

SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2792

By COMMITTEE ON JUDICIARY

June 13

1 On page 1 of the printed A-engrossed bill, line 2, after “provisions;” delete the rest of the line
2 and delete line 3 and insert “amending ORS 166.250, 166.274, 166.425 and 821.240; and declaring an
3 emergency.”.

4 Delete lines 5 through 28 and delete pages 2 through 5 and insert:

5 **“SECTION 1.** ORS 166.250, as amended by section 8a, chapter 826, Oregon Laws 2009, is
6 amended to read:

7 “166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,
8 166.291, 166.292 or 166.410 to 166.470 or section 5, chapter 826, Oregon Laws 2009, a person commits
9 the crime of unlawful possession of a firearm if the person knowingly:

10 “(a) Carries any firearm concealed upon the person;

11 “(b) Possesses a handgun that is concealed and readily accessible to the person within any ve-
12 hicle; or

13 “(c) Possesses a firearm and:

14 “(A) Is under 18 years of age;

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

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

20 “(C) Has been convicted of a felony;

21 “(D) Was committed to the Oregon Health Authority under ORS 426.130;

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

24 “(F) Has been found guilty except for insanity under ORS 161.295 of a felony.

25 “(2) This section does not prohibit:

26 “(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from pos-
27 sessed a firearm:

28 “(A) Other than a handgun, if the firearm was transferred to the minor by the minor’s parent
29 or guardian or by another person with the consent of the minor’s parent or guardian; or

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

31 “(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily
32 sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270
33 and subsection (1) of this section, from owning, possessing or keeping within the person’s place of
34 residence or place of business any handgun, and no permit or license to purchase, own, possess or
35 keep any such firearm at the person’s place of residence or place of business is required of any such

1 citizen. As used in this subsection, ‘residence’ includes a recreational vessel or recreational vehicle
2 while used, for whatever period of time, as residential quarters.

3 “(3) Firearms carried openly in belt holsters are not concealed within the meaning of this sec-
4 tion.

5 “(4)(a) Except as provided in [*paragraph (b)*] **paragraphs (b) and (c)** of this subsection, a
6 handgun is readily accessible within the meaning of this section if the handgun is within the pas-
7 senger compartment of the vehicle.

8 “(b) If a vehicle, **other than a vehicle described in paragraph (c) of this subsection**, has no
9 storage location that is outside the passenger compartment of the vehicle, a handgun is not readily
10 accessible within the meaning of this section if:

11 “(A) The handgun is stored in a closed and locked glove compartment, center console or other
12 container; and

13 “(B) The key is not inserted into the lock, if the glove compartment, center console or other
14 container unlocks with a key.

15 “(c) **If a vehicle is a motorcycle, an all-terrain vehicle or a snowmobile, a handgun is not**
16 **readily accessible within the meaning of this section if:**

17 “(A) **The handgun is in a locked container within or affixed to the vehicle; or**

18 “(B) **The handgun is equipped with a trigger lock or other locking mechanism that pre-**
19 **vents the discharge of the firearm.**

20 “(5) Unlawful possession of a firearm is a Class A misdemeanor.

21 “**SECTION 2.** ORS 166.250, as amended by sections 8a and 11a, chapter 826, Oregon Laws 2009,
22 is amended to read:

23 “166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,
24 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm
25 if the person knowingly:

26 “(a) Carries any firearm concealed upon the person;

27 “(b) Possesses a handgun that is concealed and readily accessible to the person within any ve-
28 hicle; or

29 “(c) Possesses a firearm and:

30 “(A) Is under 18 years of age;

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

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

36 “(C) Has been convicted of a felony;

37 “(D) Was committed to the Oregon Health Authority under ORS 426.130;

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

40 “(F) Has been found guilty except for insanity under ORS 161.295 of a felony.

41 “(2) This section does not prohibit:

42 “(a) A minor, who is not otherwise prohibited under subsection (1)(c) of this section, from pos-
43 sessed a firearm:

44 “(A) Other than a handgun, if the firearm was transferred to the minor by the minor’s parent
45 or guardian or by another person with the consent of the minor’s parent or guardian; or

1 “(B) Temporarily for hunting, target practice or any other lawful purpose; or
2 “(b) Any citizen of the United States over the age of 18 years who resides in or is temporarily
3 sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270
4 and subsection (1) of this section, from owning, possessing or keeping within the person’s place of
5 residence or place of business any handgun, and no permit or license to purchase, own, possess or
6 keep any such firearm at the person’s place of residence or place of business is required of any such
7 citizen. As used in this subsection, ‘residence’ includes a recreational vessel or recreational vehicle
8 while used, for whatever period of time, as residential quarters.
9 “(3) Firearms carried openly in belt holsters are not concealed within the meaning of this sec-
10 tion.
11 “(4)(a) Except as provided in [*paragraph (b)*] **paragraphs (b) and (c)** of this subsection, a
12 handgun is readily accessible within the meaning of this section if the handgun is within the pas-
13 senger compartment of the vehicle.
14 “(b) If a vehicle, **other than a vehicle described in paragraph (c) of this subsection**, has no
15 storage location that is outside the passenger compartment of the vehicle, a handgun is not readily
16 accessible within the meaning of this section if:
17 “(A) The handgun is stored in a closed and locked glove compartment, center console or other
18 container; and
19 “(B) The key is not inserted into the lock, if the glove compartment, center console or other
20 container unlocks with a key.
21 “(c) **If the vehicle is a motorcycle, an all-terrain vehicle or a snowmobile, a handgun is**
22 **not readily accessible within the meaning of this section if:**
23 “(A) **The handgun is in a locked container within or affixed to the vehicle; or**
24 “(B) **The handgun is equipped with a trigger lock or other locking mechanism that pre-**
25 **vents the discharge of the firearm.**
26 “(5) Unlawful possession of a firearm is a Class A misdemeanor.
27 “**SECTION 3.** ORS 166.274, as amended by section 19, chapter 826, Oregon Laws 2009, and
28 section 2, chapter 86, Oregon Laws 2010, is amended to read:
29 “166.274. (1) **Except as provided in subsection (11) of this section**, a person barred from
30 possessing or purchasing a firearm may file a petition for relief from the bar in accordance with
31 subsection (2) of this section if:
32 “(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) [*to*] **or** (C) or
33 166.270; or
34 “(b) The person is barred from purchasing a firearm under ORS 166.470 (1)(a) [*to (d) or (g)*], **(b)**
35 **or (g).**
36 “(2) A petition for relief described in this section must be filed in the circuit court in the
37 petitioner’s county of residence.
38 “(3) A person may apply once per calendar year for relief under the provisions of this section.
39 “(4)(a) A person petitioning for relief under this section shall serve a copy of the petition on:
40 “(A) The city chief of police if the court in which the petition is filed is located in a city; or
41 “(B) The sheriff of the county in which the court is located.
42 “(b) The copy of the petition shall be served on the chief of police or sheriff at the same time
43 the petition is filed at the court.
44 “(5)(a) When a petition is denied, the judge shall cause that information to be entered into the
45 Department of State Police computerized criminal history files.

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

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

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

15 “[8] *A person barred from possessing or purchasing a firearm because the person, while a minor,*
16 *was found to be within the jurisdiction of the juvenile court for committing an act which, if committed*
17 *by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to*
18 *petition for relief under this section until more than four years have passed since the person was dis-*
19 *charged from the jurisdiction of the juvenile court.]*

20 “[9] (8) Petitions filed under this section shall be heard and disposed of within 15 judicial days
21 of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge
22 shall then make findings and conclusions and issue a judgment based on the findings and conclusions
23 in accordance with the requirements of law.

24 “[10] (9) Filing fees shall be as for any civil action filed in the court.

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

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

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

30 “(11) **The court may not grant relief under this section to a person who:**

31 “(a) **Has been convicted of a person felony, as that term is defined in the rules of the**
32 **Oregon Criminal Justice Commission, or the statutory counterpart to a person felony in any**
33 **other jurisdiction, if the offense involved the use of a firearm or a deadly weapon as defined**
34 **in ORS 161.015;**

35 “(b) **Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart**
36 **to an offense listed in ORS 137.700 in any other jurisdiction; or**

37 “(c) **Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony**
38 **sentence in the three-year period preceding the filing of the petition.**

39 “**SECTION 4.** ORS 166.274, as amended by sections 19 and 20, chapter 826, Oregon Laws 2009,
40 and section 3, chapter 86, Oregon Laws 2010, is amended to read:

41 “166.274. (1) **Except as provided in subsection (10) of this section,** a person barred from
42 possessing a firearm under ORS 166.250 (1)(c)(A) **or (C) to (E)** or 166.270 or barred from purchasing
43 a firearm under ORS 166.470 (1)(a), **(b) or (e) to (g) [to (g)]** may file a petition for relief from the
44 bar in the circuit court in the petitioner’s county of residence.

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

1 “(3)(a) A person petitioning for relief under this section shall serve a copy of the petition on:
2 “(A) The city chief of police if the court in which the petition is filed is located in a city; or
3 “(B) The sheriff of the county in which the court is located.
4 “(b) The copy of the petition shall be served on the chief of police or sheriff at the same time
5 the petition is filed at the court.
6 “(4)(a) When a petition is denied, the judge shall cause that information to be entered into the
7 Department of State Police computerized criminal history files.
8 “(b) When a petition is granted, the judge shall cause that information and a fingerprint card
9 of the petitioner to be entered into the Department of State Police computerized criminal history
10 files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would
11 disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police
12 shall notify the court that granted relief under this section. The court shall review the order
13 granting relief and determine whether to rescind the order. The Department of State Police may
14 charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this
15 section.
16 “(5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county,
17 district or other political subdivision or public corporation in this state, without appearance by at-
18 torney, may appear as a party to an action under this section.
19 “(6) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall
20 be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner
21 does not pose a threat to the safety of the public or the petitioner.
22 “[7] *A person barred from possessing or purchasing a firearm because the person, while a minor,*
23 *was found to be within the jurisdiction of the juvenile court for committing an act which, if committed*
24 *by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to*
25 *petition for relief under this section until more than four years have passed since the person was dis-*
26 *charged from the jurisdiction of the juvenile court.]*
27 “[8] (7) Petitions filed under this section shall be heard and disposed of within 15 judicial days
28 of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge
29 shall then make findings and conclusions and issue a judgment based on the findings and conclusions
30 in accordance with the requirements of law.
31 “[9] (8) Filing fees shall be as for any civil action filed in the court.
32 “[10)(a)] (9)(a) Initial appeals of petitions shall be heard de novo.
33 “(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the
34 same manner as for any other civil action.
35 “(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall
36 be ordered to pay the attorney fees for the prevailing party.
37 “(10) **The court may not grant relief under this section to a person who:**
38 “(a) **Has been convicted of a person felony, as that term is defined in the rules of the**
39 **Oregon Criminal Justice Commission, or the statutory counterpart to a person felony in any**
40 **other jurisdiction, if the offense involved the use of a firearm or a deadly weapon as defined**
41 **in ORS 161.015;**
42 “(b) **Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart**
43 **to an offense listed in ORS 137.700 in any other jurisdiction; or**
44 “(c) **Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony**
45 **sentence in the three-year period preceding the filing of the petition.**

1 “**SECTION 5.** ORS 166.425 is amended to read:

2 “166.425. (1) A person commits the crime of unlawfully purchasing a firearm if the person,
3 knowing that the person is prohibited by state [*or federal*] law from owning or possessing the firearm
4 or having the firearm under the person’s custody or control, purchases or attempts to purchase the
5 firearm.

6 “(2) Unlawfully purchasing a firearm is a Class A misdemeanor.

7 “**SECTION 6.** ORS 821.240 is amended to read:

8 “821.240. (1) A person commits the offense of operating a snowmobile or an all-terrain vehicle
9 while carrying a firearm or bow if the person operates any snowmobile or all-terrain vehicle with
10 a firearm in the possession of the person, unless the firearm is unloaded, or with a bow, unless all
11 arrows are in a quiver.

12 “**(2) Subsection (1) of this section does not apply to a person who is licensed under ORS**
13 **166.291 and 166.292 to carry a concealed handgun.**

14 “**(3) As used in this section, ‘unloaded’ means:**

15 “**(a) If the firearm is a revolver, that there is no live cartridge in the chamber that is**
16 **aligned with the hammer of the revolver;**

17 “**(b) If the firearm is a muzzle-loading firearm, that the firearm is not capped or primed;**
18 **or**

19 “**(c) If the firearm is other than a revolver or a muzzle-loading firearm, that there is no**
20 **live cartridge in the chamber.**

21 “[(2)] (4) The offense described in this section, operating a snowmobile or an all-terrain vehicle
22 while carrying a firearm or bow, is a Class B traffic violation.

23 “**SECTION 7. No later than December 31, 2011, the Department of State Police shall**
24 **submit a report to the interim legislative committee related to the judiciary that describes**
25 **the State of Oregon’s compliance with the National Instant Criminal Background Check**
26 **System Improvement Amendments Act of 2007 (P.L. 110-180). The report must include a**
27 **description of the rate at which the State of Oregon is providing the United States Attorney**
28 **General records relevant to a determination of whether a person is disqualified from pos-**
29 **sessing or receiving a firearm under federal or state law.**

30 “**SECTION 8. Section 7 of this 2011 Act is repealed on January 2, 2012.**

31 “**SECTION 9. This 2011 Act being necessary for the immediate preservation of the public**
32 **peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect**
33 **on its passage.”.**

34