

Senate Bill 903

Sponsored by Senator BOQUIST (at the request of Ted Campbell)

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 gun dealer to substitute alternative fingerprint for criminal background check if firearm purchaser is unable to provide thumbprint.

Authorizes Department of State Police to accept requests and provide results for firearm transfer criminal background checks electronically.

Authorizes department to accept transaction record form issued by federal Bureau of Alcohol, Tobacco, Firearms and Explosives that includes thumbprint in lieu of firearms transaction thumbprint form.

A BILL FOR AN ACT

1
2 Relating to firearm transfer requirements; amending ORS 166.412, 166.434 and 166.436.

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

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

5 166.412. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

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

26 (c) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction
27 thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to
28 be filed with that copy. **If the purchaser is not able to provide a thumbprint due to a disability**

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 **or other physical limitation, the gun dealer shall substitute another fingerprint on the form**
2 **in accordance with department rules and shall indicate on the form the finger from which**
3 **the print was taken.**

4 (d) The gun dealer shall request by telephone **or by electronic transmission** that the depart-
5 ment conduct a criminal history record check on the purchaser and shall provide the following in-
6 formation to the department:

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

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

9 (C) The place of transfer;

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

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

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

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

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

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

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

21 (3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the de-
22 partment shall immediately, during the gun dealer's telephone call or by return call **or electronic**
23 **transmission:**

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

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

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

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

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

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

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

43 (b) If the identification presented by the purchaser under paragraph (a) of this subsection does
44 not include the current address of the purchaser, the purchaser shall present a second piece of
45 current identification that contains the current address of the purchaser. The Superintendent of

1 State Police may specify by rule the type of identification that may be presented under this para-
2 graph.

3 (c) The department may require that the dealer verify the identification of the purchaser if that
4 identity is in question by sending the thumbprints of the purchaser, **or another fingerprint if the**
5 **purchaser is unable to provide a thumbprint as described in subsection (2) of this section**, to
6 the department.

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

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

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

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

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

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

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

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

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

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

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

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

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

33 **(b) The department shall adopt rules establishing alternative fingerprints that a person**
34 **may provide in lieu of a thumbprint when the person is unable to provide a thumbprint due**
35 **to a disability or other physical limitation.**

36 **(c) The department may, in lieu of the firearms transaction thumbprint form described**
37 **in paragraph (a) of this subsection, accept a firearms transaction record form issued by the**
38 **federal Bureau of Alcohol, Tobacco, Firearms and Explosives that includes thumbprints or**
39 **an alternative fingerprint as provided in subsection (2) of this section.**

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

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

45 (b) A gun dealer that requests a criminal background check under this subsection is immune

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

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

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

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

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

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

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

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

21 166.436. (1) The Department of State Police shall make the telephone number **or electronic**
22 **system** established under ORS 166.412 (5) available for requests for criminal background checks
23 under this section from persons who are not gun dealers and who are transferring firearms at gun
24 shows.

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

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

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

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

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

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

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

36 (3)(a) Upon receipt of a request for a criminal background check under this section, the de-
37 partment shall immediately, during the telephone call or by return call **or electronic**
38 **transmission:**

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

42 (B) Notify the transferor when a recipient is disqualified from completing the transfer or provide
43 the transferor with a unique approval number indicating that the recipient is qualified to complete
44 the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer.
45 If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt

1 of the unique approval number, a new request must be made by the transferor.

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

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

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

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

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

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

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

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

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

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

29