

B-Engrossed
Senate Bill 525

Ordered by the Senate May 19
Including Senate Amendments dated April 30 and May 19

Sponsored by Senator MONNES ANDERSON, Representatives WILLIAMSON, VEGA PEDERSON, LININGER, PILUSO; Senators DEVLIN, STEINER HAYWARD, Representative SMITH WARNER

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure.

Prohibits possession of firearm or ammunition by person who is subject to *[restraining order issued by court under Family Abuse Prevention Act]* **certain court order protecting intimate partner or child of person or intimate partner**, or who has been convicted of certain misdemeanor crimes *[involving domestic violence]* **committed against family member**. Punishes unlawful possession of firearm by prohibited person by maximum of one year's imprisonment, \$6,250 fine, or both. Provides for procedure for relief from prohibition.

A BILL FOR AN ACT

1
2 Relating to possession of firearms by certain persons; creating new provisions; and amending ORS
3 166.250 and 166.274.

4 **Be It Enacted by the People of the State of Oregon:**

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 166.250 to**
6 **166.270.**

7 **SECTION 2. (1) It is unlawful for a person to knowingly possess a firearm or ammunition**
8 **if:**

9 (a) **The person is the subject of a court order that:**

10 (A) **Was issued or continued after a hearing for which the person had actual notice and**
11 **during the course of which the person had an opportunity to be heard;**

12 (B) **Restrains the person from stalking, intimidating, molesting or menacing an intimate**
13 **partner, a child of an intimate partner or a child of the person; and**

14 (C) **Includes a finding that the person represents a credible threat to the physical safety**
15 **of an intimate partner, a child of an intimate partner or a child of the person; or**

16 (b) **The person has been convicted of a qualifying misdemeanor and, at the time of the**
17 **offense, the person was a family member of the victim of the offense.**

18 (2) **The prohibition described in subsection (1)(a) of this section does not apply with re-**
19 **spect to the transportation, shipment, receipt, possession or importation of any firearm or**
20 **ammunition imported for, sold or shipped to or issued for the use of the United States Gov-**
21 **ernment or any federal department or agency, or any state or department, agency or poli-**
22 **tical subdivision of a state.**

23 (3) **As used in this section:**

24 (a) **"Convicted" means:**

25 (A) **The person was represented by counsel or knowingly and intelligently waived the**

NOTE: Matter in **boldfaced** type in an amended section is new; matter *[italic and bracketed]* is existing law to be omitted. New sections are in **boldfaced** type.

1 **right to counsel;**

2 **(B) The case was tried to a jury, if the crime was one for which the person was entitled**
3 **to a jury trial, or the person knowingly and intelligently waived the person's right to a jury**
4 **trial; and**

5 **(C) The conviction has not been set aside or expunged, and the person has not been**
6 **pardoned.**

7 **(b) "Deadly weapon" has the meaning given that term in ORS 161.015.**

8 **(c) "Family member" means, with respect to the victim, the victim's spouse, the victim's**
9 **former spouse, a person with whom the victim shares a child in common, the victim's parent**
10 **or guardian, a person cohabiting with or who has cohabited with the victim as a spouse,**
11 **parent or guardian or a person similarly situated to a spouse, parent or guardian of the**
12 **victim.**

13 **(d) "Intimate partner" means, with respect to a person, the person's spouse, the person's**
14 **former spouse, a parent of the person's child or another person who has cohabited or is**
15 **cohabiting with the person in a relationship akin to a spouse.**

16 **(e) "Possess" has the meaning given that term in ORS 161.015.**

17 **(f) "Qualifying misdemeanor" means a misdemeanor that has, as an element of the of-**
18 **fense, the use or attempted use of physical force or the threatened use of a deadly weapon.**

19 **SECTION 3.** ORS 166.250 is amended to read:

20 166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,
21 166.291, 166.292 or 166.410 to 166.470 or section 5, chapter 826, Oregon Laws 2009, a person commits
22 the crime of unlawful possession of a firearm if the person knowingly:

23 (a) Carries any firearm concealed upon the person;

24 (b) Possesses a handgun that is concealed and readily accessible to the person within any vehi-
25 cle; or

26 (c) Possesses a firearm and:

27 (A) Is under 18 years of age;

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

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

33 (C) Has been convicted of a felony;

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

35 (E) Was found to be a person with mental illness and subject to an order under ORS 426.130 that
36 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;
37 [or]

38 (F) Has been found guilty except for insanity under ORS 161.295 of a felony[.]; or

39 **(G) The possession of the firearm by the person is prohibited under section 2 of this 2015**
40 **Act.**

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 or
45 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 section.

10 (4)(a) Except as provided in paragraphs (b) and (c) of this subsection, a handgun is readily ac-
11 cessible within the meaning of this section if the handgun is within the passenger compartment of
12 the vehicle.

13 (b) If a vehicle, other than a vehicle described in paragraph (c) of this subsection, has no storage
14 location that is outside the passenger compartment of the vehicle, a handgun is not readily acces-
15 sible within the meaning of this section if:

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

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

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

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

23 (B) The handgun is equipped with a trigger lock or other locking mechanism that prevents the
24 discharge of the firearm.

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

26 **SECTION 4.** ORS 166.250, as amended by section 11a, chapter 826, Oregon Laws 2009, section
27 2, chapter 662, Oregon Laws 2011, and section 7, chapter 360, Oregon Laws 2013, is amended to
28 read:

29 166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,
30 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm
31 if the person knowingly:

32 (a) Carries any firearm concealed upon the person;

33 (b) Possesses a handgun that is concealed and readily accessible to the person within any vehi-
34 cle; or

35 (c) Possesses a firearm and:

36 (A) Is under 18 years of age;

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

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

42 (C) Has been convicted of a felony;

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

44 (E) Was found to be a person with mental illness and subject to an order under ORS 426.130 that
45 the person be prohibited from purchasing or possessing a firearm as a result of that mental illness;

1 [or]

2 (F) Has been found guilty except for insanity under ORS 161.295 of a felony[.]; or

3 (G) **The possession of the firearm by the person is prohibited under section 2 of this 2015**
4 **Act.**

5 (2) This section does not prohibit:

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

8 (A) Other than a handgun, if the firearm was transferred to the minor by the minor's parent or
9 guardian or by another person with the consent of the minor's parent or guardian; or

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

11 (b) Any citizen of the United States over the age of 18 years who resides in or is temporarily
12 sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270
13 and subsection (1) of this section, from owning, possessing or keeping within the person's place of
14 residence or place of business any handgun, and no permit or license to purchase, own, possess or
15 keep any such firearm at the person's place of residence or place of business is required of any such
16 citizen. As used in this subsection, "residence" includes a recreational vessel or recreational vehicle
17 while used, for whatever period of time, as residential quarters.

18 (3) Firearms carried openly in belt holsters are not concealed within the meaning of this section.

19 (4)(a) Except as provided in paragraphs (b) and (c) of this subsection, a handgun is readily ac-
20 cessible within the meaning of this section if the handgun is within the passenger compartment of
21 the vehicle.

22 (b) If a vehicle, other than a vehicle described in paragraph (c) of this subsection, has no storage
23 location that is outside the passenger compartment of the vehicle, a handgun is not readily acces-
24 sible within the meaning of this section if:

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

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

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

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

32 (B) The handgun is equipped with a trigger lock or other locking mechanism that prevents the
33 discharge of the firearm.

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

35 **SECTION 5.** ORS 166.274 is amended to read:

36 166.274. (1) Except as provided in subsection (11) of this section, a person barred from possessing
37 or purchasing a firearm may file a petition for relief from the bar in accordance with subsection (2)
38 of this section if:

39 (a) The person is barred from possessing a firearm under ORS 166.250 (1)(c)(A), [or] (C) or (G)
40 or 166.270; or

41 (b) The person is barred from purchasing a firearm under ORS 166.470 (1)(a), (b) or (g).

42 (2) A petition for relief described in this section must be filed in the circuit court in the
43 petitioner's county of residence.

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

45 (4)(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 the
4 petition is filed at the court.

5 (5)(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 of
8 the petitioner to be entered into the Department of State Police computerized criminal history files.
9 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
10 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
11 notify the court that granted relief under this section. The court shall review the order granting
12 relief and determine whether to rescind the order. The Department of State Police may charge a
13 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

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

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

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

24 (9) A person filing a petition under this section must pay the filing fee established under ORS
25 21.135.

26 (10)(a) Initial appeals of petitions shall be heard de novo.

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

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

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

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

35 (b) Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart to an
36 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 sen-
38 tence in the one-year period preceding the filing of the petition.

39 **SECTION 6.** ORS 166.274, as amended by section 20, chapter 826, Oregon Laws 2009, section
40 3, chapter 86, Oregon Laws 2010, section 60, chapter 595, Oregon Laws 2011, and section 4, chapter
41 662, Oregon Laws 2011, is amended to read:

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

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

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

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

4 (B) The sheriff of the county in which the court is located.

5 (b) The copy of the petition shall be served on the chief of police or sheriff at the same time the
6 petition is filed at the court.

7 (4)(a) When a petition is denied, the judge shall cause that information to be entered into the
8 Department of State Police computerized criminal history files.

9 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
10 the petitioner to be entered into the Department of State Police computerized criminal history files.
11 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
12 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
13 notify the court that granted relief under this section. The court shall review the order granting
14 relief and determine whether to rescind the order. The Department of State Police may charge a
15 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this 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) Petitions filed under this section shall be heard and disposed of within 15 judicial days of
23 filing or as soon as is practicable thereafter, but not more than 30 days thereafter. The judge shall
24 then make findings and conclusions and issue a judgment based on the findings and conclusions in
25 accordance with the requirements of law.

26 (8) A person filing a petition under this section must pay the filing fee established under ORS
27 21.135.

28 (9)(a) Initial appeals of petitions shall be heard de novo.

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

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

33 (10) The court may not grant relief under this section to a person who:

34 (a) Has been convicted of a person felony, as that term is defined in the rules of the Oregon
35 Criminal Justice Commission, or the statutory counterpart to a person felony in any other jurisdic-
36 tion, if the offense involved the use of a firearm or a deadly weapon as defined in ORS 161.015;

37 (b) Has been convicted of an offense listed in ORS 137.700 or the statutory counterpart to an
38 offense listed in ORS 137.700 in any other jurisdiction; or

39 (c) Is currently serving a felony sentence as defined in ORS 10.030 or has served a felony sen-
40 tence in the one-year period preceding the filing of the petition.

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