

# Senate Bill 604

Sponsored by Senator FREDERICK (at the request of Michael C. Smith) (Presession filed.)

## 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 person to obtain permit before purchasing or otherwise receiving firearm under circumstances requiring criminal background check. Specifies qualifications for permit and procedures for applying for and issuing permit.

Punishes transferor, when firearm is transferred to recipient without valid permit, by maximum of 364 days' imprisonment, \$6,250 fine, or both.

## A BILL FOR AN ACT

1  
2 Relating to permits to receive a firearm; creating new provisions; and amending ORS 166.412,  
3 166.435 and 166.438.

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

5 **SECTION 1. Section 2 of this 2021 Act is added to and made a part of ORS 166.410 to**  
6 **166.470.**

7 **SECTION 2. (1)(a) A person may apply for a permit to receive firearm under this section**  
8 **from the county sheriff of the county in which the person resides, or the municipal police**  
9 **department with jurisdiction over the municipality in which the person resides.**

10 (b) A person is qualified to receive a permit under this section if the person:

11 (A) Is not prohibited from purchasing or otherwise receiving a firearm under state or  
12 federal law;

13 (B) Is not the subject of an order described in ORS 166.525 to 166.543;

14 (C) Provides proof of completion of a firearm safety course; and

15 (D) Pays the fee described in subsection (2) of this section.

16 (c) An application for a permit under this section must state the applicant's legal name,  
17 current address and telephone number, date and place of birth, physical description, and any  
18 additional information determined necessary by the Department of State Police by rule. The  
19 application must be signed by the applicant.

20 (d) The sheriff or police department shall verify the applicant's identity with a  
21 government-issued form of identification bearing a photograph of the applicant.

22 (e) The applicant must submit to fingerprinting and photographing by the sheriff or po-  
23 lice department. The sheriff or police department shall fingerprint and photograph the ap-  
24 plicant and shall conduct any investigation necessary to determine whether the applicant  
25 meets the qualifications described in paragraph (b) of this subsection. The sheriff or police  
26 department shall request the Department of State Police to conduct a criminal background  
27 check, including fingerprint identification, through the Federal Bureau of Investigation. The  
28 Federal Bureau of Investigation shall return the fingerprint cards used to conduct the  
29 criminal background check and may not keep any record of the fingerprints. The Depart-  
30 ment of State Police shall report the results of the fingerprint-based criminal background

**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 check to the sheriff or police department.

2 (f) Within 30 days of receiving an application for a permit under this section, if the  
3 sheriff or police department has verified the applicant's identity and determined that the  
4 applicant meets the qualifications described in paragraph (b) of this subsection, the sheriff  
5 or police department shall issue the permit.

6 (2) The sheriff or police department may charge a reasonable fee for issuing permits  
7 under this section, but the fee may not exceed \$20.

8 (3)(a) The Department of State Police shall develop:

9 (A) A standardized application form for a permit under this section; and

10 (B) A form in quadruplicate for use by sheriffs and municipal police departments in is-  
11 suing permits under this section.

12 (b) The issuing sheriff or police department shall maintain a copy of each permit issued  
13 under this section.

14 (c) The person named in a permit shall:

15 (A) Maintain a copy of the permit as long as the permit is valid.

16 (B) Present a copy of the permit to the transferor of a firearm when required under ORS  
17 166.412, 166.435 or 166.438.

18 (3)(a) The sheriff or police department shall report the issuance of a permit under this  
19 section to the Department of State Police, and shall provide to the department a copy of the  
20 permit and any information necessary for the department to maintain an electronic database  
21 of all permits issued under this section.

22 (b) The department shall maintain the electronic database described in paragraph (a) of  
23 this subsection by ensuring that new permits are added to the database, renewed permits  
24 are assigned a new expiration date, and expired permits are removed from the database.

25 (4)(a) A permit issued under this section does not create any right of the permit holder  
26 to receive a firearm.

27 (b) A permit issued under this section is not a limit on the number of firearms the permit  
28 holder may purchase or receive during the time period when the permit is valid.

29 (5)(a) A permit issued under this section is valid for five years from the date of issuance.

30 (b) A person may renew an unexpired permit issued under this section by repeating the  
31 procedures set forth in subsection (1) of this section.

32 (6) The Department of State Police shall provide a telephone number or electronic system  
33 by which a firearm transferor may verify the validity of a permit issued under this section.  
34 The telephone number may be the same as that described in ORS 166.412 (5).

35 (7) The Department of State Police may adopt rules to carry out the provisions of this  
36 section.

37 (8) As used in this section, "proof of completion of a firearm safety course" means any  
38 of the following:

39 (a) Proof of completion of a hunter education course approved by the State Department  
40 of Fish and Wildlife that includes a firearm safety component;

41 (b) Proof of completion of any National Firearms Association firearms training course  
42 that includes a firearm safety component;

43 (c) Proof of completion of any firearms training course or class available to the general  
44 public that is offered by law enforcement, a community college, or a private or public insti-  
45 tution or organization or firearms training school utilizing instructors certified by the Na-

1 **tional Rifle Association or a law enforcement agency, and that includes a firearm safety**  
 2 **component;**

3 **(d) Proof of completion of any law enforcement firearms training course or class that is**  
 4 **offered for security guards, investigators, reserve law enforcement officers, or any other law**  
 5 **enforcement officers, and that includes a firearm safety component; or**

6 **(e) A valid concealed handgun license issued under ORS 166.291 and 166.292.**

7 **SECTION 3.** ORS 166.412 is amended to read:

8 166.412. (1) As used in this section:

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

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

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

13 (d) "Firearms transaction record" means the firearms transaction record required by 18 U.S.C.  
 14 921 to 929;

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

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

20 (g) "Purchaser" means a person who buys, leases or otherwise receives a firearm from a gun  
 21 dealer.

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

24 (a) The purchaser shall present to the gun dealer current identification meeting the require-  
 25 ments of subsection (4) of this section **and a valid permit issued under section 1 of this 2021**  
 26 **Act.**

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

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

32 (d) The gun dealer shall [*request*] by telephone **verify that the purchaser has a valid permit**  
 33 **to purchase a firearm issued under section 1 of this 2021 Act and request** that the department  
 34 conduct a criminal history record check on the purchaser and shall provide the following informa-  
 35 tion to the department:

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

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

38 (C) The place of transfer;

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

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

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

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

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

45 (e) The gun dealer shall receive a unique approval number for the transfer from the department

1 and record the approval number on the firearms transaction record and on the firearms transaction  
2 thumbprint form.

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

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

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

9 (B) Notify the gun dealer when a purchaser is disqualified from completing the transfer or pro-  
10 vide the gun dealer with a unique approval number indicating that the purchaser is qualified to  
11 complete the transfer.

12 (b) If the department is unable to determine if the purchaser is qualified or disqualified from  
13 completing the transfer within 30 minutes, the department shall notify the gun dealer and provide  
14 the gun dealer with an estimate of the time when the department will provide the requested infor-  
15 mation.

16 (c) If the department fails to provide a unique approval number to a gun dealer or to notify the  
17 gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close  
18 of the gun dealer's next business day following the request by the gun dealer for a criminal history  
19 record check, the gun dealer may deliver the firearm to the purchaser.

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

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

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

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

32 (c) The department may require that the gun dealer verify the identification of the purchaser if  
33 that identity is in question by sending the thumbprints of the purchaser to the department.

34 (5) The department shall establish a telephone number that shall be operational seven days a  
35 week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from gun  
36 dealers for a criminal history record check under this section.

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

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

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

44 (c) If the department determines that a purchaser is prohibited from possessing a firearm under  
45 ORS 166.250 (1)(c), the department shall report the attempted transfer, the purchaser's name and any

1 other personally identifiable information to all federal, state and local law enforcement agencies and  
2 district attorneys that have jurisdiction over the location or locations where the attempted transfer  
3 was made and where the purchaser resides.

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

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

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

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

17 (h) On or before January 31 of each year, a law enforcement agency or a prosecuting attorney's  
18 office that received a report pursuant to paragraph (c) of this subsection during the previous cal-  
19 endar year shall inform the department of any action that was taken concerning the report and the  
20 outcome of the action.

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

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

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

26 (C) The number of investigations arising from the reports made pursuant to paragraph (c) of this  
27 subsection, the number of investigations concluded and the number of investigations referred for  
28 prosecution, all arranged by category of prohibition; and

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

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

34 (9) When a firearm is delivered, it shall be unloaded.

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

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

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

39 (c) The provision of a security system to identify gun dealers that request a criminal history  
40 record check under subsection (2) of this section; and

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

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

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

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

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

7 **SECTION 4.** ORS 166.435 is amended to read:

8 166.435. (1) As used in this section:

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

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

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

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

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

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

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

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

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

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

34 (3)(a) A transferor may transfer a firearm to a transferee only as provided in this section. Except  
35 as provided in paragraph (b) of this subsection, prior to the transfer both the transferor and the  
36 transferee must appear in person before a gun dealer, with the firearm **and a valid permit issued**  
37 **under section 1 of this 2021 Act**, and request that the gun dealer perform a criminal background  
38 check on the transferee.

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

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

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

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

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

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

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

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

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

17 (c) The transfer of a firearm to:

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

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

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

21 (D) A transferor's sibling;

22 (E) A transferor's grandparent;

23 (F) A transferor's grandchild;

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

25 (H) A transferor's first cousin;

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

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

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

31 (A) The transfer is conducted or facilitated by a personal representative, as defined in ORS  
 32 111.005, or a trustee of a trust created in a will; and

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

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

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

40 **SECTION 5.** ORS 166.438 is amended to read:

41 166.438. (1) A transferor who is not a gun dealer may not transfer a firearm at a gun show un-  
 42 less the transferor:

43 (a)(A) **Verifies with the Department of State Police that the recipient has a valid permit**  
 44 **issued under section 1 of this 2021 Act;**

45 (B) Requests a criminal background check under ORS 166.436 prior to completing the transfer;

1        ~~[(B)]~~ (C) Receives a unique approval number from the department [*of State Police*] indicating  
2 that the recipient is qualified to complete the transfer; and

3        ~~[(C)]~~ (D) Has the recipient complete the form described in ORS 166.441; or

4        (b) Completes the transfer through a gun dealer.

5        (2) The transferor shall retain the completed form referred to in subsection (1) of this section  
6 for at least five years and shall make the completed form available to law enforcement agencies for  
7 the purpose of criminal investigations.

8        (3) A person who organizes a gun show shall post in a prominent place at the gun show a notice  
9 explaining the requirements of subsections (1) and (2) of this section. The person shall provide the  
10 form required by subsection (1) of this section to any person transferring a firearm at the gun show.

11        (4) Subsection (1) of this section does not apply if the transferee is licensed as a dealer under  
12 18 U.S.C. 923.

13        (5)(a) Failure to comply with the requirements of subsection (1), (2) or (3) of this section is a  
14 Class A misdemeanor.

15        (b) Notwithstanding paragraph (a) of this subsection, failure to comply with the requirements  
16 of subsection (1), (2) or (3) of this section is a Class C felony if the person has two or more previous  
17 convictions under this section.

18        (6) It is an affirmative defense to a charge of violating subsection (1) or (3) of this section that  
19 the person did not know, or reasonably could not know, that more than 25 firearms were at the site  
20 and available for transfer.

21        **SECTION 6. The amendments to ORS 166.412, 166.435 and 166.438 by sections 3 to 5 of this**  
22 **2021 Act apply to firearm transfers conducted on or after the effective date of this 2021 Act.**