

House Bill 2853

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 **as introduced**.

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

A BILL FOR AN ACT

Relating to firearms; creating new provisions; and amending ORS 166.250, 166.291 and 166.470.

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

SECTION 1. ORS 166.470 is amended to read:

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

(a) Is under 18 years of age;

(b) Has been convicted of a felony or found guilty[,] except for insanity under ORS 161.295[,] of a *[felony]* **crime**;

(c) Has any outstanding felony warrants for arrest;

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

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

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

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

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

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

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

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

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

SECTION 2. ORS 166.250 is amended to read:

166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,

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.

1 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm
 2 if the person knowingly:

3 (a) Carries any firearm concealed upon the person;

4 (b) Possesses a handgun that is concealed and readily accessible to the person within any vehi-
 5 cle; or

6 (c) Possesses a firearm and:

7 (A) Is under 18 years of age;

8 (B)(i) While a minor, was found to be within the jurisdiction of the juvenile court for having
 9 committed an act which, if committed by an adult, would constitute a felony or a misdemeanor in-
 10 volving violence, as defined in ORS 166.470; and

11 (ii) Was discharged from the jurisdiction of the juvenile court within four years prior to being
 12 charged under this section;

13 (C) Has been convicted of a felony or found guilty[,] except for insanity under ORS 161.295[,]
 14 of a [*felony*] **crime**;

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

16 (E) Was found to be mentally ill and subject to an order under ORS 426.130 that the person be
 17 prohibited from purchasing or possessing a firearm as a result of that mental illness.

18 (2) This section does not prohibit:

19 (a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from pos-
 20 ssuming a firearm:

21 (A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or
 22 guardian or by another person with the consent of the minor's parent or guardian; or

23 (B) Temporarily for hunting, target practice or any other lawful purpose; or

24 (b) Any citizen of the United States over the age of 18 years who resides in or is temporarily
 25 sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270
 26 and subsection (1) of this section, from owning, possessing or keeping within the person's place of
 27 residence or place of business any handgun, and no permit or license to purchase, own, possess or
 28 keep any such firearm at the person's place of residence or place of business is required of any such
 29 citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle
 30 while used, for whatever period of time, as residential quarters.

31 (3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

32 (4) Unlawful possession of a firearm is a Class A misdemeanor.

33 **SECTION 3.** ORS 166.291 is amended to read:

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

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

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

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

43 (c) Is a resident of the county;

44 (d) Has no outstanding warrants for arrest;

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

- 1 (f) Demonstrates competence with a handgun by any one of the following:
- 2 (A) Completion of any hunter education or hunter safety course approved by the State Depart-
- 3 ment of Fish and Wildlife or a similar agency of another state if handgun safety was a component
- 4 of the course;
- 5 (B) Completion of any National Rifle Association firearms safety or training course if handgun
- 6 safety was a component of the course;
- 7 (C) Completion of any firearms safety or training course or class available to the general public
- 8 offered by law enforcement, community college, or private or public institution or organization or
- 9 firearms training school utilizing instructors certified by the National Rifle Association or a law
- 10 enforcement agency if handgun safety was a component of the course;
- 11 (D) Completion of any law enforcement firearms safety or training course or class offered for
- 12 security guards, investigators, reserve law enforcement officers or any other law enforcement offi-
- 13 cers if handgun safety was a component of the course;
- 14 (E) Presents evidence of equivalent experience with a handgun through participation in organ-
- 15 ized shooting competition or military service;
- 16 (F) Is licensed or has been licensed to carry a firearm in this state, unless the license has been
- 17 revoked; or
- 18 (G) Completion of any firearms training or safety course or class conducted by a firearms in-
- 19 structor certified by a law enforcement agency or the National Rifle Association if handgun safety
- 20 was a component of the course;
- 21 (g) Has never been convicted of a felony or found guilty[,] except for insanity under ORS
- 22 161.295[,] of a [*felony*] **crime**;
- 23 (h) Has not been convicted of a misdemeanor [*or found guilty, except for insanity under ORS*
- 24 *161.295, of a misdemeanor*] within the four years prior to the application;
- 25 (i) Has not been committed to the Department of Human Services under ORS 426.130;
- 26 (j) Has not been found to be mentally ill and is not subject to an order under ORS 426.130 that
- 27 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;
- 28 (k) Has been discharged from the jurisdiction of the juvenile court for more than four years if,
- 29 while a minor, the person was found to be within the jurisdiction of the juvenile court for having
- 30 committed an act that, if committed by an adult, would constitute a felony or a misdemeanor in-
- 31 volving violence, as defined in ORS 166.470;
- 32 (L) Has not been convicted of an offense involving controlled substances or participated in a
- 33 court-supervised drug diversion program, except this disability does not operate to exclude a person
- 34 if:
- 35 (A) The person has been convicted only once of violating ORS 475.864 (3) and has not completed
- 36 a court-supervised drug diversion program under ORS 135.907; or
- 37 (B) The person has completed a court-supervised drug diversion program under ORS 135.907 and
- 38 has not been convicted of violating ORS 475.864 (3);
- 39 (m) Is not subject to a citation issued under ORS 163.735 or an order issued under ORS 30.866,
- 40 107.700 to 107.735 or 163.738;
- 41 (n) Has not received a dishonorable discharge from the Armed Forces of the United States; and
- 42 (o) Is not required to register as a sex offender in any state.
- 43 (2) A person who has been granted relief under ORS 166.274 or 166.293 or 18 U.S.C. 925(c) or
- 44 has had the person's record expunged under the laws of this state or equivalent laws of other ju-
- 45 risdictions is not subject to the disabilities in subsection (1)(g) to (L) of this section.

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

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

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

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

21
 22
 23 APPLICATION FOR LICENSE TO CARRY CONCEALED HANDGUN

24 Date_____

25 I hereby declare as follows:

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

1 as a sex offender in any state. I understand I will be fingerprinted and 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.)

20

21

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)

29

30

31 Character references.

32

33

Name Address

34

35

Name Address

36

37 Approved _____ Disapproved _____ by _____

38

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

41

41 License No. _____

42

43

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 4. The amendments to ORS 166.250, 166.291 and 166.470 by sections 1 to 3 of this**
26 **2009 Act apply to conduct occurring on or after the effective date of this 2009 Act.**

27