification and outcome of action. Requires department to publish written report detailing attempted unlawful purchases, including information on investigations and criminal prosecutions.**

Specifies that "firearm" does not include certain tools and devices for purposes of private transfer criminal background checks.

A BILL FOR AN ACT

1
2 Relating to firearm transfer criminal background checks; amending ORS 166.412, 166.435 and
3 166.436.

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

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

6 166.412. (1) As used in this section:

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

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

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

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

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

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

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

19 (h) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun
20 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 (2) Except as provided in subsections (3)(c) and (12) of this section, a gun dealer shall comply
2 with the following before a handgun is delivered to a purchaser:

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

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

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

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

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

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

14 (C) The place of transfer;

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

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

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

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

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

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

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

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

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

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

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

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

40 **(c) If, after 10 business days following the request by the dealer for a criminal history
41 record check, the department has failed to provide either a unique approval number to the
42 gun dealer or notification to the gun dealer that the purchaser is disqualified under para-
43 graph (a) of this subsection, the gun dealer may, at the gun dealer's discretion, deliver the
44 handgun to the purchaser.**

45 (4)(a) Identification required of the purchaser under subsection (2) of this section shall include

1 one piece of current identification bearing a photograph and the date of birth of the purchaser 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
15 week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from
16 dealers for 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
19 faith 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 **(c) If the department determines that a purchaser is prohibited from possessing a**
28 **firearm under ORS 166.250 (1)(c), the department shall report the attempted transfer and the**
29 **purchaser's name to the United States Attorney for the District of Oregon and to all state**
30 **and local law enforcement agencies and district attorneys that have jurisdiction over the**
31 **location or locations where the attempted transfer was made and where the purchaser re-**
32 **sides.**

33 **(d) If the department determines that the purchaser is prohibited from possessing a**
34 **firearm as a condition of probation under ORS 137.540 (1)(L), the department shall report the**
35 **attempted transfer to the purchaser's probation officer.**

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

39 **(f) The report required by paragraphs (c), (d) and (e) of this subsection shall be made**
40 **within 24 hours after the determination is made, unless the report would compromise an**
41 **ongoing investigation, in which case the report may be delayed as long as necessary to avoid**
42 **compromising the investigation.**

43 **(g) On or before January 31 of each year, a law enforcement agency or a prosecuting**
44 **attorney's office that received a report pursuant to paragraph (c) of this subsection during**
45 **the previous calendar year shall inform the department of the action that was taken con-**

1 cerning each attempted transfer and the outcome of the action.

2 (h) After receiving the information described in paragraph (g) of this subsection, the de-
3 partment shall annually publish a written report detailing the following information for the
4 previous year:

5 (A) The number of attempted purchasers whom the department determined were pro-
6 hibited from possessing a firearm under ORS 166.250 (1)(c), arranged by category of prohib-
7 ited possessor;

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

9 (C) The number of investigations arising from the reports made pursuant to paragraph
10 (c) of this subsection, the number of investigations concluded and the number of investi-
11 gations referred for prosecution, all arranged by category of prohibited possessor; and

12 (D) The number of criminal charges arising from the reports made pursuant to para-
13 graph (c) of this subsection and the disposition of the charges, both arranged by category
14 of prohibited possessor.

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

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

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

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

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

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

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

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

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

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

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

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

37 166.435. (1) As used in this section:

38 (a) **“Firearm” does not include a powder-actuated tool or other device designed to be used**
39 **for construction purposes, or an emergency flare.**

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

45 (A) At a shooting range, shooting gallery or other area designed for the purpose of target

1 shooting, for use during target practice, a firearms safety or training course or class or a similar
2 lawful activity;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

39 (e) **Except as provided in paragraph (f) of this subsection, if, after requesting a criminal**
40 **background check, the gun dealer receives notification pursuant to ORS 166.412 (3)(b) that**
41 **the department is unable to determine if the transferee is qualified or disqualified from**
42 **completing the transfer, the gun dealer shall notify the transferor and neither the transferor**
43 **nor the gun dealer shall transfer the firearm to the transferee.**

44 (f) **If, after 10 business days following the criminal background check request, the de-**
45 **partment has failed to provide either a unique approval number or notification that the**

1 **transferee is prohibited by state or federal law from possessing or receiving the firearm, the**
2 **gun dealer may, at the gun dealer's discretion, facilitate the transfer of the firearm to the**
3 **transferee as described in paragraph (d)(A) of this subsection.**

4 [(e)] (g) A gun dealer may charge a reasonable fee for facilitating a firearm transfer pursuant
5 to this section.

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

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

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

12 (c) The transfer of a firearm to:

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

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

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

16 (D) A transferor's sibling;

17 (E) A transferor's grandparent;

18 (F) A transferor's grandchild;

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

20 (H) A transferor's first cousin;

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

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

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

26 (A) The transfer is conducted or facilitated by a personal representative, as defined in ORS
27 111.005, or a trustee of a trust created in a will; and

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

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

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

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

36 166.436. (1) The Department of State Police shall make the telephone number established under
37 ORS 166.412 (5) available for requests for criminal background checks under this section from per-
38 sons who are not gun dealers and who are transferring firearms at gun shows.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 **(c) If the department determines that a recipient is prohibited from possessing a firearm**
30 **under ORS 166.250 (1)(c), the department shall report the attempted transfer and the**
31 **recipient's name to the United States Attorney for the District of Oregon and to all state**
32 **and local law enforcement agencies and district attorneys that have jurisdiction over the**
33 **location or locations where the attempted transfer was made and where the recipient re-**
34 **sides.**

35 **(d) If the department determines that the recipient is prohibited from possessing a**
36 **firearm as a condition of probation under ORS 137.540 (1)(L), the department shall report the**
37 **attempted transfer to the recipient's probation officer.**

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

41 **(f) The report required by paragraphs (c), (d) and (e) of this subsection shall be made**
42 **within 24 hours after the determination is made, unless the report would compromise an**
43 **ongoing investigation, in which case the report may be delayed as long as necessary to avoid**
44 **compromising the investigation.**

45 **(g) On or before January 31 of each year, a law enforcement agency or a prosecuting**

1 attorney's office that received a report pursuant to paragraph (c) of this subsection during
2 the previous calendar year shall inform the department of the action that was taken con-
3 cerning each attempted transfer and the outcome of the action.

4 (h) After receiving the information described in paragraph (g) of this subsection, the de-
5 partment shall annually publish a written report detailing the following information for the
6 previous year:

7 (A) The number of attempted purchasers whom the department determined were pro-
8 hibited from possessing a firearm under ORS 166.250 (1)(c), arranged by category of prohib-
9 ited possessor;

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

11 (C) The number of investigations arising from the reports made pursuant to paragraph
12 (c) of this subsection, the number of investigations concluded and the number of investi-
13 gations referred for prosecution, all arranged by category of prohibited possessor; and

14 (D) The number of criminal charges arising from the reports made pursuant to para-
15 graph (c) of this subsection and the disposition of the charges, both arranged by category
16 of prohibited possessor.

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

25 (b) 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