

HB 4145-2  
(LC 244)  
2/5/18 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Governor Kate Brown)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 4145**

1 On page 1 of the printed bill, delete lines 5 through 23 and delete pages  
2 2 through 8 and insert:

3 **“SECTION 1.** ORS 166.255 is amended to read:

4 “166.255. (1) It is unlawful for a person to knowingly possess a firearm  
5 or ammunition if:

6 “(a) The person is the subject of a court order that:

7 “(A) Was issued or continued after a hearing for which the person had  
8 actual notice and during the course of which the person had an opportunity  
9 to be heard;

10 “(B) Restrains the person from stalking, intimidating, molesting or men-  
11 acing [*an intimate partner*] **a family or household member of the**  
12 **person**, a child of [*an intimate partner*] **a family or household member**  
13 **of the person** or a child of the person; and

14 “(C) Includes a finding that the person represents a credible threat to the  
15 physical safety of [*an intimate partner*] **a family or household member of**  
16 **the person**, a child of [*an intimate partner*] **a family or household member**  
17 **of the person** or a child of the person; [*or*]

18 “(b) The person has been convicted of a qualifying misdemeanor and, at  
19 the time of the offense, the person was:

20 “(A) A family **or household** member of the victim of the offense[.]; **or**

21 “(B) A **parent or guardian of the victim of the offense; or**

1       “(c) **The person has been convicted of stalking under ORS 163.732.**

2       “(2) The prohibition described in subsection (1)(a) of this section does not  
3 apply with respect to the transportation, shipment, receipt, possession or  
4 importation of any firearm or ammunition imported for, sold or shipped to  
5 or issued for the use of the United States Government or any federal de-  
6 partment or agency, or any state or department, agency or political subdivi-  
7 sion of a state.

8       “(3) As used in this section:

9       “(a) ‘Convicted’ means:

10       “(A) The person was represented by counsel or knowingly and  
11 intelligently waived the right to counsel;

12       “(B) The case was tried to a jury, if the crime was one for which the  
13 person was entitled to a jury trial, or the person knowingly and intelligently  
14 waived the person’s right to a jury trial; and

15       “(C) The conviction has not been set aside or expunged, and the person  
16 has not been pardoned.

17       “(b) ‘Deadly weapon’ has the meaning given that term in ORS 161.015.

18       “(c) ‘Family **or household** member’ [*means, with respect to the victim, the*  
19 *victim’s spouse, the victim’s former spouse, a person with whom the victim*  
20 *shares a child in common, the victim’s parent or guardian, a person cohabiting*  
21 *with or who has cohabited with the victim as a spouse, parent or guardian or*  
22 *a person similarly situated to a spouse, parent or guardian of the victim*] **has**  
23 **the meaning given that term in ORS 135.230.**

24       “[(d) ‘Intimate partner’ means, with respect to a person, the person’s spouse,  
25 the person’s former spouse, a parent of the person’s child or another person  
26 who has cohabited or is cohabiting with the person in a relationship akin to  
27 a spouse.]

28       “[(e)] (d) ‘Possess’ has the meaning given that term in ORS 161.015.

29       “[(f)] (e) ‘Qualifying misdemeanor’ means a misdemeanor that has, as an  
30 element of the offense, the use or attempted use of physical force or the

1 threatened use of a deadly weapon.

2 **“SECTION 2. Section 3 of this 2018 Act is added to and made a part**  
3 **of ORS 181A.010 to 181A.350.**

4 **“SECTION 3. Upon receipt of a record of conviction for an offense**  
5 **described in ORS 166.255 (1)(b), the Department of State Police shall**  
6 **immediately enter the conviction into the Law Enforcement Data**  
7 **System and shall cause the conviction to be entered into the databases**  
8 **of the National Crime Information Center of the United States De-**  
9 **partment of Justice. The entry must include any judicial findings or**  
10 **terms of the judgment, when available, that are necessary to designate**  
11 **the conviction as a misdemeanor crime of domestic violence as defined**  
12 **in 18 U.S.C. 921 or as an offense described in ORS 166.255 (1)(b).**

13 **“SECTION 4. ORS 166.412 is amended to read:**

14 “166.412. (1) As used in this section:

15 “(a) ‘Antique firearm’ has the meaning given that term in 18 U.S.C. 921;

16 “(b) ‘Department’ means the Department of State Police;

17 “(c) ‘Firearm’ has the meaning given that term in ORS 166.210, except  
18 that it does not include an antique firearm;

19 “(d) ‘Firearms transaction record’ means the firearms transaction record  
20 required by 18 U.S.C. 921 to 929;

21 “(e) ‘Firearms transaction thumbprint form’ means a form provided by the  
22 department under subsection (11) of this section;

23 “(f) ‘Gun dealer’ means a person engaged in the business, as defined in  
24 18 U.S.C. 921, of selling, leasing or otherwise transferring a firearm, whether  
25 the person is a retail dealer, pawnbroker or otherwise; **and**

26 “[g] ‘Handgun’ has the meaning given that term in ORS 166.210; and]

27 “[h)] (g) ‘Purchaser’ means a person who buys, leases or otherwise re-  
28 ceives a firearm from a gun dealer.

29 “(2) Except as provided in subsections (3)(c) and (12) of this section, a gun  
30 dealer shall comply with the following before a [*handgun*] **firearm** is deliv-

1 ered to a purchaser:

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

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

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

9 “(d) The gun dealer shall request by telephone that the department con-  
10 duct a criminal history record check on the purchaser and shall provide the  
11 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  
17 [*handgun*] **firearm** being transferred;

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

19 “(G) The Social Security number of the purchaser if the purchaser vol-  
20 untarily provides this number to the gun dealer; and

21 “(H) The type, issuer and identification number of the identification pre-  
22 sented by the purchaser.

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

26 “(f) The gun dealer may destroy the firearms transaction thumbprint form  
27 five years after the completion of the firearms transaction thumbprint form.

28 “(3)(a) Upon receipt of a request of the gun dealer for a criminal history  
29 record check, the department shall immediately, during the gun dealer’s  
30 telephone call or by return call:

1 “(A) Determine, from criminal records and other information available to  
2 it, whether the purchaser is disqualified under ORS 166.470 from completing  
3 the purchase; and

4 “(B) Notify the **gun** dealer when a purchaser is disqualified from com-  
5 pleting the transfer or provide the **gun** dealer with a unique approval num-  
6 ber indicating that the purchaser is qualified to complete the transfer.

7 “(b) If the department is unable to determine if the purchaser is qualified  
8 or disqualified from completing the transfer within 30 minutes, the depart-  
9 ment shall notify the **gun** dealer and provide the **gun** dealer with an esti-  
10 mate of the time when the department will provide the requested  
11 information.

12 “(c) If the department fails to provide a unique approval number to a gun  
13 dealer or to notify the gun dealer that the purchaser is disqualified under  
14 paragraph (a) of this subsection before the close of the gun dealer’s next  
15 business day following the request by the **gun** dealer for a criminal history  
16 record check, the **gun** dealer may deliver the [*handgun*] **firearm** to the  
17 purchaser.

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

21 “(A) Is issued under the authority of the United States Government, a  
22 state, a political subdivision of a state, a foreign government, a political  
23 subdivision of a foreign government, an international governmental organ-  
24 ization or an international quasi-governmental organization; and

25 “(B) Is intended to be used for identification of an individual or is com-  
26 monly accepted for the purpose of identification of an individual.

27 “(b) If the identification presented by the purchaser under paragraph (a)  
28 of this subsection does not include the current address of the purchaser, the  
29 purchaser shall present a second piece of current identification that contains  
30 the current address of the purchaser. The Superintendent of State Police may

1 specify by rule the type of identification that may be presented under this  
2 paragraph.

3 “(c) The department may require that the **gun** dealer verify the identifi-  
4 cation of the purchaser if that identity is in question by sending the  
5 thumbprints of the purchaser to the department.

6 “(5) The department shall establish a telephone number that shall be op-  
7 erational seven days a week between the hours of 8 a.m. and 10 p.m. for the  
8 purpose of responding to inquiries from **gun** dealers for a criminal history  
9 record check under this section.

10 “(6) No public employee, official or agency shall be held criminally or  
11 civilly liable for performing the investigations required by this section pro-  
12 vided the employee, official or agency acts in good faith and without malice.

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

16 “(b) The record of the information obtained during a request for a crimi-  
17 nal history record check by a gun dealer is exempt from disclosure under  
18 public records law.

19 “[*(c) If the department determines that a purchaser is prohibited from pos-*  
20 *sessing a firearm under ORS 166.250 (1)(c), as soon as practicable, the de-*  
21 *partment may report the attempted transfer and the purchaser’s name to the*  
22 *appropriate law enforcement agency.*]

23 “**(c) If the department determines that a purchaser is prohibited**  
24 **from possessing a firearm under ORS 166.250 (1)(c), the department**  
25 **shall report the attempted transfer, the purchaser’s name and any**  
26 **other personally identifiable information to all federal, state and local**  
27 **law enforcement agencies and district attorneys that have jurisdiction**  
28 **over the location or locations where the attempted transfer was made**  
29 **and where the purchaser resides.**

30 “**(d) If the department determines that, based on the judgment of**

1 conviction, the purchaser is prohibited from possessing a firearm as  
2 a condition of probation or that the purchaser is currently on post-  
3 prison supervision or parole, the department shall report the at-  
4 tempted transfer to the purchaser's supervising officer and the district  
5 attorney of the county in which the conviction occurred.

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

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

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

18 “(h) On or before January 31 of each year, a law enforcement  
19 agency or a prosecuting attorney's office that received a report pur-  
20 suant to paragraph (c) of this subsection during the previous calendar  
21 year shall inform the department of the action that was taken con-  
22 cerning each attempted transfer and the outcome of the action.

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

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

29 “(B) The number of reports made pursuant to paragraph (c) of this  
30 subsection;

1       “(C) The number of investigations arising from the reports made  
2 pursuant to paragraph (c) of this subsection, the number of investi-  
3 gations concluded and the number of investigations referred for pros-  
4 ecution, all arranged by category of prohibition; and

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

8       “(8) A law enforcement agency may inspect the records of a gun dealer  
9 relating to transfers of [*handguns*] **firearms** with the consent of a gun dealer  
10 in the course of a reasonable inquiry during a criminal investigation or un-  
11 der the authority of a properly authorized subpoena or search warrant.

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

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

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

16       “(b) The maintenance of a procedure to correct errors in the criminal re-  
17 cords of the department;

18       “(c) The provision of a security system to identify **gun** dealers [*who*] **that**  
19 request a criminal history record check under subsection (2) of this section;  
20 and

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

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

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

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

30       “(b) A gun dealer that requests a criminal background check under this



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

4 **“SECTION 5.** ORS 166.436 is amended to read:

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

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

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

14 “(b) The make, model, caliber and manufacturer’s number of the firearm  
15 being transferred;

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

17 “(d) The Social Security number of the recipient if the recipient volun-  
18 tarily provides that number;

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

20 “(f) The type, issuer and identification number of a current piece of  
21 identification bearing a recent photograph of the recipient presented by the  
22 recipient. The identification presented by the recipient must meet the re-  
23 quirements of ORS 166.412 (4)(a).

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

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

1 “(B) Notify the transferor when a recipient is disqualified from complet-  
2 ing the transfer or provide the transferor with a unique approval number  
3 indicating that the recipient is qualified to complete the transfer. The unique  
4 approval number is a permit valid for 24 hours for the requested transfer. If  
5 the firearm is not transferred from the transferor to the recipient within 24  
6 hours after receipt of the unique approval number, a new request must be  
7 made by the transferor.

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

13 “(4) A public employee or public agency incurs no criminal or civil li-  
14 ability for performing the criminal background checks required by this sec-  
15 tion, provided the employee or agency acts in good faith and without malice.

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

19 “(b) The record of the information obtained during a request for a crimi-  
20 nal background check under this section is exempt from disclosure under  
21 public records law.

22 “[*(c) If the department determines that a recipient is prohibited from pos-*  
23 *sessing a firearm under ORS 166.250 (1)(c), as soon as practicable, the de-*  
24 *partment may report the attempted transfer and the recipient’s name to the*  
25 *appropriate law enforcement agency.*]

26 “**(c) If the department determines that a recipient is prohibited**  
27 **from possessing a firearm under ORS 166.250 (1)(c), the department**  
28 **shall report the attempted transfer, the recipient’s name and any**  
29 **other personally identifiable information to all federal, state and local**  
30 **law enforcement agencies and district attorneys that have jurisdiction**

1 over the location or locations where the attempted transfer was made  
2 and where the recipient resides.

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

9 “(e) If the department determines that the recipient is prohibited  
10 from possessing a firearm due to a court order described in ORS  
11 166.255 (1)(a), the department shall report the attempted transfer to  
12 the court that issued the order.

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

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

21 “(h) On or before January 31 of each year, a law enforcement  
22 agency or a prosecuting attorney’s office that received a report pur-  
23 suant to paragraph (c) of this subsection during the previous calendar  
24 year shall inform the department of the action that was taken con-  
25 cerning each attempted transfer and the outcome of the action.

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

29 “(A) The number of recipients whom the department determined  
30 were prohibited from possessing a firearm under ORS 166.250 (1)(c),

1 **arranged by category of prohibition;**

2 **“(B) The number of reports made pursuant to paragraph (c) of this**  
3 **subsection;**

4 **“(C) The number of investigations arising from the reports made**  
5 **pursuant to paragraph (c) of this subsection, the number of investi-**  
6 **gations concluded and the number of investigations referred for pros-**  
7 **ecution, all arranged by category of prohibition; and**

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

11 **“(6) The recipient of the firearm must be present when the transferor re-**  
12 **quests a criminal background check under this section.**

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

21 **“(b) The immunity provided by paragraph (a) of this subsection does not**  
22 **apply:**

23 **“(A) If the transferor knows, or reasonably should know, that the recipi-**  
24 **ent of the firearm intends to deliver the firearm to a third person who the**  
25 **transferor knows, or reasonably should know, may not lawfully possess the**  
26 **firearm; or**

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

28 **“SECTION 6. ORS 166.434 is amended to read:**

29 **“166.434. [(1) Notwithstanding the fact that ORS 166.412 requires a gun**  
30 **dealer to request a criminal history record check only when transferring a**

1 handgun, a gun dealer shall comply with the requirements of ORS 166.412  
2 before transferring any firearm to a purchaser. The provisions of ORS 166.412  
3 apply to the transfer of firearms other than handguns to the same extent that  
4 they apply to the transfer of handguns.]

5 “[2] (1) In addition to the determination required by ORS 166.412  
6 (3)(a)(A), in conducting a criminal background check or criminal history re-  
7 cord check, the Department of State Police shall also determine whether the  
8 recipient is otherwise prohibited by state or federal law from possessing a  
9 firearm.

10 “[3] (2) Notwithstanding ORS 166.412 (5), the department is not required  
11 to operate the telephone number established under ORS 166.412 (5) on  
12 Thanksgiving Day or Christmas Day.

13 “[4)(a)] (3)(a) The department may charge a fee, not to exceed the  
14 amount authorized under ORS 166.414, for criminal background checks re-  
15 quired under this section or ORS 166.435 or 166.436.

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

19 **“SECTION 7.** ORS 166.418 is amended to read:

20 “166.418. (1) A person commits the crime of improperly transferring a  
21 firearm if the person is a gun dealer as defined in ORS 166.412 and sells,  
22 leases or otherwise transfers a firearm and intentionally violates ORS  
23 166.412 [or 166.434].

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

25 **“SECTION 8.** ORS 166.432 is amended to read:

26 “166.432. (1) As used in ORS 166.412, 166.433, 166.434, 166.435, 166.436 and  
27 166.438, ‘criminal background check’ or ‘criminal history record check’ means  
28 determining the eligibility of a person to purchase or possess a firearm by  
29 reviewing state and federal databases including, but not limited to, the:

30 “(a) Oregon computerized criminal history system;

1 “(b) Oregon mental health data system;

2 “(c) Law Enforcement Data System;

3 “(d) National Instant Criminal Background Check System; and

4 “(e) Stolen guns system.

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

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

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

9 **“SECTION 9. The amendments to ORS 166.255 by section 1 of this**  
10 **2018 Act apply to possessions of firearms or ammunition occurring on**  
11 **or after the effective date of this 2018 Act.”.**

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