

A-Engrossed
Senate Bill 1064

Ordered by the House February 24
Including House Amendments dated February 24

Sponsored by Senator DEVLIN

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.

[Modifies circumstances under which person convicted of felony may obtain relief from prohibition against possession and transfer of firearms.]

Provides that petition for relief from prohibition against possession and transfer of firearms must be filed in circuit court in petitioner's county of residence.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to the restoration of firearms rights to persons convicted of a felony; creating new pro-
3 visions; amending ORS 166.274; and declaring an emergency.

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

5 **SECTION 1.** ORS 166.274 is amended to read:

6 166.274. (1) A person barred from possessing a firearm under ORS 166.250 (1)(c)(A) to (E) or
7 166.270 or barred from purchasing a firearm under ORS 166.470 (1)(a) to (g) may file a petition for
8 relief from the bar in[.]

9 *[(a) A justice court in the petitioner's county of residence that is reasonably accessible to the*
10 *petitioner; or]*

11 *[(b) If no justice court is reasonably accessible,]* the circuit court **in the petitioner's county of**
12 **residence.**

13 (2) A person may apply once per calendar year for relief under the provisions of this section.

14 (3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

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

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

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

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

21 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
22 the petitioner to be entered into the Department of State Police computerized criminal history files.

23 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
24 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
25 notify the court that granted relief under this section. The court shall review the order granting
26 relief and determine whether to rescind the order. The Department of State Police may charge a

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 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

2 (5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county,
3 district or other political subdivision or public corporation in this state, without appearance by at-
4 torney, may appear as a party to an action under this section.

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

8 (7) A person barred from possessing or purchasing a firearm because the person, while a minor,
9 was found to be within the jurisdiction of the juvenile court for committing an act which, if com-
10 mitted by an adult, would have constituted a felony or a misdemeanor involving violence, is not el-
11 igible to petition for relief under this section until more than four years have passed since the
12 person was discharged from the jurisdiction of the juvenile court.

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

17 (9) Filing fees shall be as for any civil action filed in the court.

18 (10)(a) Initial appeals of petitions shall be heard de novo.

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

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

23 **SECTION 2.** ORS 166.274, as amended by section 19, chapter 826, Oregon Laws 2009, is
24 amended to read:

25 166.274. (1) A person barred from possessing or purchasing a firearm may file a petition for relief
26 from the bar in accordance with subsection (2) of this section if:

27 (a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) to (C) or 166.270;
28 or

29 (b) The person is barred from purchasing a firearm under ORS 166.470 (1)(a) to (d) or (g).

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

31 [(a) A justice court in the petitioner's county of residence that is reasonably accessible to the
32 petitioner; or]

33 [(b) If no justice court is reasonably accessible,] the circuit court **in the petitioner's county of**
34 **residence.**

35 (3) A person may apply once per calendar year for relief under the provisions of this section.

36 (4)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

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

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

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

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

43 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
44 the petitioner to be entered into the Department of State Police computerized criminal history files.
45 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-

1 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
2 notify the court that granted relief under this section. The court shall review the order granting
3 relief and determine whether to rescind the order. The Department of State Police may charge a
4 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

5 (6) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county,
6 district or other political subdivision or public corporation in this state, without appearance by at-
7 torney, may appear as a party to an action under this section.

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

11 (8) A person barred from possessing or purchasing a firearm because the person, while a minor,
12 was found to be within the jurisdiction of the juvenile court for committing an act which, if com-
13 mitted by an adult, would have constituted a felony or a misdemeanor involving violence, is not el-
14 igible to petition for relief under this section until more than four years have passed since the
15 person was discharged from the jurisdiction of the juvenile court.

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

20 (10) Filing fees shall be as for any civil action filed in the court.

21 (11)(a) Initial appeals of petitions shall be heard de novo.

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

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

26 **SECTION 3.** ORS 166.274, as amended by sections 19 and 20, chapter 826, Oregon Laws 2009,
27 is amended to read:

28 166.274. (1) A person barred from possessing a firearm under ORS 166.250 (1)(c)(A) to (E) or
29 166.270 or barred from purchasing a firearm under ORS 166.470 (1)(a) to (g) may file a petition for
30 relief from the bar in[.]

31 *[(a) A justice court in the petitioner's county of residence that is reasonably accessible to the*
32 *petitioner; or]*

33 *[(b) If no justice court is reasonably accessible,]* the circuit court **in the petitioner's county of**
34 **residence.**

35 (2) A person may apply once per calendar year for relief under the provisions of this section.

36 (3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:

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

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

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

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

43 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
44 the petitioner to be entered into the Department of State Police computerized criminal history files.
45 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-

1 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
2 notify the court that granted relief under this section. The court shall review the order granting
3 relief and determine whether to rescind the order. The Department of State Police may charge a
4 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

5 (5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county,
6 district or other political subdivision or public corporation in this state, without appearance by at-
7 torney, may appear as a party to an action under this section.

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

11 (7) A person barred from possessing or purchasing a firearm because the person, while a minor,
12 was found to be within the jurisdiction of the juvenile court for committing an act which, if com-
13 mitted by an adult, would have constituted a felony or a misdemeanor involving violence, is not el-
14 igible to petition for relief under this section until more than four years have passed since the
15 person was discharged from the jurisdiction of the juvenile court.

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

20 (9) Filing fees shall be as for any civil action filed in the court.

21 (10)(a) Initial appeals of petitions shall be heard de novo.

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

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

26 **SECTION 4. (1) The amendments to ORS 166.274 by section 2 of this 2010 Act become**
27 **operative on the date the rule described in section 13 (1), chapter 826, Oregon Laws 2009, is**
28 **adopted.**

29 **(2) The amendments to ORS 166.274 by section 3 of this 2010 Act become operative on**
30 **January 2, 2012.**

31 **SECTION 5. This 2010 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2010 Act takes effect**
33 **on its passage.**

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