

REVENUE: No revenue impact

FISCAL: Fiscal statement issued

Action:	Without Recommendation as to Passage and Refer to the Senate Committee on Rules
Vote:	3 - 2 - 0
Yeas:	Dembrow, Roblan, Prozanski
Nays:	Close, Kruse
Exc.:	0
Prepared By:	Bill Taylor, Counsel
Meeting Dates:	2/6, 2/13

WHAT THE MEASURE DOES: Requires a person transferring a firearm to another person in a private sale or transfer, whether at a gun show or outside a gun show, to do a background check on the other person. Exempts from this provision a transfer to: (1) A person’s spouse or domestic partner; (2) The person’s parent or step-parent; (3) The person’s child or step-child; (4) The person’s sibling; (5) The person’s grandparent (6) A spouse of the person’s previously listed; or, (7) The person’s niece or nephew. Exempts a transfer by a personal representative of a deceased person. Specifies the penalty for a person who transfers a firearm in a private sale or transfer without a background check as: (1) A Class C misdemeanor for a first offense; (2) A Class A misdemeanor if the person has a prior conviction; (3) A Class C felony if the person has two or more previous convictions. Requires a person, other than a gun dealer, to have a “unique approval number” from the Oregon State Police when transferring a firearm in order to be immune from civil liability. Requires a person transferring a firearm, other than a gun dealer, to complete and retain a form approved by the Oregon State Police prior to transfer. Allows a gun dealer to complete a criminal background check on behalf of a person transferring a firearm and allows the gun dealer to charge a fee. Exempts the gun dealer who completes a background check for a transferor, other than a gun dealer, from civil liability arising from the use of the firearm. Applies to transfers made after the effective date of the Act. Declares emergency; effective upon passage.

ISSUES DISCUSSED:

- Right to bear arms
- Felons do not have a right to possess a firearm

EFFECT OF COMMITTEE AMENDMENT: No amendment.

BACKGROUND: ORS 166.412(1)(f) defines a “gun dealer” as a person engaged in the business, as defined in 18 U.S.C. 921 of selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer, pawnbroker or otherwise. Among other things, a gun dealer must do a criminal records background check through the Oregon State Police on the prospective purchaser. If the gun dealer fails to comply with the requirements of ORS 166.412(2), he or she is guilty of a Class A misdemeanor. ORS 166.438 requires a person transferring a firearm at a gun show to also do a background check on a prospective purchaser through the state police. Currently, there is no obligation on the seller of a firearm, who is not a gun dealer or a seller at a gun show, to do a background check of the prospective purchaser.

Article 1, section 27, Oregon Constitution states as follows: “The people shall have the right to bear arms for the defense [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power.” This provision provides Oregonians the right to bear arms collectively through a militia, which today would be the Oregon National Guard, and individually for personal protection particularly in their respective homes. *State v. Kessler*, 289 Or. 359 (1980). This right is not absolute. Oregon prohibits convicted felons from possessing firearms. The Oregon Supreme has found this prohibition constitutional and strongly indicated that prohibiting mentally ill persons from carrying a firearm, as Oregon does, is constitutional. *State v. Hirsch/Friend*, 338 Or. 622 (2005). The Oregon Supreme Court has found a City of Portland ordinance prohibiting the carrying of a loaded firearm in a public place, constitutional. *State v. Christian*, August 15, 2013.

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This summary has not been adopted or officially endorsed by action of the committee.

The Second Amendment to the United States Constitution states as follows: “A well-regulated Militia, being necessary to the security of a free State, the right of the people to keep and bear Arms, shall not be infringed.” The United States Supreme Court has found that the Second Amendment guarantees a citizen the individual right to possess a firearm in the home for protection. *District of Columbia v. Heller*, 554 U.S. 570 (2008) and *McDonald v. City of Chicago*. 130 S.Ct. 3020 (2010). Recently, the 7th federal circuit court extended the right to carry a firearm for protection to beyond the home, Nos. 11269, 12 1788 (February 22, 2013). This decision is applicable only to the 7th circuit and not Oregon.