

# D R A F T

## SUMMARY

Extends exemption from private firearm criminal background check requirement when firearm is provided to transferee preparing to engage in or in process of completing activities related to hunting, trapping or target shooting.

Authorizes person temporarily transferring firearm for period of no more than seven days to conduct criminal background check on transferee by telephone. Requires transferor to retain form documenting transfer. Provides transferor with limited civil immunity for use of firearm if transferor, after requesting criminal background check, receives notification that transferee is qualified to receive firearm and retains completed form.

Declares emergency, effective on passage.

## A BILL FOR AN ACT

1

2 Relating to firearm transfers; amending ORS 166.435 and 166.436; and de-  
3 claring an emergency.

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

5 **SECTION 1.** ORS 166.435 is amended to read:

6 166.435. (1) As used in this section:

7 (a) "Transfer" means the delivery of a firearm from a transferor to a  
8 transferee, including, but not limited to, the sale, gift, loan or lease of the  
9 firearm. "Transfer" does not include the temporary provision of a firearm to  
10 a transferee if the transferor has no reason to believe the transferee is pro-  
11 hibited from possessing a firearm or intends to use the firearm in the com-  
12 mission of a crime, and the provision occurs:

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

1 (B) For the purpose of hunting, trapping or target shooting, during the  
2 time in which the transferee is **preparing to engage in, is engaged in or**  
3 **is in the process of completing** activities related to hunting, trapping or  
4 target shooting;

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

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

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

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

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

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

21 (2) Except as provided in ORS 166.436 and 166.438 and [*subsection (4)*]  
22 **subsections (4) and (5)** of this section, a transferor may not transfer a  
23 firearm to a transferee unless the transfer is completed through a gun dealer  
24 as described in subsection (3) of this section.

25 (3)(a) A transferor may transfer a firearm to a transferee only as provided  
26 in this section. Except as provided in paragraph (b) of this subsection, prior  
27 to the transfer both the transferor and the transferee must appear in person  
28 before a gun dealer, with the firearm, and request that the gun dealer per-  
29 form a criminal background check on the transferee.

30 (b) If the transferor and the transferee reside over 40 miles from each  
31 other, the transferor may ship or deliver the firearm to a gun dealer located

1 near the transferee or a gun dealer designated by the transferee, and the  
2 transferor need not appear before the gun dealer in person.

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

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

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

12 (B) Receives notification that the transferee is prohibited by state or  
13 federal law from possessing or receiving the firearm, the gun dealer shall  
14 notify the transferor and neither the transferor nor the gun dealer shall  
15 transfer the firearm to the transferee. If the transferor shipped or delivered  
16 the firearm to the gun dealer pursuant to paragraph (b) of this subsection,  
17 the gun dealer shall comply with federal law when returning the firearm to  
18 the transferor.

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

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

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

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

30 (c) The transfer of a firearm to:

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

- 1 (B) A transferor's parent or stepparent;
- 2 (C) A transferor's child or stepchild;
- 3 (D) A transferor's sibling;
- 4 (E) A transferor's grandparent;
- 5 (F) A transferor's grandchild;
- 6 (G) A transferor's aunt or uncle;
- 7 (H) A transferor's first cousin;
- 8 (I) A transferor's niece or nephew; or
- 9 (J) The spouse or domestic partner of a person specified in subparagraphs
- 10 (B) to (I) of this paragraph.

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

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

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

17 **(5)(a) A transferor temporarily transferring a firearm without con-**  
18 **sideration for a period of no more than seven calendar days to a**  
19 **transferee who is personally known to the transferor may request a**  
20 **criminal background check under ORS 166.436 instead of completing**  
21 **the transfer through a gun dealer as described in subsections (2) and**  
22 **(3) of this section.**

23 **(b) A transferor who requests a criminal background check under**  
24 **paragraph (a) of this subsection instead of completing the transfer**  
25 **through a gun dealer:**

26 **(A) Shall have the transferee complete the form described in ORS**  
27 **166.441, shall retain the completed form and shall make the completed**  
28 **form available to law enforcement agencies for the purpose of a**  
29 **criminal investigation.**

30 **(B) May not transfer the firearm to the transferee unless the**  
31 **transferor receives a unique approval number from the Department**

1 **of State Police indicating that the transferee is qualified to complete**  
2 **the transfer.**

3 [(5)(a)] **(6)(a)** A transferor who fails to comply with the requirements of  
4 this section commits a Class A misdemeanor.

5 (b) Notwithstanding paragraph (a) of this subsection, a transferor who  
6 fails to comply with the requirements of this section commits a Class B fel-  
7 ony if the transferor has a previous conviction under this section at the time  
8 of the offense.

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

10 166.436. (1) The Department of State Police shall make the telephone  
11 number established under ORS 166.412 (5) available for requests for criminal  
12 background checks under this section from persons who are not gun dealers  
13 and who are transferring firearms at gun shows **and from transferors**  
14 **temporarily transferring firearms under ORS 166.435 (5).**

15 (2) Prior to transferring a firearm at a gun show **or in accordance with**  
16 **ORS 166.435 (5)**, a transferor who is not a gun dealer may request by tele-  
17 phone that the department conduct a criminal background check on the re-  
18 cipient and shall provide the following information to the department:

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

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

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

23 (d) The Social Security number of the recipient if the recipient voluntar-  
24 ily provides that number;

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

26 (f) The type, issuer and identification number of a current piece of iden-  
27 tification bearing a recent photograph of the recipient presented by the re-  
28 cipient. The identification presented by the recipient must meet the  
29 requirements of ORS 166.412 (4)(a).

30 (3)(a) Upon receipt of a request for a criminal background check under  
31 this section, the department shall immediately, during the telephone call or

1 by return call:

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

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

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

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

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

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

27 (c) If the department determines that a recipient is prohibited from pos-  
28 sessing a firearm under ORS 166.250 (1)(c), as soon as practicable, the de-  
29 partment may report the attempted transfer and the recipient's name to the  
30 appropriate law enforcement agency.

31 (6) The recipient of the firearm must be present when the transferor re-

1   quests a criminal background check under this section.

2       *[(7)(a) Except as otherwise provided in paragraph (b) of this subsection, a*  
3 *transferor who receives notification under this section that the recipient is*  
4 *qualified to complete the transfer of a firearm, has the recipient fill out the*  
5 *form required by ORS 166.438 (1)(a) and retains the form as required by ORS*  
6 *166.438 (2) is immune from civil liability for any use of the firearm from the*  
7 *time of the transfer unless the transferor knows, or reasonably should know,*  
8 *that the recipient is likely to commit an unlawful act involving the firearm.]*

9       **(7)(a) Except as otherwise provided in paragraph (b) of this sub-**  
10 **section, a transferor who receives notification under this section that**  
11 **the recipient is qualified to complete the transfer of a firearm, has the**  
12 **recipient fill out the form required by ORS 166.435 (5)(b) or 166.438**  
13 **(1)(a) and retains the form as required by ORS 166.435 (5)(b) or 166.438**  
14 **(2) is immune from civil liability for any use of the firearm from the**  
15 **time of the transfer unless the transferor knows, or reasonably should**  
16 **know, that the recipient is likely to commit an unlawful act involving**  
17 **the firearm.**

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

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

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

25       **SECTION 3. This 2016 Act being necessary for the immediate pres-**  
26 **ervation of the public peace, health and safety, an emergency is de-**  
27 **clared to exist, and this 2016 Act takes effect on its passage.**

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