



HARNEY COUNTY COURT

Office of Judge Steven E. Grasty

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March 30, 2015

Senator Floyd Prozanski
Senator Ginny Burdick
Representative Jennifer Williamson
Representative Val Hoyle

VIA
Email

RE: SB 941

Dear Legislator,

Recently SB 941 was introduced and referred to the Senate Judiciary with a hearing scheduled for April 1st. Unfortunately the Harney County Court was unable to attend the hearing since the hearing was scheduled on a regularly scheduled Court date.

The Harney County Court is concerned that the legislation is being fast tracked without sufficient time for interested persons to participate in the Senate Committee process. Matters relating to firearms are highly controversial and warrant a very transparent process with wide spread open participation and discussion.

On initial review, the Harney County Court is concerned that the language, while attempting to address criminal access to firearms, is not the least intrusive means. While preventing felons and persons with mental infirmity, that create a risk to themselves or society, from acquiring firearms has some merit the proposed legislation is overly broad and goes further than achieving these goals.

For example, under Section 2(4)(c) the proposed legislation makes an exception for transfers to family members, however it does not allow transfers to all family members, the exception does not extend to in-laws. In other words, a person could not convey a firearm to one's son-in-law, daughter-in-law or other in-laws.

Similarly, we have concerns over a hidden trap created by Section 3(7) (a). Under this section anyone who transfers a gun, after a firearms check, is required to fill out the required form and retain it. If they complete the requisite form and retain for unlimited

period of time, they are immune from civil liability except if they knew at the time the transferee is likely to commit an unlawful act. This provision raises numerous questions, for example, do they need to retain the form longer than the time period of ORS 166.412(7); what happens if it is inadvertently destroyed and what happens if knowledge is subsequently gained that the transferee has committed or is likely to commit a crime involving that firearm. In those situations does the civil immunity lapse? While it appears the intent is that records only need to be retained for five years by the reference in ORS 166.438, however, that statute is limited to gun show transfers. Also is it the intent to have these forms registered/recorded?

While the law addresses immunity for civil liability, can the legislation in fact do away with a common law remedy? It appears if the intent is to place a limit on actions and suits, then the limitations should be added to ORS 12 as well. Likewise, are there any scenarios wherein there would be a risk of criminal liability – it is notable that the department is immune under ORS 166.412(6) for both civil and criminal liability.

We note that in Section 3(5)(c) if a transferee is not one who can receive a weapon then the department is to report the attempted transfer to the local sheriff or city official. What is the purpose of this reporting? Is it the intent to impose a duty or responsibility on the local law enforcement to retain the records or to take other actions and if so what is it and who pays the cost? Likewise, is it the intent to amend ORS 166.425 to make it unlawful to acquire or attempt to convey a gun by way of gift?

It is unclear why the “criminal background check” provisions of ORS 166.412(7) were deleted. Was it the intent to only require the “criminal history record check” to be subject to the five year record restriction?

Also Section 2(4)(d) provides that the personal representative may transfer a gun to a deceased family member but it is not clear whether the PR is required to undertake background check on the transferee. What immunity does the personal representative have and do they need to retain records after they have been discharged of their personal representative’s duties?

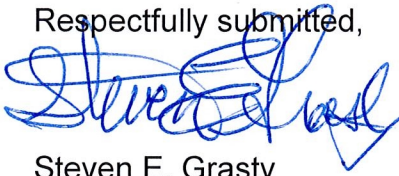
It is unclear whether the limitations on transfer in Section 2(1) (a) (A)-(B) require that when not actively hunting or target shooting that the firearm must be returned to the transferor. In other words while in transit from the hunting area to the vehicle or to home.

As noted above, the Harney County Court was unable to attend the Senate hearing because of previously scheduled Court business. It has however discussed the proposed legislation and would like the above comments included in your deliberations and record.

The Harney County Court recommends waiting until the next Legislative Session to allow time to fix these flaws and to consider the necessity of the legislation by the public.

If you have any questions please do not hesitate to contact County Judge Steve Grasty.

Respectfully submitted,



Steven E. Grasty
Judge, Harney County Court



Dan Nichols
Commissioner



Pete Runnels
Commissioner

SEG;sj

cc. Representative Cliff Bentz
Senator Ted Ferrioli