

House Bill 4145

Introduced and printed pursuant to House Rule 12.00. Pre-session filed (at the request of Governor Kate Brown)

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**.

Modifies definitions relating to relationship status that pertain to types of court orders and misdemeanor convictions that cause person to be prohibited from possessing firearms. Provides that conviction for stalking causes person to be prohibited from possessing firearm unless person obtains relief from prohibition. Punishes unlawful possession by maximum of 364 days' imprisonment, \$6,250 fine, or both.

Directs Department of State Police to enter into Law Enforcement Data System information concerning conviction disqualifying person from possessing firearm.

Requires Department of State Police to notify United States Attorney for District of Oregon and all state and local law enforcement agencies and district attorneys with jurisdiction when, during criminal background check performed by gun dealer or at gun show prior to transfer of firearm, department determines that recipient is prohibited from possessing firearm. Requires department to perform other notifications as applicable and to perform notifications 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.

A BILL FOR AN ACT

1
2 Relating to firearms; creating new provisions; and amending ORS 166.255, 166.412, 166.418, 166.432,
3 166.434 and 166.436.

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

5 **SECTION 1.** ORS 166.255 is amended to read:

6 166.255. (1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

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

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

10 (ii) **Remains in effect after the person received notice of the opportunity to request a**
11 **hearing in which to be heard on the order, and declined to request a hearing during the time**
12 **period in which the opportunity was available;**

13 (B) Restrains the person from stalking, intimidating, molesting or menacing [*an intimate*
14 *partner*] **a family or household member of the person**, a child of [*an intimate partner*] **a family**
15 **or household member of the person** or a child of the person; and

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

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

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

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

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

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) The prohibition described in subsection (1)(a) of this section does not apply with respect to
 2 the transportation, shipment, receipt, possession or importation of any firearm or ammunition im-
 3 ported for, sold or shipped to or issued for the use of the United States Government or any federal
 4 department or agency, or any state or department, agency or political subdivision of a state.

5 (3) As used in this section:

6 (a) “Convicted” means:

7 (A) The person was represented by counsel or knowingly and intelligently waived the right to
 8 counsel;

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

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

12 (b) “Deadly weapon” has the meaning given that term in ORS 161.015.

13 (c) “Family **or household** member” [*means, with respect to the victim, the victim’s spouse, the*
 14 *victim’s former spouse, a person with whom the victim shares a child in common, the victim’s parent*
 15 *or guardian, a person cohabiting with or who has cohabited with the victim as a spouse, parent or*
 16 *guardian or a person similarly situated to a spouse, parent or guardian of the victim*] **has the**
 17 **meaning given that term in ORS 135.230.**

18 [(d) “Intimate partner” means, with respect to a person, the person’s spouse, the person’s former
 19 spouse, a parent of the person’s child or another person who has cohabited or is cohabiting with the
 20 person in a relationship akin to a spouse.]

21 [(e)] (d) “Possess” has the meaning given that term in ORS 161.015.

22 [(f)] (e) “Qualifying misdemeanor” means a misdemeanor that has, as an element of the offense,
 23 the use or attempted use of physical force or the threatened use of a deadly weapon.

24 **SECTION 2. Section 3 of this 2018 Act is added to and made a part of ORS 181A.010 to**
 25 **181A.350.**

26 **SECTION 3. Upon receipt of a record of conviction for an offense described in ORS**
 27 **166.255 (1)(b), the Department of State Police shall immediately enter the conviction into the**
 28 **Law Enforcement Data System and shall cause the conviction to be entered into the data-**
 29 **bases of the National Crime Information Center of the United States Department of Justice.**
 30 **The entry must include any terms and findings, when available, that are necessary to des-**
 31 **ignate the conviction as a misdemeanor crime of domestic violence as defined in 18**
 32 **U.S.C. 921.**

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

34 166.412. (1) As used in this section:

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

36 (b) “Department” means the Department of State Police;

37 (c) “Firearm” has the meaning given that term in ORS 166.210, except that it does not include
 38 an antique firearm;

39 (d) “Firearms transaction record” means the firearms transaction record required by 18 U.S.C.
 40 921 to 929;

41 (e) “Firearms transaction thumbprint form” means a form provided by the department under
 42 subsection (11) of this section;

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

1 [(g) “Handgun” has the meaning given that term in ORS 166.210; and]

2 [(h)] (g) “Purchaser” means a person who buys, leases or otherwise receives a firearm from a
3 gun dealer.

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

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

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

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

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

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

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

17 (C) The place of transfer;

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

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

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

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

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

25 (e) The gun dealer shall receive a unique approval number for the transfer from the department
26 and record the approval number on the firearms transaction record and on the firearms transaction
27 thumbprint 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 de-
31 partment 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 pur-
33 chaser is disqualified under ORS 166.470 from completing the purchase; and

34 (B) Notify the **gun** dealer when a purchaser is disqualified from completing the transfer or
35 provide the **gun** dealer with a unique approval number indicating that the purchaser is qualified to
36 complete the 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 **gun** dealer and provide
39 the **gun** dealer with an estimate of the time when the department will provide the requested infor-
40 mation.

41 (c) If the department fails to provide a unique approval number to a gun dealer or to notify the
42 gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close
43 of the gun dealer’s next business day following the request by the **gun** dealer for a criminal history
44 record check, the **gun** dealer may deliver the [handgun] **firearm** 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 **gun** dealer verify the identification of the purchaser
 13 if that 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 **gun**
 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, post-prison supervision or parole, the department shall**
 35 **report the attempted transfer to the purchaser's supervising 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) If the department determines that the purchaser is under the jurisdiction of the**
 40 **Psychiatric Security Review Board, the department shall report the attempted transfer to**
 41 **the board.**

42 **(g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24**
 43 **hours after the determination is made, unless a report would compromise an ongoing inves-**
 44 **tigation, in which case the report may be delayed as long as necessary to avoid compromising**
 45 **the investigation.**

1 (h) On or before January 31 of each year, a law enforcement agency or a prosecuting
 2 attorney's office that received a report pursuant to paragraph (c) of this subsection during
 3 the previous calendar year shall inform the department of the action that was taken con-
 4 cerning each attempted transfer and the outcome of the action.

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

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

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 prohibition; 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 prohibition.

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

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

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

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

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

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

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

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

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

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

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

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

39 166.436. (1) The Department of State Police shall make the telephone number established under
 40 ORS 166.412 (5) available for requests for criminal background checks under this section from per-
 41 sons who are not gun dealers and who are transferring firearms at gun shows.

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

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

- 1 (b) The make, model, caliber and manufacturer's number of the firearm being transferred;
- 2 (c) The name, date of birth, race, sex and address of the recipient;
- 3 (d) The Social Security number of the recipient if the recipient voluntarily provides that number;
- 4 (e) The address of the place where the transfer is occurring; and
- 5 (f) The type, issuer and identification number of a current piece of identification bearing a re-
- 6 cent photograph of the recipient presented by the recipient. The identification presented by the re-
- 7 cipient must meet the requirements of ORS 166.412 (4)(a).

8 (3)(a) Upon receipt of a request for a criminal background check under this section, the de-

9 partment shall immediately, during the telephone call or by return call:

10 (A) Determine from criminal records and other information available to it whether the recipient

11 is disqualified under ORS 166.470 from completing the transfer or is otherwise prohibited by state

12 or federal law from possessing a firearm; and

13 (B) Notify the transferor when a recipient is disqualified from completing the transfer or provide

14 the transferor with a unique approval number indicating that the recipient is qualified to complete

15 the transfer. The unique approval number is a permit valid for 24 hours for the requested transfer.

16 If the firearm is not transferred from the transferor to the recipient within 24 hours after receipt

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

18 (b) If the department is unable to determine whether the recipient is qualified for or disqualified

19 from completing the transfer within 30 minutes of receiving the request, the department shall notify

20 the transferor and provide the transferor with an estimate of the time when the department will

21 provide the requested information.

22 (4) A public employee or public agency incurs no criminal or civil liability for performing the

23 criminal background checks required by this section, provided the employee or agency acts in good

24 faith and without malice.

25 (5)(a) The department may retain a record of the information obtained during a request for a

26 criminal background check under this section for the period of time provided in ORS 166.412 (7).

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

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

29 *[(c) If the department determines that a recipient is prohibited from possessing a firearm under*

30 *ORS 166.250 (1)(c), as soon as practicable, the department may report the attempted transfer and the*

31 *recipient's name to the appropriate law enforcement agency.]*

32 **(c) If the department determines that a recipient is prohibited from possessing a firearm**

33 **under ORS 166.250 (1)(c), the department shall report the attempted transfer and the**

34 **recipient's name to the United States Attorney for the District of Oregon and to all state**

35 **and local law enforcement agencies and district attorneys that have jurisdiction over the**

36 **location or locations where the attempted transfer was made and where the recipient re-**

37 **sides.**

38 **(d) If the department determines that the recipient is prohibited from possessing a**

39 **firearm as a condition of probation, post-prison supervision or parole, the department shall**

40 **report the attempted transfer to the recipient's supervising officer.**

41 **(e) If the department determines that the recipient is prohibited from possessing a**

42 **firearm due to a court order described in ORS 166.255 (1)(a), the department shall report the**

43 **attempted transfer to the court that issued the order.**

44 **(f) If the department determines that the recipient is under the jurisdiction of the Psy-**

45 **chiatric Security Review Board, the department shall report the attempted transfer to the**

1 **board.**

2 **(g) Reports required by paragraphs (c) to (f) of this subsection shall be made within 24**
 3 **hours after the determination is made, unless a report would compromise an ongoing inves-**
 4 **tigation, in which case the report may be delayed as long as necessary to avoid compromising**
 5 **the investigation.**

6 **(h) On or before January 31 of each year, a law enforcement agency or a prosecuting**
 7 **attorney's office that received a report pursuant to paragraph (c) of this subsection during**
 8 **the previous calendar year shall inform the department of the action that was taken con-**
 9 **cerning each attempted transfer and the outcome of the action.**

10 **(i) After receiving the information described in paragraph (h) of this subsection, the de-**
 11 **partment shall annually publish a written report detailing the following information for the**
 12 **previous year:**

13 **(A) The number of recipients whom the department determined were prohibited from**
 14 **possessing a firearm under ORS 166.250 (1)(c), arranged by category of prohibition;**

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

16 **(C) The number of investigations arising from the reports made pursuant to paragraph**
 17 **(c) of this subsection, the number of investigations concluded and the number of investi-**
 18 **gations referred for prosecution, all arranged by category of prohibition; and**

19 **(D) The number of criminal charges arising from the reports made pursuant to para-**
 20 **graph (c) of this subsection and the disposition of the charges, both arranged by category**
 21 **of prohibition.**

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

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

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

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

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

35 **SECTION 6.** ORS 166.434 is amended to read:

36 *166.434. [(1) Notwithstanding the fact that ORS 166.412 requires a gun dealer to request a criminal*
 37 *history record check only when transferring a handgun, a gun dealer shall comply with the require-*
 38 *ments of ORS 166.412 before transferring any firearm to a purchaser. The provisions of ORS 166.412*
 39 *apply to the transfer of firearms other than handguns to the same extent that they apply to the transfer*
 40 *of handguns.]*

41 [(2)] (1) In addition to the determination required by ORS 166.412 (3)(a)(A), in conducting a
 42 criminal background check or criminal history record check, the Department of State Police shall
 43 also determine whether the recipient is otherwise prohibited by state or federal law from possessing
 44 a firearm.

45 [(3)] (2) Notwithstanding ORS 166.412 (5), the department is not required to operate the tele-

1 phone number established under ORS 166.412 (5) on Thanksgiving Day or Christmas Day.

2 [(4)(a)] (3)(a) The department may charge a fee, not to exceed the amount authorized under ORS
3 166.414, for criminal background checks required under this section or ORS 166.435 or 166.436.

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

6 **SECTION 7.** ORS 166.418 is amended to read:

7 166.418. (1) A person commits the crime of improperly transferring a firearm if the person is a
8 gun dealer as defined in ORS 166.412 and sells, leases or otherwise transfers a firearm and inten-
9 tionally violates ORS 166.412 [or 166.434].

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

11 **SECTION 8.** ORS 166.432 is amended to read:

12 166.432. (1) As used in ORS 166.412, 166.433, 166.434, 166.435, 166.436 and 166.438, “criminal
13 background check” or “criminal history record check” means determining the eligibility of a person
14 to purchase or possess a firearm by reviewing state and federal databases including, but not limited
15 to, the:

- 16 (a) Oregon computerized criminal history system;
- 17 (b) Oregon mental health data system;
- 18 (c) Law Enforcement Data System;
- 19 (d) National Instant Criminal Background Check System; and
- 20 (e) Stolen guns system.

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

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

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

25 **SECTION 9.** The amendments to ORS 166.255 by section 1 of this 2018 Act apply to pos-
26 sessions of firearms or ammunition occurring on or after the effective date of this 2018 Act.

27