

Testimony in OPPOSITION to SB978, as amended

To: Senate Judiciary Committee [Sjud.exhibits@oregonlegislature.gov](mailto:Sjud.exhibits@oregonlegislature.gov)

From: Benjamin Haines – CHL holder, Resident SD12, HD23

Date: Submitted Thursday April 4, 2019

Please accept this as my formal comments and Testimony on Senate Bill #978 and Amendments SB978-1 SB978-2 and SB978-3 (44 pages of amendment).

Senators,

I hope you have taken the time to read and reflect on the testimony you have received regarding this legislation. I am writing to add my name to the list of productive, law abiding citizens in strong opposition to this bill. A citizen who will be forced to surrender tens of thousands of dollars worth of private firearms and “unfinished receivers” without compensation or be faced with a Felony. A Felony! I have never been cited for more than a driving infraction. And present no threat to anyone. Quite the opposite – I am more often than not armed. And that includes places with administrative “rules” prohibiting concealed carry. Provided it is \*not against the law\* I am armed and willing to accept the consequences of my actions in many public buildings on a daily basis. An amateur gunsmith by hobby, a professional engineer by occupation and an invited University Lecturer with a CHL, I am a law abiding citizen with a lot to lose should this bill become law. I have therefore taken significant amount of time to study and reflect on this proposed legislation and provide this testimony. I hope that my legislators have done the same in preparing to make a Felon out of me.

I have provided detailed analyses and arguments in testimony against the Bill for the record. Should the Bill proceed out of committee, the contents of this testimony are intended to be used as evidence in legal action pursuant to Title 18 USC 241 and 242.

Thank you for considering my testimony.

Ben Haines

Polk County Oregon

**FOR REFERENCE:**

**Article 1 Section 27, Oregon State Constitution:** Right to bear arms; military subordinate to civil power. The people shall have the right to bear arms for the defence [sic] of themselves, and the State, but the Military shall be kept in strict subordination to the civil power[.]

<https://sos.oregon.gov/blue-book/Documents/oregon-constitution.pdf>


**Amendment II of the US Constitution**

“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.”

<https://www.archives.gov/founding-docs/bill-of-rights-transcript>





**When Tyranny becomes Law, Rebellion becomes Duty**



**"YOU WILL NEVER KNOW HOW MUCH IT HAS COST MY GENERATION TO PRESERVE YOUR FREEDOM. I HOPE YOU WILL MAKE A GOOD USE OF IT."**

**-JOHN ADAMS**


*John Adams.*



**"IF YE LOVE WEALTH BETTER THAN LIBERTY, THE TRANQUILITY OF SERVITUDE BETTER THAN THE ANIMATING CONTEST OF FREEDOM, GO HOME FROM US IN PEACE. WE ASK NOT YOUR COUNSELS OR YOUR ARMS. CROUCH DOWN AND LICK THE HANDS WHICH FEED YOU. MAY YOUR CHAINS SET LIGHTLY UPON YOU, AND MAY POSTERITY FORGET THAT YOU WERE OUR COUNTRYMEN."**

**-SAM ADAMS**

*Sam Adams*



## **ARGUMENTS IN OPPOSITION:**

### **SECTION 1: MINIMUM AGE FOR FIREARM SALES**

A seller, dealer, etc. should not be able to limit firearms or ammunition sales beyond any restriction set forth in ORS or in Federal Laws. This is in effect a form of age discrimination. It is also a solution looking for a problem where none exists. We can send a 18 year old off to war, serving in the military but they can't buy shotgun shells or purchase a hunting rifle ? A teen can drive a 4,000 pound car at 16, buy one if they can, purchase all kinds of power tools, gasoline, other potentially dangerous items but cannot buy a gun, ammo or accessory if legal to do so by State Law? Age discrimination is what it is. Leave the statutes as they are. Furthermore, you have not the authority to violate the Second Amendment rights of ANY citizen, regardless of their age. I stand for the rights of the next generation. And the generation after that, and so on and so on. 18 year olds are ADULTS and therefore have all the privileges of any other person in this country. Voting to move this portion of the bill forward is like saying "It's just the tip" when raping somebody.

### **SECTIONS 5-10 related to Firearms Storage:**

**SECTION 5.** *As used in sections 5 to 10 of this 2019 Act: "(1) 'Authorized person' means a person authorized by the owner or possessor of a firearm to carry or control the firearm. "(2)(a) 'Container' means a box, case, chest, locker, safe or other similar receptacle. "(b) 'Container' does not include a building, room or vehicle or a space within a vehicle. "(3) 'Control' means, in relation to a firearm, that a person is insufficiently close proximity to the firearm to prevent another person from obtaining the firearm. "(5) 'Gun room' means an area within a building enclosed by walls, a floor and a ceiling, including a closet, that has all entrances secured by a tamper-resistant lock, that is kept locked at all times when unoccupied and that is used for:*

**SECTION 6.** *(1)(a) A person who owns or possesses a firearm shall, at all times that the firearm is not carried by or under the control of the person or an authorized person, secure the firearm: "(A) With an engaged trigger lock or cable lock that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; "(B) In a locked container, equipped with a tamper-resistant lock, that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; or "(C) In a gun room. (3) If a person obtains an unsecured firearm as a result of the owner Or possessor of a firearm violating subsection (1) of this section and the firearm is used to injure a person or property within two years of the violation, the owner or possessor of the firearm who violated subsection (1) of this section is strictly liable for the injury.*

**SECTION 7.** *(1) A person transferring a firearm shall transfer the firearm: "(a) With an engaged trigger lock or cable lock that meets or exceeds the minimum specifications established by the Oregon Health Authority under section 10 of this 2019 Act; or "(b) In a locked container, equipped with a tamper-resistant lock.*

**SECTION 8.** *"(3) If a lost or stolen firearm is used to injure a person or property and the person who owned, possessed or controlled the firearm at the time of the loss or theft did not report the loss or theft within the time period required by subsection (1) of this section, the person who owned, possessed or controlled the firearm at the time of the loss or theft is strictly liable for the injury for two years from the*

*expiration of the time limit for reporting or until the loss or theft report is made, whichever occurs sooner.*

Specific issues I have with the proposed “lock-up” restrictions contained in Sections 5 - 10:

- It violates my ability to control my own property within my own home or possession.
- A gun left on a night stand in a bedroom while the owner was in the kitchen could be seen as a violation of this law. (no children or visitors in the home) The gun would be viewed as NOT under the owner’s control and the owner subject to arrest.
- A gun in the home is often maintained for self defense purposes. Requiring a cable lock, box lock or other device defeats this purpose. In a home invasion or burglary, time is of the essence to protect one’s self and family from injury or death. A locking device defeats the very reason to have firearm for defensive purposes. This edict is clear from the Heller decision, and is the guiding reason for declaring trigger locks UNCONSTITUTIONAL.
- The Amendment states that a building does not qualify for a locking device. My locked, deadbolted, cameras and alarm system Home does not qualify to properly retain my firearms? But a plastic box with a cheap lock or a light weight cable lock that can be defeated with a \$5.00 tool is? The State has no business what or how I store any of my property within my home. If a criminal makes the decision to break into my fortified and secured home and steal property of any kind, that is on the criminal not the homeowner.
- Cable lock/lock requirements upon sale or transfer even at a gun store. This is totally ridiculous. Many new firearms are now sold with locking devices. Some new firearms are sold with locking devices and by their design were custom made (as a cable would not work). By design, not all guns can be locked by a device. Firearms from years past, many years, did not come with locking devices and there may not be the ability to do so. Cable locks currently accompanying firearms when sold can be easily opened using a screw driver or a simple wire cutter.
- Holding a gun owner legally liable for the acts of a criminal that illegally obtained their gun is ludicrous. 2 years at that. How could I prove months or years later that the gun that was stolen from me was properly locked up? Where is the burden of proof? The honest gun owner should not be held responsible for the acts of another... a criminal.
- Securing a gun in a vehicle is not permitted and is in fact a crime under this Bill. A CHL holder under other parts of this Bill would be required to disarm while in or upon certain jurisdictions. Proposed amendments would not allow locking a handgun in the trunk of their car. One could argue that the trunk (made of steel and a lock) is more secure than a cable lock, plastic box or cheap gun safe. Under this bill a CHL holder would be required to; disarm, unload the gun, insert a cable lock and then secure the weapon....where...? The vehicle is not permitted. All of this in view of the public, possibly in a parking lot. Unsafe and unnecessary.
- In reading these amendments I also see no exemption in storing of firearms in vehicles for; hunters, shooting sports, transporting guns for any reason or even guns stored within police vehicles. Does this State really want to criminalize a hunter for having a rifle locked in the cab of their truck, the trunk of their car or; the police officer that may have a spare gun, shotgun or tactical rifle in a police vehicle? I

have been instructed by State Police to “lock the firearm in a vehicle” during the course of my regular day under some circumstances. Is this bill what those responsible for \*your public safety\* want? Based on the testimony I’ve read, I’d say NO.

- These amendments hold gun owners responsible for two years for guns they "transferred" unless they could prove the transferred gun had a trigger or cable lock.
- This bill significantly impacts personal choice and responsibility by requiring all firearms owners and possessors to secure the firearm with a trigger lock or other storage device, without regard to whether the premises itself is secured or where it is.

Lock up requirements for guns are a responsible thing to do but should be voluntary based upon the individuals own personal choice and circumstances. Mandatory lock up requirements for firearms have been ruled UNCONSTITUTIONAL by the Supreme Court of the United States: “On June 26, 2008, the Supreme Court affirmed by a vote of 5 to 4 the Court of Appeals for the D.C. Circuit in Heller v. District of Columbia. The Supreme Court struck down provisions of the Firearms Control Regulations Act of 1975 as unconstitutional, determined that handguns are "arms" for the purposes of the Second Amendment, found that the Regulations Act was an unconstitutional ban, and struck down the portion of the Regulations Act that requires all firearms including rifles and shotguns be kept "unloaded and disassembled or bound by a trigger lock".

This is settled caselaw! Any attempt by the Oregon Legislature to enact firearms lockup restrictions would be unconstitutional and you as Legislators are violating your oath of office even attempting to pass such legislation. Please read Title 18, U.S.C. Sections 241 and 242.

This testimony constitutes instruction to the Oregon Legislature under the provisions of Article 1 Section 26 of the Oregon State Constitution. YOU ARE HEREBY INSTRUCTED THAT Willful violation of Federal and State Constitutional rights by advancing this bill constitutes a violation of Title 18 USC sections 241 and 242. You are hereby notified that I intend to pursue legal action against those who conspire against my civil rights, including senators and or representatives in their official capacity.

This committee has the opportunity to positively hold irresponsible gun owners responsible without violation the civil rights of hundreds of thousands of Oregonians. SB 817 created the crime of unlawful storage, but specifically only punishes violators whose actions result in a tragic event rather than all gun owners.

#### **SECTION 10.**

*No later than January 1, 2020, the Oregon Health Authority shall adopt rules establishing the minimum specifications for trigger locks, cable locks and containers equipped with tamper resistant locks required by sections 6 and 7 of this 2019 Act.*

In regards to Section 10; It is my opinion that the Oregon Health Authority has no jurisdiction or expertise to comment or make rules in the proper locking or security of firearms. There are thousands of styles and designs of firearms which may require unique means of securing. If even possible. Regarding “tamper resistant locks”; every lock can be tampered with, every lock defeated. What will be the minimum standards? At what cost? Most gun owners are already responsible for properly securing their firearms. Firearms is nothing more than, property. The State should not be involved in how gun owners

store their property. This has already been settled by the Supreme Court in the Heller decision. Further action by the State is Unconstitutional! Besides; cars, knives, hammers, drugs harm and kill more people than guns do....when will we require hammers be locked up? See CDC Statistics for Oregon below.

**SECTION 20:** *“(j) Has been convicted of unlawful storage of a firearm under section 12 of this 2019 Act within the five years immediately preceding the date of the attempted sale, delivery or transfer.” Prohibits gun sale or transfer for violation of unlawful storage/lockup law.*

Removal of a Constitutionally protected right (gun ownership) should not be withheld under this Bill. We had strict federal standards for removal of constitutionally protected rights. Creating the “crime” of unlawful storage as a pretense for prohibiting a person from owning or possessing a firearm is downright grotesque.

### **SECTION 26 - SECTION 27**

The proposed amendments included in Section 26 and 27 in addition to other language will severely restrict a Concealed Handgun License holder’s (CHL) ability to legally carry a concealed handgun. Allowing individual municipal and other government entities and hospitals and universities to develop ordinances and policies to regulate where and when a CHL holder can carry will cause complete confusion among CHL holders. A hodgepodge of hundreds if not thousands of new policies and ordinances would in effect render a CHL to be ineffective for the very purposes that the holder obtained the CHL for. It would also be impossible for any CHL holder to know all the various ordinances and policies as he or she passed through various jurisdictions and/or entered various facilities or properties.

Those that have a CHL obtained the license for various personal reasons. These could be; personal - defense, crime victim, victim of a stalker, carry large amounts of monies or valuable properties, business related, general security, they live in a rural area where police response times are poor, former law enforcement officer, former military officer or; because they believe it is their responsibility to protect themselves, their family and community. Threats and risks to honest CHL holders do not end just because there is a sign at the door, a policy written or an ordinance that disallows a licensed CHL holder from carrying into a specific building or upon (as an example) city owned properties. These amendments to existing ORS would place these CHL holders in greater harm by not allowing them to carry their handgun.

These amendments, if passed would cause extreme confusion and place a CHL holder in jeopardy of being arrested for violation of a ORS and/or ordinance. Imagine a CHL holder leaving their home from Eugene, traveling through Salem to pick up a child at school and then proceeding to Portland for business, dinner or to pick up a spouse at the airport. That holder could be subjected to at least 6 different governmental jurisdictions, a school district and PDX airport all of which could have their own ordinances regulating when and where a CHL holder could legally carry their handgun or not. It would be impossible to know all of these laws/ordinances and their nuances. You could literally on your drive be legal, illegal, legal, illegal, illegal. I would compare this to allowing every city, county, and other governmental and nongovernmental agency to enact their own portions of the motor vehicle code. Codes that would conflict and be opposite of each other. An impossibility to comply that will only get honest CHL holders arrested. A parent with a CHL, going to school to pick up their child would literally have to disarm themselves at home and remain disarmed for their entire trip until they returned home (with a school disallowing CHL carry). This could place a crime victim CHL holder at risk of attack and

injury. Other examples: If I drove from Albany to pick up a passenger at PDX Portland, I could not even drive onto airport grounds with a handgun and my CHL. If I got off of work carrying my CHL and got into an accident, transported to a hospital, I could be subject to arrest for entering that hospital with a legally carried handgun using my CHL (hospital would be prohibited). Picking up a child at school would be illegal to carry a handgun-CHL on my person or in my vehicle (assuming the School passed an ordinance) EVEN if I was on an adjacent property to the school property. The ADJACENT PROPERTY clause in the amendments is further, ludicrous.

Allowing such entities to further restrict CHL holders from concealed or open carry of handguns would be a confusing mess that will only get honest citizens arrested. It will do nothing to ensure safety of any kind. This is why the state has preemption statutes related to firearms.

Safety Concerns: The safest place to retain a handgun when it is being carried is in it's holster! If not being utilized for a defensive use, the gun should remain holstered. If these ordinances and carry restrictions were instituted, a CHL holder would be required to disarm themselves at various locations, buildings, lands and locations. This would require removal of the handgun from the person of the CHL holder and possible placement into a vehicle mounted safe (as example). Every time a gun is unholstered and re-holstered there is the possibility of an accidental discharge. The act of unholstering and re-holstering could be viewed by people in the vicinity and this could cause alarm and/or panic. This resulting panic could cause an unnecessary police response or a police response that could lead to an honest citizen CHL holder being mistaken as a threat and shot and killed or injured by responding police. As a CHL holder leaving my home running various errands; one could find it necessary, to remain "legal", to unholster and re-holster 4 or 5 times in one trip. Starbuck's "no Guns", unholster and re-holster. Kid's school, unholster and re-holster. Post Office, unholster and re-holster. Bank, unholster and re-holster. Get the picture. Each time risking an accidental discharge or causing public alarm by handling a gun in view of the public. This is unsafe and ridiculous. Oregon citizens that have taken the time to obtain a CHL have; taken the appropriate classes, are often experienced with firearm usage, trained in safety and legality of gun usage, background checked by State Police and the FBI (and other jurisdictions), fingerprinted and are regulated by existing laws. CHL holders ARE honest law abiding citizens! Studies have shown that CHL holders are in fact more honest and more law obeying then even law enforcement officers. CHL holders have NOT been a problem or a safety risk to society or in the various locations that are proposed to allow restricted carry. In fact, there have been times where the CHL holder even prevented injuries, deaths and stopped the carnage of the criminal element causing harm. The Clackamas Town Center shooting incident was stopped by a CHL holder. There has NOT been a problem with CHL holders under current Oregon Law and current restrictions of carry. There is NO need to proceed with this bill and the amendments to allow jurisdictions to further restrict a CHL holder's ability to legally carry a handgun.

Its interesting to note the irony of creating more crimes in a school zone which will require a police response to enforce, thus increasing the number of safety "lockdowns" the school would experience. This would be the case if/when a CHL holder inadvertently violates a local ordinance they may not be aware of.

It is a God given right for one to be able to protect themselves. The courts have agreed with this, we have a right to self defense. A CHL holder has that ability licensed to them for whatever personal reason and need they see fit. To further restrict where a honest CHL holder can carry removes safety and makes



that very environment less safe. Criminals do not follow laws. Criminals do not and cannot obtain a CHL. Criminals will not obey “gun free zones”, therefore by allowing these amendments you are handing the criminal a platter of disarmed citizens to feast and prey upon. If I as a CHL holder disarmed myself to enter a municipal building/property/or adjacent property and I was attacked and injured by a criminal with assaultive intent; I would file a lawsuit against that municipality for failure to provide myself (and others) with adequate security and protection. This bill does NOTHING to further protect Oregonians and there is no need, has been no need to protect society from legally armed CHL holders, NONE!

As far as raising a fee for a CHL license to cover FBI costs or any other costs incurred by the Sheriff; there should be a maximum amount for all the fees charged. Currently there is no fee amount or maximum fee amount limitation for the FBI background check.

**“SECTION 32.** *This 2019 Act being necessary for the immediate preservation of the public peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect on its passage.”*

BS. BS. BS. The only reason for attaching an emergency clause to this bill is to prevent a citizen referendum. Not only do proponents of this Bill want to violate our rights, they wish to prevent citizens from fixing their errors. Take a look at the Centers for Disease Control statistics included at the end of this testimony. Oregon’s firearm homicide rate is approximately half that of the average in the US. Hardly an emergency....

The use of the Emergency Clause for SB978 and 978-1 Amendments is an improper and inappropriate use of the emergency clause, one for which it was NOT intended. I strongly object to the use of the emergency clause. NO emergency exists when it comes to any subject matter discussed within this Bill. There is NO emergency or need to alter places where law abiding CHL holders may carry their handguns! There is NO emergency for securing and locking up of firearms! There is NO emergency to change age restrictions for gun/ammo transfers and purchases! There is NO emergency for other sections within SB978 & 978-1, -2 and -3 Amendments. In its entirety, SB978 and Amendments should be tabled and no further action be taken. A vote to move this bill out of committee is a vote to consciously join in on an illegal conspiracy against the Civil Rights of hundreds of thousands of Oregonians. Your yes vote will result in your name being added to the prepared suit.

The entire bill is restrictive of constitutionally protected rights at both the State and Federal Levels.

If you really want to make our communities safer; instead of attacking honest gun owners with unconstitutional laws and more restrictions of their rights, your efforts would be better spent: Enhancing penalties for crimes involving the use of firearms, enhanced sentencing for assaults/injures/deaths involving firearms, gang reduction (high illegal gun usage), drug use and trafficking (high illegal gun usage) and going after criminal black market gun sales. HONEST GUN OWNERS ARE NOT THE PROBLEM! CRIMINALS ARE!

FROM CDC reports:

<https://www.cdc.gov/nchs/pressroom/states/oregon/oregon.htm>

<b>OR Leading Causes of Death, 2017</b>	<b>Deaths</b>	<b>Rate***</b>	<b>State Rank*</b>	<b>U.S. Rate**</b>
1. <a href="#">Cancer</a>	8,083	154.2	25th (tie)	152.5
2. <a href="#">Heart Disease</a>	6,942	134.0	47th	165.0
3. <a href="#">Chronic Lower Respiratory Diseases</a>	2,088	39.7	32nd	40.9
4. <a href="#">Accidents</a>	2,076	44.7	37th	49.4
5. <a href="#">Stroke</a>	2,066	39.9	17th	37.6
6. <a href="#">Alzheimer's disease</a>	1,850	36.0	18th	31.0
7. <a href="#">Diabetes</a>	1,243	23.9	14th (tie)	21.5
8. <a href="#">Suicide</a>	825	19.0	15th	14.0
9. <a href="#">Chronic Liver Disease/Cirrhosis</a>	642	12.6	16th (tie)	10.9
10. <a href="#">Flu/Pneumonia</a>	573	11.1	45th	14.3

<b>Oregon Mortality Data</b>	<b>Deaths</b>	<b>Rate**</b>	<b>U.S. Deaths</b>	<b>U.S. Rate***</b>
<a href="#">Firearm Deaths</a>	528	12.1	39,773	12.0
<a href="#">Homicide</a>	127	3.1	19,551	6.2
<a href="#">Drug Overdose Deaths</a>	530	12.4	70,237	21.7

Respectfully submitted,

Benjamin Haines

Polk County Oregon

CHL holder, Amateur Gunsmith, Farm Operator, Business Owner, Taxpayer and Oregon Voter.