

A-Engrossed
House Bill 2853

Ordered by the House June 4
Including House Amendments dated June 4

Sponsored by Representative GALIZIO

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.

[Expands prohibition on possessing and transferring firearm to include person found guilty except for insanity of misdemeanor.]

Requires specified state agencies and Psychiatric Security Review Board to provide Department of State Police with minimum information necessary to identify persons who are subject to certain court orders or about whom court has made certain findings for purpose of transmitting information to federal government.

Creates process by which specified persons who are barred from transporting, shipping, possessing or receiving firearm may petition for relief.

A BILL FOR AN ACT

1
2 Relating to firearms; creating new provisions; and amending ORS 166.274, 166.291, 166.412, 166.470,
3 426.160 and 427.293.

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

5 **SECTION 1. (1) The Department of Human Services, the Psychiatric Security Review**
6 **Board and the Judicial Department shall provide the Department of State Police with the**
7 **minimum information necessary to identify persons who:**

8 (a) **Have been committed by a court to the Department of Human Services under ORS**
9 **426.130, based on a finding that the person is dangerous to self or others;**

10 (b) **Are subject to a court order under ORS 426.130 prohibiting the person from pur-**
11 **chasing or possessing a firearm;**

12 (c) **Have been committed by a court to the Department of Human Services under ORS**
13 **427.290, based on a finding that the person is dangerous to self or others;**

14 (d) **Have been found by a court to lack fitness to proceed under ORS 161.370;**

15 (e) **Have been found guilty except for insanity of a crime under ORS 161.295 to 161.370;**

16 (f) **Have been found responsible except for insanity for an act under ORS 419C.411;**

17 (g) **Have been placed under the jurisdiction of the Psychiatric Security Review Board by**
18 **a court; or**

19 (h) **Have been committed to a state hospital or facility under ORS 161.327, 161.336 to**
20 **161.351 or 419C.529 to 419C.544.**

21 (2) **Upon receipt of the information described in this section, the Department of State**
22 **Police shall access and maintain the information and transmit the information to the federal**
23 **government as required under federal law.**

24 (3) **The Department of Human Services, the Psychiatric Security Review Board and the**
25 **Judicial Department shall enter into agreements with the Department of State Police de-**

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 **scribing the access to information provided under this section.**

2 **(4) The Department of State Police shall adopt rules:**

3 **(a) After consulting with the Department of Human Services, the Psychiatric Security**
4 **Review Board and the Judicial Department, describing the type of information provided to**
5 **the Department of State Police under this section; and**

6 **(b) Describing the method and manner of maintaining the information described in this**
7 **section and transmitting the information to the federal government.**

8 **(5) As used in this section, "minimum information necessary" means data elements or**
9 **nominal information that is necessary or required under federal law to accurately identify a**
10 **person described in this section and includes the person's name, date of birth, gender and**
11 **reference information that identifies the originating agency or court and enables the origi-**
12 **inating agency or court to locate an underlying record or file of a person described in this**
13 **section. "Minimum information necessary" does not include any medical, psychiatric or**
14 **psychological information, case histories or files of a person described in this section or any**
15 **record or file of an originating agency or court.**

16 **SECTION 2.** ORS 426.160 is amended to read:

17 426.160. The judge shall cause to be recorded in the court records a full account of proceedings
18 had at all hearings and examinations conducted pursuant to ORS 426.005, 426.060 to 426.170, 426.217,
19 426.228, 426.255 to 426.292, 426.300 to 426.309, 426.335, 426.385 and 426.395, together with the judg-
20 ments and orders of the court and a copy of the orders issued. The account of the proceedings and
21 transcripts of testimony if taken thereat shall be delivered to the court clerk or court administrator
22 who shall cause it to be sealed and neither the account of the proceedings nor the transcript of
23 testimony if taken shall be disclosed to any person except:

24 **(1) The court shall, pursuant to rules adopted by the Department of State Police, trans-**
25 **mit the minimum information necessary, as defined in section 1 of this 2009 Act, to the De-**
26 **partment of State Police bureau of criminal identification for persons described in section 1**
27 **(1)(a) or (b) of this 2009 Act to enable the department to access and maintain the information**
28 **and transmit the information to the federal government as required under federal law;**

29 *[(1)]* **(2) As provided in ORS 426.070 (5)(c), 426.130 (3) or 426.170;**

30 *[(2)]* **(3) Upon request of the person subject to the proceedings, the legal representatives, or the**
31 **attorney of the person; or**

32 *[(3)]* **(4) Pursuant to court order.**

33 **SECTION 3.** ORS 427.293 is amended to read:

34 427.293. (1) The court shall cause to be recorded in the court records:

35 (a) A full account of all proceedings conducted under ORS 427.235 to 427.290;

36 (b) Reports submitted to the court under ORS 427.270;

37 (c) The judgments and orders of the court; and

38 (d) A copy of the judgments and orders issued.

39 (2) The account of the proceedings, including any transcript of testimony, and reports submitted
40 to the court under ORS 427.270 shall be delivered to the court clerk or court administrator who
41 shall cause them to be sealed. The account of the proceedings, the reports and any transcript of
42 testimony may not be disclosed to any person except *[upon]*:

43 **(a) The court shall, pursuant to rules adopted by the Department of State Police, trans-**
44 **mit the minimum information necessary, as defined in section 1 of this 2009 Act, to the De-**
45 **partment of State Police bureau of criminal identification for persons described in section 1**

1 **(1)(c) of this 2009 Act to enable the department to maintain the information and transmit the**
2 **information to the federal government as required under federal law;**

3 [(a)] **(b) Upon** request of the person subject to the proceedings or the legal representative or
4 attorney of the person; or

5 [(b)] **(c) Pursuant to an** order of the court.

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

7 166.412. (1) As used in this section:

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

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

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

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

14 (e) “Firearms transaction thumbprint form” means a form provided by the department under
15 subsection [(12)] **(11)** of this section;

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

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

20 (h) “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 [(13)] **(12)** of this section, a gun dealer shall
23 comply with the following before a handgun is delivered to a purchaser:

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

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

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

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

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

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

35 (C) The place of transfer;

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

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

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

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

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

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

45 (f) The gun dealer may destroy the firearms transaction thumbprint form five years after the

1 completion of the firearms transaction thumbprint form.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

40 *[(8) The Department of Human Services shall provide the Department of State Police with direct*
41 *electronic access to information from the Department of Human Services' database of information*
42 *identifying persons meeting the criteria in ORS 166.470 (1)(e) and (f) who were committed or subject*
43 *to an order under ORS 426.130. The Department of State Police and the Department of Human Services*
44 *shall enter into an agreement describing the access to information under this subsection.]*

45 *[(9)]* (8) A law enforcement agency may inspect the records of a gun dealer relating to transfers

1 of handguns with the consent of a gun dealer in the course of a reasonable inquiry during a criminal
2 investigation or under the authority of a properly authorized subpoena or search warrant.

3 [(10)] (9) When a handgun is delivered, it shall be unloaded.

4 [(11)] (10) In accordance with applicable provisions of ORS chapter 183, the Superintendent of
5 State Police may adopt rules necessary for:

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

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

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

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

11 [(12)] (11) The department shall publish the firearms transaction thumbprint form and shall fur-
12 nish the form to gun dealers on application at cost.

13 [(13)] (12) This section does not apply to transactions between persons licensed as dealers under
14 18 U.S.C. 923.

15 **SECTION 5. (1) A person barred from transporting, shipping, possessing or receiving a**
16 **firearm may file a petition with the Psychiatric Security Review Board for relief from the**
17 **bar if:**

18 (a) **The person is barred from possessing a firearm under ORS 166.250 (1)(c)(D) or (E);**

19 (b) **The person is barred from receiving a firearm under:**

20 (A) **ORS 166.470 (1)(b) and the bar is the result of the person having been found guilty**
21 **except for insanity of a felony; or**

22 (B) **ORS 166.470 (1)(e) or (f); or**

23 (c) **The person is barred from possessing, receiving, shipping or transporting a firearm**
24 **under 18 U.S.C. 922(d)(4) or (g)(4) as the result of a state mental health determination.**

25 (2) **The petitioner shall serve a copy of the petition on:**

26 (a) **The Department of Human Services; and**

27 (b) **The district attorney in each county in which:**

28 (A) **The person was committed by a court to the Department of Human Services, or ad-**
29 **judicated by a court as mentally ill, under ORS 426.130;**

30 (B) **The person was committed by a court to the Department of Human Services, or ad-**
31 **judicated by a court as mentally retarded, under ORS 427.290;**

32 (C) **The person was found guilty except for insanity under ORS 161.295;**

33 (D) **The person was found responsible except for insanity under ORS 419C.411; or**

34 (E) **The person was found by a court to lack fitness to proceed under ORS 161.370.**

35 (3) **Following receipt of the petition, the board shall conduct a contested case hearing,**
36 **make written findings of fact and conclusions of law on the issues before the board and issue**
37 **a final order.**

38 (4) **The state and any person or entity described in subsection (2) of this section may**
39 **appear and object to and present evidence relevant to the relief sought by the petitioner.**

40 (5) **The board shall grant the relief requested in the petition if the petitioner demon-**
41 **strates, based on the petitioner's reputation, the petitioner's record, the circumstances**
42 **surrounding the firearm disability and any other evidence in the record, that the petitioner**
43 **will not be likely to act in a manner that is dangerous to public safety and that granting the**
44 **relief would not be contrary to the public interest.**

45 (6) **If the board grants the relief requested in the petition, the board shall provide to the**

1 Department of State Police the minimum information necessary, as defined in section 1 of
2 this 2009 Act, to enable the department to:

3 (a) Maintain the information and transmit the information to the federal government as
4 required under federal law; and

5 (b) Maintain a record of the person's relief from the disqualification to possess or receive
6 a firearm under ORS 166.250 (1)(c)(D) or (E) or 166.470 (1)(b), (e) or (f).

7 (7) The petitioner may petition for judicial review of a final order of the board. The pe-
8 tition shall be filed in the circuit court of a county described in subsection (2)(b) of this
9 section. The review shall be conducted de novo and without a jury.

10 (8) A petitioner may take an appeal from the circuit court to the Court of Appeals. Re-
11 view by the Court of Appeals shall be conducted in accordance with ORS 183.500.

12 (9) A person may file a petition for relief under this section no more than once every two
13 years.

14 (10) The board shall adopt procedural rules to carry out the provisions of this section.

15 (11) As used in this section, "state mental health determination" means:

16 (a) A finding by a court that a person lacks fitness to proceed under ORS 161.370;

17 (b) A finding that a person is guilty except for insanity of a crime under ORS 161.295 or
18 responsible except for insanity of an act under ORS 419C.411 or any determination by the
19 Psychiatric Security Review Board thereafter;

20 (c) A commitment by a court to the Department of Human Services, or an adjudication
21 by a court that a person is mentally ill, under ORS 426.130; or

22 (d) A commitment by a court to the Department of Human Services, or an adjudication
23 by a court that a person is mentally retarded, under ORS 427.290.

24 **SECTION 6.** ORS 166.274 is amended to read:

25 166.274. (1) A person barred from possessing [*a firearm under ORS 166.250 (1)(c)(A), (B), (D) or*
26 *(E) or barred from*] or purchasing a firearm [*under ORS 166.470*] may file a petition for relief from
27 the bar [*in:*] in accordance with subsection (2) of this section if:

28 (a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) or (B);
29 or

30 (b) The person is barred from purchasing a firearm under:

31 (A) ORS 166.470 (1)(a), (c), (d) or (g); or

32 (B) ORS 166.470 (1)(b) and the bar is the result of the person having been convicted of a
33 felony.

34 (2) A petition for relief described in this section must be filed in:

35 (a) A justice court in the petitioner's county of residence that is reasonably accessible to the
36 petitioner; or

37 (b) If no justice court is reasonably accessible, the circuit court.

38 [(2)] (3) A person may apply once per calendar year for relief under the provisions of this sec-
39 tion.

40 [(3)(a)] (4)(a) A person petitioning for relief under this section shall serve a copy of the petition
41 on:

42 (A) The city chief of police if the court in which the petition is filed is located in a city; or

43 (B) The sheriff of the county in which the court is located.

44 (b) The copy of the petition shall be served on the chief of police or sheriff at the same time the
45 petition is filed at the court.

1 [(4)(a)] (5)(a) When a petition is denied, the judge shall cause that information to be entered into
2 the Department of State Police computerized criminal history files.

3 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
4 the petitioner to be entered into the Department of State Police computerized criminal history files.
5 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
6 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
7 notify the court that granted relief under this section. The court shall review the order granting
8 relief and determine whether to rescind the order. The Department of State Police may charge a
9 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

10 [(5)] (6) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city,
11 county, district or other political subdivision or public corporation in this state, without appearance
12 by attorney, may appear as a party to an action under this section.

13 [(6)] (7) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief
14 shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the
15 petitioner does not pose a threat to the safety of the public or the petitioner.

16 [(7)] (8) A person barred from possessing or purchasing a firearm because the person, while a
17 minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if
18 committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not
19 eligible to petition for relief under this section until more than four years have passed since the
20 person was discharged from the jurisdiction of the juvenile court.

21 [(8)] (9) Petitions filed under this section shall be heard and disposed of within 15 judicial days
22 of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge
23 shall then make findings and conclusions and issue a judgment based on the findings and conclusions
24 in accordance with the requirements of law.

25 [(9)] (10) Filing fees shall be as for any civil action filed in the court.

26 [(10)(a)] (11)(a) Initial appeals of petitions shall be heard de novo.

27 (b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the
28 same manner as for any other civil action.

29 (c) If the governmental entity files an appeal under this subsection and does not prevail, it shall
30 be ordered to pay the attorney fees for the prevailing party.

31 **SECTION 7.** ORS 166.291 is amended to read:

32 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed
33 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set
34 out in this section, shall issue the person a concealed handgun license if the person:

35 (a)(A) Is a citizen of the United States; or

36 (B) Is a legal resident alien who can document continuous residency in the county for at least
37 six months and has declared in writing to the United States Citizenship and Immigration Services
38 the intent to acquire citizenship status and can present proof of the written declaration to the
39 sheriff at the time of application for the license;

40 (b) Is at least 21 years of age;

41 (c) Is a resident of the county;

42 (d) Has no outstanding warrants for arrest;

43 (e) Is not free on any form of pretrial release;

44 (f) Demonstrates competence with a handgun by any one of the following:

45 (A) Completion of any hunter education or hunter safety course approved by the State Depart-

1 ment of Fish and Wildlife or a similar agency of another state if handgun safety was a component
2 of the course;

3 (B) Completion of any National Rifle Association firearms safety or training course if handgun
4 safety was a component of the course;

5 (C) Completion of any firearms safety or training course or class available to the general public
6 offered by law enforcement, community college, or private or public institution or organization or
7 firearms training school utilizing instructors certified by the National Rifle Association or a law
8 enforcement agency if handgun safety was a component of the course;

9 (D) Completion of any law enforcement firearms safety or training course or class offered for
10 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-
11 cers if handgun safety was a component of the course;

12 (E) Presents evidence of equivalent experience with a handgun through participation in organ-
13 ized shooting competition or military service;

14 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been
15 revoked; or

16 (G) Completion of any firearms training or safety course or class conducted by a firearms in-
17 structor certified by a law enforcement agency or the National Rifle Association if handgun safety
18 was a component of the course;

19 (g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295,
20 of a felony;

21 (h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS
22 161.295, of a misdemeanor within the four years prior to the application;

23 (i) Has not been committed to the Department of Human Services under ORS 426.130;

24 (j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that
25 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

26 (k) Has been discharged from the jurisdiction of the juvenile court for more than four years if,
27 while a minor, the person was found to be within the jurisdiction of the juvenile court for having
28 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
29 volving violence, as defined in ORS 166.470;

30 (L) Has not been convicted of an offense involving controlled substances or participated in a
31 court-supervised drug diversion program, except this disability does not operate to exclude a person
32 if:

33 (A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed
34 a court-supervised drug diversion program under ORS 135.907; or

35 (B) The person has completed a court-supervised drug diversion program under ORS 135.907 and
36 has not been convicted of violating ORS 475.864 (3);

37 (m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866,
38 107.700 to 107.735 or 163.738;

39 (n) Has not received a dishonorable discharge from the Armed Forces of the United States; and

40 (o) Is not required to register as a sex offender in any state.

41 (2) A person who has been granted relief under ORS 166.274 or 166.293 **or section 5 of this 2009**
42 **Act** or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of this state or
43 equivalent laws of other jurisdictions is not subject to the disabilities in subsection (1)(g) to (L) of
44 this section.

45 (3) Before the sheriff may issue a license:

1 (a) The application must state the applicant’s legal name, current address and telephone number,
2 date and place of birth, hair and eye color and height and weight. The application must also list the
3 applicant’s residence address or addresses for the previous three years. The application must contain
4 a statement by the applicant that the applicant meets the requirements of subsection (1) of this
5 section. The application may include the Social Security number of the applicant if the applicant
6 voluntarily provides this number. The application must be signed by the applicant.

7 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff
8 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to
9 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal
10 records check is necessary, the sheriff shall request the Department of State Police to conduct the
11 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal
12 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records
13 check and may not keep any record of the fingerprints. The Department of State Police shall report
14 the results of the fingerprint-based criminal records check to the sheriff. The Department of State
15 Police shall also furnish the sheriff with any information about the applicant that the Department
16 of State Police may have in its possession from its central bureau of criminal identification includ-
17 ing, but not limited to, manual or computerized criminal offender information.

18 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-
19 quest. The forms shall be uniform throughout the state in substantially the following form:
20

21
22 APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

23 Date_____

24 I hereby declare as follows:

25 I am a citizen of the United States or a legal resident alien who can document continuous res-
26 idency in the county for at least six months and have declared in writing to the United States Cit-
27 izenship and Immigration Services my intention to become a citizen and can present proof of the
28 written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have
29 been discharged from the jurisdiction of the juvenile court for more than four years if, while a mi-
30 nor, I was found to be within the jurisdiction of the juvenile court for having committed an act that,
31 if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined
32 in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under
33 ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years,
34 been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a
35 misdemeanor. Except as provided in ORS 166.291 (1)(L), I have not been convicted of an offense in-
36 volving controlled substances or completed a court-supervised drug diversion program. There are
37 no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not
38 been committed to the Department of Human Services under ORS 426.130, nor have I been found
39 mentally ill and presently subject to an order prohibiting me from purchasing or possessing a
40 firearm because of mental illness. If any of the previous conditions do apply to me, I have been
41 granted relief or wish to petition for relief from the disability under ORS 166.274 or 166.293 **or**
42 **section 5 of this 2009 Act** or 18 U.S.C. 925(c) or have had the records expunged. I am not subject
43 to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or
44 163.738. I have never received a dishonorable discharge from the Armed Forces of the United States.
45 I am not required to register as a sex offender in any state. I understand I will be fingerprinted and

1 photographed.

2

3 Legal name _____

4 Age _____ Date of birth _____

5 Place of birth _____

6 Social Security number _____

7 (Disclosure of your Social Security account number is voluntary. Solicitation of the number is au-
8 thorized under ORS 166.291. It will be used only as a means of identification.)

9

10 Proof of identification (Two pieces of current identification are required, one of which must bear a
11 photograph of the applicant. The type of identification and the number on the identification are to
12 be filled in by the sheriff.):

13 1. _____

14 2. _____

15

16 Height _____ Weight _____

17 Hair color _____ Eye color _____

18

19 Current address _____

(List residence addresses for the
past three years on the back.)

22

23 City _____ County _____ Zip _____

24 Phone _____

25

26 I have read the entire text of this application, and the statements therein are correct and true.
27 (Making false statements on this application is a misdemeanor.)

28

(Signature of Applicant)

30

31 Character references.

32

Name Address

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Name Address

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37 Approved _____ Disapproved _____ by _____

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39 Competence with handgun demonstrated by _____ (to be filled in by sheriff) Date _____ Fee
40 Paid _____

41 License No. _____

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44 (5)(a) Fees for concealed handgun licenses are:

45 (A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.

1 (B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.

2 (C) \$15 to the sheriff for the duplication of a license because of loss or change of address.

3 (b) The sheriff may enter into an agreement with the Department of Transportation to produce
4 the concealed handgun license.

5 (6) No civil or criminal liability shall attach to the sheriff or any authorized representative en-
6 gaged in the receipt and review of, or an investigation connected with, any application for, or in the
7 issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful
8 performance of duties under those sections.

9 (7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff
10 shall enter the applicant's name into the Law Enforcement Data System indicating that the person
11 is an applicant for a concealed handgun license or is a license holder.

12 (8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section
13 for a resident of a contiguous state who has a compelling business interest or other legitimate
14 demonstrated need.

15 (9) For purposes of subsection (1)(c) of this section, a person is a resident of a county if the
16 person:

17 (a) Has a current Oregon driver license issued to the person showing a residence address in the
18 county;

19 (b) Is registered to vote in the county and has a memorandum card issued to the person under
20 ORS 247.181 showing a residence address in the county;

21 (c) Has documentation showing that the person currently leases or owns real property in the
22 county; or

23 (d) Has documentation showing that the person filed an Oregon tax return for the most recent
24 tax year showing a residence address in the county.

25 **SECTION 8.** ORS 166.470 is amended to read:

26 166.470. (1) Unless relief has been granted under ORS 166.274[,] **or section 5 of this 2009 Act**
27 **or** 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another jurisdiction,
28 a person may not intentionally sell, deliver or otherwise transfer any firearm when the transferor
29 knows or reasonably should know that the recipient:

30 (a) Is under 18 years of age;

31 (b) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a
32 felony;

33 (c) Has any outstanding felony warrants for arrest;

34 (d) Is free on any form of pretrial release for a felony;

35 (e) Was committed to the Department of Human Services under ORS 426.130;

36 (f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130
37 that the person be prohibited from purchasing or possessing a firearm as a result of that mental
38 illness; or

39 (g) Has been convicted of a misdemeanor involving violence or found guilty, except for insanity
40 under ORS 161.295, of a misdemeanor involving violence within the previous four years. As used in
41 this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160,
42 163.187, 163.190, 163.195 or 166.155 (1)(b).

43 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or
44 reasonably should know is stolen.

45 (3) Subsection (1)(a) of this section does not prohibit:

1 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a
2 minor from transferring to the minor a firearm, other than a handgun; or

3 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other
4 lawful purpose.

5 (4) Violation of this section is a Class A misdemeanor.

6 **SECTION 9.** ORS 166.274, as amended by section 6 of this 2009 Act, is amended to read:

7 166.274. (1) A person barred from possessing **a firearm under ORS 166.250 (1)(c)(A), (B), (D)**
8 **or (E) or barred from purchasing a firearm under ORS 166.470** may file a petition for relief from
9 the bar in: *[accordance with subsection (2) of this section if:]*

10 *[(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) or (B); or]*

11 *[(b) The person is barred from purchasing a firearm under:]*

12 *[(A) ORS 166.470 (1)(a), (c), (d) or (g); or]*

13 *[(B) ORS 166.470 (1)(b) and the bar is the result of the person having been convicted of a felony.]*

14 *[(2) A petition for relief described in this section must be filed in:]*

15 (a) A justice court in the petitioner's county of residence that is reasonably accessible to the
16 petitioner; or

17 (b) If no justice court is reasonably accessible, the circuit court.

18 *[(3)] (2)* A person may apply once per calendar year for relief under the provisions of this sec-
19 tion.

20 *[(4)(a)] (3)(a)* A person petitioning for relief under this section shall serve a copy of the petition
21 on:

22 (A) The city chief of police if the court in which the petition is filed is located in a city; or

23 (B) The sheriff of the county in which the court is located.

24 (b) The copy of the petition shall be served on the chief of police or sheriff at the same time the
25 petition is filed at the court.

26 *[(5)(a)] (4)(a)* When a petition is denied, the judge shall cause that information to be entered into
27 the Department of State Police computerized criminal history files.

28 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
29 the petitioner to be entered into the Department of State Police computerized criminal history files.
30 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
31 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
32 notify the court that granted relief under this section. The court shall review the order granting
33 relief and determine whether to rescind the order. The Department of State Police may charge a
34 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

35 *[(6)] (5)* Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city,
36 county, district or other political subdivision or public corporation in this state, without appearance
37 by attorney, may appear as a party to an action under this section.

38 *[(7)] (6)* If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief
39 shall be granted when the petitioner demonstrates, by clear and convincing evidence, that the
40 petitioner does not pose a threat to the safety of the public or the petitioner.

41 *[(8)] (7)* A person barred from possessing or purchasing a firearm because the person, while a
42 minor, was found to be within the jurisdiction of the juvenile court for committing an act which, if
43 committed by an adult, would have constituted a felony or a misdemeanor involving violence, is not
44 eligible to petition for relief under this section until more than four years have passed since the
45 person was discharged from the jurisdiction of the juvenile court.

1 [(9)] (8) Petitions filed under this section shall be heard and disposed of within 15 judicial days
2 of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge
3 shall then make findings and conclusions and issue a judgment based on the findings and conclusions
4 in accordance with the requirements of law.

5 [(10)] (9) Filing fees shall be as for any civil action filed in the court.

6 [(11)(a)] (10)(a) Initial appeals of petitions shall be heard de novo.

7 (b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the
8 same manner as for any other civil action.

9 (c) If the governmental entity files an appeal under this subsection and does not prevail, it shall
10 be ordered to pay the attorney fees for the prevailing party.

11 **SECTION 10.** ORS 166.291, as amended by section 7 of this 2009 Act, is amended to read:

12 166.291. (1) The sheriff of a county, upon a person's application for an Oregon concealed
13 handgun license, upon receipt of the appropriate fees and after compliance with the procedures set
14 out in this section, shall issue the person a concealed handgun license if the person:

15 (a)(A) Is a citizen of the United States; or

16 (B) Is a legal resident alien who can document continuous residency in the county for at least
17 six months and has declared in writing to the United States Citizenship and Immigration Services
18 the intent to acquire citizenship status and can present proof of the written declaration to the
19 sheriff at the time of application for the license;

20 (b) Is at least 21 years of age;

21 (c) Is a resident of the county;

22 (d) Has no outstanding warrants for arrest;

23 (e) Is not free on any form of pretrial release;

24 (f) Demonstrates competence with a handgun by any one of the following:

25 (A) Completion of any hunter education or hunter safety course approved by the State Depart-
26 ment of Fish and Wildlife or a similar agency of another state if handgun safety was a component
27 of the course;

28 (B) Completion of any National Rifle Association firearms safety or training course if handgun
29 safety was a component of the course;

30 (C) Completion of any firearms safety or training course or class available to the general public
31 offered by law enforcement, community college, or private or public institution or organization or
32 firearms training school utilizing instructors certified by the National Rifle Association or a law
33 enforcement agency if handgun safety was a component of the course;

34 (D) Completion of any law enforcement firearms safety or training course or class offered for
35 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-
36 cers if handgun safety was a component of the course;

37 (E) Presents evidence of equivalent experience with a handgun through participation in organ-
38 ized shooting competition or military service;

39 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been
40 revoked; or

41 (G) Completion of any firearms training or safety course or class conducted by a firearms in-
42 structor certified by a law enforcement agency or the National Rifle Association if handgun safety
43 was a component of the course;

44 (g) Has never been convicted of a felony or found guilty, except for insanity under ORS 161.295,
45 of a felony;

1 (h) Has not been convicted of a misdemeanor or found guilty, except for insanity under ORS
2 161.295, of a misdemeanor within the four years prior to the application;

3 (i) Has not been committed to the Department of Human Services under ORS 426.130;

4 (j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that
5 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

6 (k) Has been discharged from the jurisdiction of the juvenile court for more than four years if,
7 while a minor, the person was found to be within the jurisdiction of the juvenile court for having
8 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
9 volving violence, as defined in ORS 166.470;

10 (L) Has not been convicted of an offense involving controlled substances or participated in a
11 court-supervised drug diversion program, except this disability does not operate to exclude a person
12 if:

13 (A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed
14 a court-supervised drug diversion program under ORS 135.907; or

15 (B) The person has completed a court-supervised drug diversion program under ORS 135.907 and
16 has not been convicted of violating ORS 475.864 (3);

17 (m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866,
18 107.700 to 107.735 or 163.738;

19 (n) Has not received a dishonorable discharge from the Armed Forces of the United States; and

20 (o) Is not required to register as a sex offender in any state.

21 (2) A person who has been granted relief under ORS 166.274 or 166.293 [*or section 5 of this 2009*
22 *Act*] or 18 U.S.C. 925(c) or has had the person's record expunged under the laws of this state or
23 equivalent laws of other jurisdictions is not subject to the disabilities in subsection (1)(g) to (L) of
24 this section.

25 (3) Before the sheriff may issue a license:

26 (a) The application must state the applicant's legal name, current address and telephone number,
27 date and place of birth, hair and eye color and height and weight. The application must also list the
28 applicant's residence address or addresses for the previous three years. The application must contain
29 a statement by the applicant that the applicant meets the requirements of subsection (1) of this
30 section. The application may include the Social Security number of the applicant if the applicant
31 voluntarily provides this number. The application must be signed by the applicant.

32 (b) The applicant must submit to fingerprinting and photographing by the sheriff. The sheriff
33 shall fingerprint and photograph the applicant and shall conduct any investigation necessary to
34 corroborate the requirements listed under subsection (1) of this section. If a nationwide criminal
35 records check is necessary, the sheriff shall request the Department of State Police to conduct the
36 check, including fingerprint identification, through the Federal Bureau of Investigation. The Federal
37 Bureau of Investigation shall return the fingerprint cards used to conduct the criminal records
38 check and may not keep any record of the fingerprints. The Department of State Police shall report
39 the results of the fingerprint-based criminal records check to the sheriff. The Department of State
40 Police shall also furnish the sheriff with any information about the applicant that the Department
41 of State Police may have in its possession from its central bureau of criminal identification includ-
42 ing, but not limited to, manual or computerized criminal offender information.

43 (4) Application forms for concealed handgun licenses shall be supplied by the sheriff upon re-
44 quest. The forms shall be uniform throughout the state in substantially the following form:
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APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

Date _____

I hereby declare as follows:

I am a citizen of the United States or a legal resident alien who can document continuous residency in the county for at least six months and have declared in writing to the United States Citizenship and Immigration Services my intention to become a citizen and can present proof of the written declaration to the sheriff at the time of this application. I am at least 21 years of age. I have been discharged from the jurisdiction of the juvenile court for more than four years if, while a minor, I was found to be within the jurisdiction of the juvenile court for having committed an act that, if committed by an adult, would constitute a felony or a misdemeanor involving violence, as defined in ORS 166.470. I have never been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a felony in the State of Oregon or elsewhere. I have not, within the last four years, been convicted of a misdemeanor or found guilty, except for insanity under ORS 161.295, of a misdemeanor. Except as provided in ORS 166.291 (1)(L), I have not been convicted of an offense involving controlled substances or completed a court-supervised drug diversion program. There are no outstanding warrants for my arrest and I am not free on any form of pretrial release. I have not been committed to the Department of Human Services under ORS 426.130, nor have I been found mentally ill and presently subject to an order prohibiting me from purchasing or possessing a firearm because of mental illness. If any of the previous conditions do apply to me, I have been granted relief or wish to petition for relief from the disability under ORS 166.274 or 166.293 [or section 5 of this 2009 Act] or 18 U.S.C. 925(c) or have had the records expunged. I am not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866, 107.700 to 107.735 or 163.738. I have never received a dishonorable discharge from the Armed Forces of the United States. I am not required to register as a sex offender in any state. I understand I will be fingerprinted and photographed.

Legal name _____
Age _____ Date of birth _____
Place of birth _____
Social Security number _____

(Disclosure of your Social Security account number is voluntary. Solicitation of the number is authorized under ORS 166.291. It will be used only as a means of identification.)

Proof of identification (Two pieces of current identification are required, one of which must bear a photograph of the applicant. The type of identification and the number on the identification are to be filled in by the sheriff.):

- 1. _____
- 2. _____

Height _____ Weight _____
Hair color _____ Eye color _____
Current address _____

(List residence addresses for the

past three years on the back.)

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City _____ County _____ Zip _____

Phone _____

I have read the entire text of this application, and the statements therein are correct and true.
(Making false statements on this application is a misdemeanor.)

(Signature of Applicant)

Character references.

Name	Address

Approved _____ Disapproved _____ by _____

Competence with handgun demonstrated by _____ (to be filled in by sheriff) Date _____ Fee Paid _____
License No. _____

- (5)(a) Fees for concealed handgun licenses are:
 - (A) \$15 to the Department of State Police for conducting the fingerprint check of the applicant.
 - (B) \$50 to the sheriff for the issuance or renewal of a concealed handgun license.
 - (C) \$15 to the sheriff for the duplication of a license because of loss or change of address.
- (b) The sheriff may enter into an agreement with the Department of Transportation to produce the concealed handgun license.
- (6) No civil or criminal liability shall attach to the sheriff or any authorized representative engaged in the receipt and review of, or an investigation connected with, any application for, or in the issuance, denial or revocation of, any license under ORS 166.291 to 166.295 as a result of the lawful performance of duties under those sections.
- (7) Immediately upon acceptance of an application for a concealed handgun license, the sheriff shall enter the applicant's name into the Law Enforcement Data System indicating that the person is an applicant for a concealed handgun license or is a license holder.
- (8) The county sheriff may waive the residency requirement in subsection (1)(c) of this section for a resident of a contiguous state who has a compelling business interest or other legitimate demonstrated need.
- (9) For purposes of subsection (1)(c) of this section, a person is a resident of a county if the person:
 - (a) Has a current Oregon driver license issued to the person showing a residence address in the county;
 - (b) Is registered to vote in the county and has a memorandum card issued to the person under ORS 247.181 showing a residence address in the county;

1 (c) Has documentation showing that the person currently leases or owns real property in the
2 county; or

3 (d) Has documentation showing that the person filed an Oregon tax return for the most recent
4 tax year showing a residence address in the county.

5 **SECTION 11.** ORS 166.470, as amended by section 8 of this 2009 Act, is amended to read:

6 166.470. (1) Unless relief has been granted under ORS 166.274 or [*section 5 of this 2009 Act or*]
7 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another jurisdiction, a
8 person may not intentionally sell, deliver or otherwise transfer any firearm when the transferor
9 knows or reasonably should know that the recipient:

10 (a) Is under 18 years of age;

11 (b) Has been convicted of a felony or found guilty, except for insanity under ORS 161.295, of a
12 felony;

13 (c) Has any outstanding felony warrants for arrest;

14 (d) Is free on any form of pretrial release for a felony;

15 (e) Was committed to the Department of Human Services under ORS 426.130;

16 (f) After January 1, 1990, was found to be mentally ill and subject to an order under ORS 426.130
17 that the person be prohibited from purchasing or possessing a firearm as a result of that mental
18 illness; or

19 (g) Has been convicted of a misdemeanor involving violence or found guilty, except for insanity
20 under ORS 161.295, of a misdemeanor involving violence within the previous four years. As used in
21 this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160,
22 163.187, 163.190, 163.195 or 166.155 (1)(b).

23 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or
24 reasonably should know is stolen.

25 (3) Subsection (1)(a) of this section does not prohibit:

26 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a
27 minor from transferring to the minor a firearm, other than a handgun; or

28 (b) The temporary transfer of any firearm to a minor for hunting, target practice or any other
29 lawful purpose.

30 (4) Violation of this section is a Class A misdemeanor.

31 **SECTION 12.** (1) **Section 1 of this 2009 Act applies to records and information in the**
32 **possession of the Department of Human Services, the Psychiatric Security Review Board or**
33 **the Judicial Department on or after the effective date of this 2009 Act, irrespective of when**
34 **the record or information was created.**

35 **(2)(a) When the Department of Human Services determines that the department has re-**
36 **ceived a sufficient legislative appropriation or federal funding to carry out the provisions of**
37 **section 1 of this 2009 Act, the department shall adopt a rule so indicating. The department**
38 **shall notify Legislative Counsel when the rule is adopted.**

39 **(b) When the Chief Justice of the Supreme Court determines that the Judicial Depart-**
40 **ment has received a sufficient legislative appropriation or federal funding to carry out the**
41 **provisions of section 1 of this 2009 Act, the Chief Justice shall issue an order so indicating.**
42 **The Chief Justice shall notify Legislative Counsel when the order is issued.**

43 **(c) When the Psychiatric Security Review Board determines that the board has received**
44 **a sufficient legislative appropriation or federal funding to carry out the provisions of section**
45 **1 of this 2009 Act, the board shall adopt a rule so indicating. The board shall notify Legisla-**

1 tive Counsel when the rule is adopted.

2 (3)(a) The Department of Human Services need not comply with section 1 of this 2009
3 Act or the amendments to ORS 166.412 by section 4 of this 2009 Act until the rule described
4 in subsection (2)(a) of this section is adopted.

5 (b) The Judicial Department need not comply with section 1 of this 2009 Act until the
6 Chief Justice issues the order described in subsection (2)(b) of this section.

7 (c) The Psychiatric Security Review Board need not comply with section 1 of this 2009
8 Act until the rule described in subsection (2)(c) of this section is adopted.

9 (4)(a) When the Chief Justice of the Supreme Court determines that the Judicial De-
10 partment has received a sufficient legislative appropriation or federal funding to carry out
11 the provisions of the amendments to ORS 426.160 and 427.293 by sections 2 and 3 of this 2009
12 Act, the Chief Justice shall issue an order so indicating. The Chief Justice shall notify Leg-
13 islative Counsel when the order is issued.

14 (b) The amendments to ORS 426.160 and 427.293 by sections 2 and 3 of this 2009 Act be-
15 come operative on the date the order described in paragraph (a) of this subsection is issued.

16 SECTION 13. (1) When the Psychiatric Security Review Board determines that the board
17 has received a sufficient legislative appropriation or federal funding to carry out the pro-
18 visions of section 5 of this 2009 Act, the board shall adopt a rule so indicating. The board
19 shall notify Legislative Counsel upon adoption of the rule.

20 (2) Section 5 of this 2009 Act and the amendments to ORS 166.274, 166.291 and 166.470 by
21 sections 6 to 8 of this 2009 Act become operative on the date the rule described in subsection
22 (1) of this section is adopted.

23 SECTION 14. (1) Sections 5 and 13 of this 2009 Act are repealed on January 2, 2012.

24 (2) The amendments to ORS 166.274, 166.291 and 166.470 by sections 9 to 11 of this 2009
25 Act become operative on January 2, 2012.

26 SECTION 15. (1) The repeal of section 5 of this 2009 Act by section 14 of this 2009 Act
27 does not affect any petition for relief filed pursuant to section 5 of this 2009 Act with the
28 Psychiatric Security Review Board before January 2, 2012. Any proceeding commenced under
29 section 5 of this 2009 Act before January 2, 2012, shall continue to be governed by the pro-
30 visions of section 5 of this 2009 Act.

31 (2) Nothing in the repeal of section 5 of this 2009 Act by section 14 of this 2009 Act or the
32 amendments to ORS 166.274, 166.291 and 166.470 by sections 9 to 11 of this 2009 Act affects
33 the relief granted to a person under section 5 of this 2009 Act.

34