

Seventy-Eighth Oregon Legislative Assembly - 2015 Regular Session
STAFF MEASURE SUMMARY
Senate Committee On Judiciary

****CORRECTED****

MEASURE: SB 941 A
CARRIER: Sen. Prozanski

Fiscal: Fiscal impact issued
Revenue: No Revenue Impact

Action Date: 04/06/15
Action: Do Pass With Amendments. (Printed A-Eng.)
Meeting Dates: 04/01, 04/02, 04/06
Vote:
Yeas: 3 - Burdick, Gelser, Prozanski
Nays: 2 - Kruse, Thatcher

Prepared By: Jeff Rhoades, Counsel

WHAT THE MEASURE DOES:

Requires all private transferors of firearms to appear at gun dealer in person with both transferee and firearm and request criminal background check before transfer. Enumerates exceptions for family members, law enforcement, inherited firearms and certain temporary transfers. States that violation of background check law constitutes Class A misdemeanor for first offense and Class B felony for second and subsequent offenses. Provides that if transferor and transferee live over 40 miles from each other, transferor may ship or deliver firearm to gun dealer located near transferee. Allows Department of State Police to notify local law enforcement when background check demonstrates transferee is prohibited from possession of firearm. Allows court to prohibit person participating in outpatient treatment from possession of firearm during period of treatment upon certain findings. Declares emergency, effective on passage.

ISSUES DISCUSSED:

- Constitutionality of universal background checks
- Preventing felons and other prohibited persons from possessing firearms
- Application of Second Amendment
- Recent increase in gun and gang violence

EFFECT OF COMMITTEE AMENDMENT:

Provides that if transferor and transferee live over 40 miles from each other, transferor may ship or deliver firearm to gun dealer located near transferee. Makes Department of State Police reporting of failed attempted transfer to sheriff permissive.

BACKGROUND:

Senate Bill 941A, also named the "Oregon Firearms Safety Act," requires universal background checks for firearm transfers in the state of Oregon. Eight jurisdictions currently require a background check to be conducted prior to any firearms transfer, including those between private citizens and at gun shows. This is known colloquially as a "universal background check." These states are California, Colorado, Connecticut, Delaware, New York, Rhode Island, Washington State and Washington D.C. Of these states, some have additional restrictions such as handgun purchase permits, waiting periods, assault weapons bans and magazine capacity restrictions. Washington State is the most recent addition to the list, with Initiative 594 taking effect on December 4, 2014.

Oregon currently mandates that all firearms transfers at both gun shows and gun dealers be completed with a criminal background check. Such checks for private individuals, however, are permissive. ORS 166.436 provides that, prior to transferring a firearm, a transferor *may* request by telephone that the Department of State Police

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conduct a criminal background check on the recipient (emphasis added). Should a transferor elect to utilize this procedure, he or she is then immune from civil liability for any use of the firearm from the time of the transfer, unless the transferor knows, or reasonably should have known, that the recipient is likely to commit an unlawful act with the firearm.

The Act makes a background check between private individuals mandatory. There are certain exceptions enumerated in the Act. These include: 1) transfers between law enforcement agencies; 2) transfers at firearms turn-in or buy-back events; 3) transfers to certain family members; or 4) transfers as a result of the death of the owner. Violation of these provisions is classified as a Class A misdemeanor for a first offense, and a Class B felony for second and subsequent offenses. In the event that a background check reveals a transferee's ineligibility to possess a firearm, the Act allows the Department of State Police to notify the local sheriff of the attempted firearm transfer. Lastly, the Act allows judges to prohibit those undergoing assisted outpatient treatment from owning a firearm if, in the opinion of the court, there is a reasonable likelihood the person would constitute a danger to themselves or others as the result of the person's mental or psychological state.