

## SENATE AMENDMENTS TO A-ENGROSSED HOUSE BILL 2797

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 insert “amending ORS 166.250, 166.262, 166.274, 166.360, 166.370, 166.425 and 821.240; repealing  
3 ORS 166.380; and declaring an emergency.”.

4 On page 3, line 18, after the first “vehicle” insert “, other than a vehicle described in paragraph  
5 (c) of this subsection.”.

6 On page 4, delete lines 1 and 2 and insert:

7 **“SECTION 4. A public body as defined in ORS 192.410 may not disclose records or infor-**  
8 **mation that identifies a person as a current holder of, or applicant for, a concealed handgun**  
9 **license unless:**

10 **“(1) The disclosure is made to another public body and is necessary for criminal justice**  
11 **purposes;**

12 **“(2) A court enters an order in a pending civil or criminal case directing the public body**  
13 **to disclose the records or information; or**

14 **“(3) The holder of, or applicant for, the concealed handgun license consents to the dis-**  
15 **closure.**

16 **“SECTION 5.** ORS 166.274, as amended by section 19, chapter 826, Oregon Laws 2009, and  
17 section 2, chapter 86, Oregon Laws 2010, is amended to read:

18 **“166.274. (1) Except as provided in subsection (11) of this section,** a person barred from  
19 possessing or purchasing a firearm may file a petition for relief from the bar in accordance with  
20 subsection (2) of this section if:

21 **“(a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A) [to] or (C) or**  
22 **166.270; or**

23 **“(b) The person is barred from purchasing a firearm under ORS 166.470 (1)(a) [to (d) or (g)], (b)**  
24 **or (g).**

25 **“(2) A petition for relief described in this section must be filed in the circuit court in the**  
26 **petitioner’s county of residence.**

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

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

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

30 **“(B) The sheriff of the county in which the court is located.**

31 **“(b) The copy of the petition shall be served on the chief of police or sheriff at the same time**  
32 **the petition is filed at the court.**

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

35 **“(b) When a petition is granted, the judge shall cause that information and a fingerprint card**

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

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

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

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

19 “[~~(9)~~] **(8)** Petitions filed under this section shall be heard and disposed of within 15 judicial days  
20 of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge  
21 shall then make findings and conclusions and issue a judgment based on the findings and conclusions  
22 in accordance with the requirements of law.

23 “[~~(10)~~] **(9)** Filing fees shall be as for any civil action filed in the court.

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

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

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

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

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

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

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

38 “**SECTION 6.** ORS 166.274, as amended by sections 19 and 20, chapter 826, Oregon Laws 2009,  
39 and section 3, chapter 86, Oregon Laws 2010, is amended to read:

40 “166.274. (1) **Except as provided in subsection (10) of this section,** a person barred from  
41 possessing a firearm under ORS 166.250 (1)(c)(A) **or (C) to (E)** or 166.270 or barred from purchasing  
42 a firearm under ORS 166.470 (1)(a), **(b) or (e) to (g)** [*to (g)*] may file a petition for relief from the  
43 bar in the circuit court in the petitioner’s county of residence.

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

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

1           “(A) The city chief of police if the court in which the petition is filed is located in a city; or  
2           “(B) The sheriff of the county in which the court is located.  
3           “(b) The copy of the petition shall be served on the chief of police or sheriff at the same time  
4 the petition is filed at the court.  
5           “(4)(a) When a petition is denied, the judge shall cause that information to be entered into the  
6 Department of State Police computerized criminal history files.  
7           “(b) When a petition is granted, the judge shall cause that information and a fingerprint card  
8 of the petitioner to be entered into the Department of State Police computerized criminal history  
9 files. If, after a petition is granted, the petitioner is arrested and convicted of a crime that would  
10 disqualify the petitioner from purchasing or possessing a firearm, the Department of State Police  
11 shall notify the court that granted relief under this section. The court shall review the order  
12 granting relief and determine whether to rescind the order. The Department of State Police may  
13 charge a reasonable fee, under ORS 192.440, for the entry and maintenance of information under this  
14 section.  
15           “(5) Notwithstanding the provisions of ORS 9.320, a corporation, the state or any city, county,  
16 district or other political subdivision or public corporation in this state, without appearance by at-  
17 torney, may appear as a party to an action under this section.  
18           “(6) If the petitioner seeks relief from the bar on possessing or purchasing a firearm, relief shall  
19 be granted when the petitioner demonstrates, by clear and convincing evidence, that the petitioner  
20 does not pose a threat to the safety of the public or the petitioner.  
21           “[(7) *A person barred from possessing or purchasing a firearm because the person, while a minor,*  
22 *was found to be within the jurisdiction of the juvenile court for committing an act which, if committed*  
23 *by an adult, would have constituted a felony or a misdemeanor involving violence, is not eligible to*  
24 *petition for relief under this section until more than four years have passed since the person was dis-*  
25 *charged from the jurisdiction of the juvenile court.*]  
26           “[(8)] **(7)** Petitions filed under this section shall be heard and disposed of within 15 judicial days  
27 of filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge  
28 shall then make findings and conclusions and issue a judgment based on the findings and conclusions  
29 in accordance with the requirements of law.  
30           “[(9)] **(8)** Filing fees shall be as for any civil action filed in the court.  
31           “[(10)(a)] **(9)(a)** Initial appeals of petitions shall be heard de novo.  
32           “(b) Any party to a judgment under this subsection may appeal to the Court of Appeals in the  
33 same manner as for any other civil action.  
34           “(c) If the governmental entity files an appeal under this subsection and does not prevail, it shall  
35 be ordered to pay the attorney fees for the prevailing party.  
36           **“(10) The court may not grant relief under this section to a person who:**  
37           **“(a) Has been convicted of a person felony, as that term is defined in the rules of the**  
38 **Oregon Criminal Justice Commission, or the statutory counterpart to a person felony in any**  
39 **other jurisdiction, if the offense involved the use of a firearm or a deadly weapon as defined**  
40 **in ORS 161.015;**  
41           **“(b) Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart**  
42 **to an offense listed in ORS 137.700 in any other jurisdiction; or**  
43           **“(c) Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony**  
44 **sentence in the three-year period preceding the filing of the petition.**  
45           **“SECTION 7.** ORS 166.370 is amended to read:

1 “166.370. (1)(a) [Any] A person who intentionally possesses a [loaded or unloaded] firearm or any  
2 other instrument used as a dangerous weapon, while in or on a public building, [shall upon conviction  
3 be guilty of] **commits** a Class C felony.

4 “(b) **A person who intentionally possesses a firearm or any other instrument used as a  
5 dangerous weapon on school grounds commits a Class C felony.**

6 “(2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who inten-  
7 tionally possesses:

8 “(A) A firearm in a court facility [is guilty, upon conviction, of] **commits** a Class C felony. A  
9 person who intentionally possesses a firearm in a court facility shall surrender the firearm to a law  
10 enforcement officer.

11 “(B) A weapon, other than a firearm, in a court facility may be required to surrender the  
12 weapon to a law enforcement officer or to immediately remove it from the court facility. A person  
13 who fails to comply with this subparagraph [is guilty, upon conviction, of] **commits** a Class C felony.

14 “(b) The presiding judge of a judicial district may enter an order permitting the possession of  
15 specified weapons in a court facility.

16 “(3) Subsection (1) of this section does not apply to:

17 “(a) A sheriff, police officer, other duly appointed peace officers or a corrections officer while  
18 acting within the scope of employment.

19 “(b) A person summoned by a peace officer to assist in making an arrest or preserving the  
20 peace, while the summoned person is engaged in assisting the officer.

21 “(c) An active or reserve member of the military forces of this state or the United States, when  
22 engaged in the performance of duty.

23 “[d] A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.]

24 “[e] (d) A person who is authorized by the officer or agency that controls the public building  
25 **or the school grounds** to possess a firearm or dangerous weapon in [that] **the public building or  
26 on the school grounds.**

27 “[f] (e) An employee of the United States Department of Agriculture, acting within the scope  
28 of employment, who possesses a firearm in the course of the lawful taking of wildlife.

29 “[g] (f) Possession of a firearm on school [property] **grounds** if the firearm[:]

30 “[A] is possessed by a person who is not otherwise prohibited from possessing the firearm[:]  
31 and **the firearm is:**

32 “[B] (A) [is] Unloaded and locked in a motor vehicle; or

33 **“(B) Possessed in a motor vehicle by a person who is licensed under ORS 166.291 and  
34 166.292 to carry a concealed handgun.**

35 **“(4) Subsection (1)(a) of this section does not apply to a person who is licensed under ORS  
36 166.291 and 166.292 to carry a concealed handgun.**

37 “[4] (5)(a) The exceptions listed in subsection (3)(b) to [(g)] (f) of this section constitute affir-  
38 mative defenses to a charge of violating subsection (1) of this section.

39 **“(b) The exception described in subsection (4) of this section constitutes an affirmative  
40 defense to a charge of violating subsection (1)(a) of this section.**

41 “[5)(a)] (6)(a) [Any] A person who knowingly, or with reckless disregard for the safety of an-  
42 other, discharges or attempts to discharge a firearm at a place that the person knows is [a] **on  
43 school [shall upon conviction be guilty of] grounds commits** a Class C felony.

44 “(b) Paragraph (a) of this subsection does not apply to the discharge of a firearm:

45 “(A) As part of a program approved by a school in the school by an individual who is partic-

1 ipating in the program;

2 “(B) By a law enforcement officer acting in the officer’s official capacity; or

3 “(C) By an employee of the United States Department of Agriculture, acting within the scope  
4 of employment, in the course of the lawful taking of wildlife.

5 “[6] (7) Any weapon carried in violation of this section is subject to the forfeiture provisions  
6 of ORS 166.279.

7 “[7] (8) Notwithstanding the fact that a person’s conduct in a single criminal episode consti-  
8 tutes a violation of both subsections (1) and [(5)] (6) of this section, the district attorney may charge  
9 the person with only one of the offenses.

10 “[8] (9) As used in this section, ‘dangerous weapon’ means a dangerous weapon as that term  
11 is defined in ORS 161.015.

12 “**SECTION 8.** ORS 166.360 is amended to read:

13 “166.360. As used in ORS 166.360 to 166.380, unless the context requires otherwise:

14 “(1) ‘Capitol building’ means the Capitol, the State Office Building, the State Library Building,  
15 the Labor and Industries Building, the State Transportation Building, the Agriculture Building or  
16 the Public Service Building and includes any new buildings which may be constructed on the same  
17 grounds as an addition to the group of buildings listed in this subsection.

18 “(2) ‘Court facility’ means a courthouse or that portion of any other building occupied by a  
19 circuit court, the Court of Appeals, the Supreme Court or the Oregon Tax Court or occupied by  
20 personnel related to the operations of those courts, or in which activities related to the operations  
21 of those courts take place.

22 “[3] ‘Loaded firearm’ means:]

23 “[a] A breech-loading firearm in which there is an unexpended cartridge or shell in or attached  
24 to the firearm including but not limited to, in a chamber, magazine or clip which is attached to the  
25 firearm.]

26 “[b] A muzzle-loading firearm which is capped or primed and has a powder charge and ball, shot  
27 or projectile in the barrel or cylinder.]

28 “[4] (3) ‘Public building’ means a hospital, a capitol building, [*a public or private school, as*  
29 *defined in ORS 339.315, a college or university,*] a city hall or the residence of any state official  
30 elected by the state at large, and the grounds adjacent to each such building. The term also includes  
31 that portion of any other building occupied by an agency of the state or a municipal corporation,  
32 as defined in ORS 297.405, other than a court facility.

33 “(4) ‘**School grounds’ means the buildings that compose a community college, college,**  
34 **university or a school as defined in ORS 339.315, and the grounds adjacent to each such**  
35 **building.**

36 “[5] (5) ‘Weapon’ means:

37 “(a) A firearm;

38 “(b) Any dirk, dagger, ice pick, slingshot, metal knuckles or any similar instrument or a knife  
39 other than an ordinary pocket knife, the use of which could inflict injury upon a person or property;

40 “(c) Mace, tear gas, pepper mace or any similar deleterious agent as defined in ORS 163.211;

41 “(d) An electrical stun gun or any similar instrument;

42 “(e) A tear gas weapon as defined in ORS 163.211;

43 “(f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchaku, nightstick, truncheon or any  
44 similar instrument, the use of which could inflict injury upon a person or property; or

45 “(g) A dangerous or deadly weapon as those terms are defined in ORS 161.015.

1       “**SECTION 9.** ORS 166.262 is amended to read:

2       “166.262. A peace officer may not arrest or charge a person for violating ORS 166.250 (1)(a) or  
3 (b) or 166.370 (1)(a) if the person has in the person’s immediate possession a valid license to carry  
4 a firearm as provided in ORS 166.291 and 166.292.

5       “**SECTION 10.** ORS 166.425 is amended to read:

6       “166.425. (1) A person commits the crime of unlawfully purchasing a firearm if the person,  
7 knowing that the person is prohibited by state [*or federal*] law from owning or possessing the firearm  
8 or having the firearm under the person’s custody or control, purchases or attempts to purchase the  
9 firearm.

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

11       “**SECTION 11.** No later than December 31, 2011, the Department of State Police shall  
12 submit a report to the interim committee related to the judiciary that describes the State  
13 of Oregon’s compliance with the National Instant Criminal Background Check System Im-  
14 provement Amendments Act of 2007 (P.L. 110-180). The report must include a description of  
15 the rate at which the State of Oregon is providing the United States Attorney General re-  
16 cords relevant to a determination of whether a person is disqualified from possessing or re-  
17 ceiving a firearm under federal or state law.

18       “**SECTION 12.** Section 11 of this 2011 Act is repealed on January 2, 2012.

19       “**SECTION 13.** ORS 166.380 is repealed.

20       “**SECTION 14.** The amendments to ORS 166.250, 166.262, 166.370, 166.425 and 821.240 by  
21 sections 1 to 3, 7, 9 and 10 of this 2011 Act apply to conduct occurring on or after the effec-  
22 tive date of this 2011 Act.

23       “**SECTION 15.** This 2011 Act being necessary for the immediate preservation of the public  
24 peace, health and safety, an emergency is declared to exist, and this 2011 Act takes effect  
25 on its passage.”.

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