

HOUSE AMENDMENTS TO HOUSE BILL 2013

By COMMITTEE ON JUDICIARY

April 17

1 On page 1 of the printed bill, delete lines 5 through 25 and delete pages 2 through 5 and insert:
2 “**SECTION 1.** ORS 166.255, as amended by section 1, chapter 5, Oregon Laws 2018, is amended
3 to read:

4 “166.255. (1) It is unlawful for a person to knowingly possess a firearm or ammunition if:

5 “(a) The person is the subject of a court order that:

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

8 “(ii) **Was issued, continued or remains in effect, by order or operation of law, after the**
9 **person received notice of the opportunity to request a hearing in which to be heard on the**
10 **order, and either requested a hearing but did not attend the hearing or withdrew the request**
11 **before the hearing occurred, or did not request a hearing during the time period in which**
12 **the opportunity was available;**

13 “(B) Restrains the person from stalking, intimidating, molesting or menacing a family or house-
14 hold member of the person, a child of a family or household member of the person or a child of the
15 person; and

16 “(C) Includes a finding that the person represents a credible threat to the physical safety of a
17 family or household member of the person, a child of a family or household member of the person
18 or a child of the person;

19 “(b) The person has been convicted of a qualifying misdemeanor and, at the time of the offense,
20 the person was:

21 “(A) A family or household member of the victim of the offense; or

22 “(B) A parent or guardian of the victim of the offense; or

23 “(c) The person has been convicted of stalking under ORS 163.732.

24 “(2) The prohibition described in subsection (1)(a) of this section does not apply with respect to
25 the transportation, shipment, receipt, possession or importation of any firearm or ammunition im-
26 ported for, sold or shipped to or issued for the use of the United States Government or any federal
27 department or agency, or any state or department, agency or political subdivision of a state.

28 “(3) As used in this section:

29 “(a) ‘Convicted’ means:

30 “(A) The person was represented by counsel or knowingly and intelligently waived the right to
31 counsel;

32 “(B) The case was tried to a jury, if the crime was one for which the person was entitled to a
33 jury trial, or the person knowingly and intelligently waived the person’s right to a jury trial; and

34 “(C) The conviction has not been set aside or expunged, and the person has not been pardoned.

35 “(b) ‘Deadly weapon’ has the meaning given that term in ORS 161.015.

1 “(c) ‘Family or household member’ has the meaning given that term in ORS 135.230.

2 “(d) ‘Possess’ has the meaning given that term in ORS 161.015.

3 “(e) ‘Qualifying misdemeanor’ means a misdemeanor that has, as an element of the offense, the
4 use or attempted use of physical force or the threatened use of a deadly weapon.

5 **“SECTION 2. Section 3 of this 2019 Act is added to and made a part of ORS 166.250 to
6 166.270.**

7 **“SECTION 3. (1) When a person is convicted of an offense described in ORS 166.255 (1)(b)
8 or (c), the court shall, at the time of conviction:**

9 **“(a) Indicate in the judgment of conviction that the person is prohibited from possessing
10 firearms and ammunition under ORS 166.250 and 166.255;**

11 **“(b) Inform the person, orally and in writing, that the person is prohibited from pos-
12 sessed firearms and ammunition;**

13 **“(c) Order in writing that the person transfer all firearms and ammunition in the
14 person’s possession in accordance with subsection (2) of this section; and**

15 **“(d) Order that the person file a declaration as described in subsection (4) of this section.**

16 **“(2)(a) Within 24 hours of the court’s order under subsection (1) of this section, the
17 person shall transfer all firearms and ammunition in the person’s possession to a local law
18 enforcement agency, to a gun dealer as defined in ORS 166.412 or to a third party who does
19 not reside with the person, and shall obtain a proof of transfer under paragraph (b) of this
20 subsection. A transfer to a third party under this subsection must be in accordance with
21 ORS 166.435, except that the criminal background check exceptions in ORS 166.435 (4) do not
22 apply.**

23 **“(b) A law enforcement agency, gun dealer or third party receiving a firearm or ammu-
24 nition pursuant to this subsection shall issue to the person a written proof of transfer. The
25 proof of transfer must include the person’s name, the date of transfer and the serial number,
26 make and model of each transferred firearm. A proof of transfer issued by a third party
27 must also include the unique approval number from the Department of State Police from the
28 criminal background check conducted under ORS 166.435.**

29 **“(c) A person transferring a firearm or ammunition to a third party under this sub-
30 section shall additionally obtain from the third party a declaration under penalty of perjury
31 confirming receipt of the firearm or ammunition and attesting that:**

32 **“(A) The third party understands that the person is prohibited from possessing firearms
33 and ammunition; and**

34 **“(B) The third party is subject to criminal penalties if the third party allows the person
35 access to the firearm or ammunition during the prohibition.**

36 **“(3)(a) A law enforcement agency may accept a firearm or ammunition transferred under
37 this section.**

38 **“(b) A gun dealer may purchase or may accept for storage a firearm or ammunition
39 transferred under this section.**

40 **“(4)(a) Within two judicial days of the court’s order under subsection (1) of this section,
41 the person shall file with the court a declaration under penalty of perjury attesting that:**

42 **“(A) All firearms and ammunition in the person’s possession have been transferred under
43 subsection (2) of this section to:**

44 **“(i) A law enforcement agency;**

45 **“(ii) A gun dealer; or**

1 “(iii) A third party;

2 “(B) The person was not in possession of any firearms at the time of the court’s order

3 and continues to not possess any firearms; or

4 “(C) The person is asserting the person’s constitutional right against self-incrimination.

5 “(b) The person shall file with the declaration a copy of the proof of transfer, if applica-

6 ble, and a copy of the third party declaration, if applicable.

7 “(5) The person shall concurrently file with the district attorney copies of the declara-

8 tion, proof of transfer and third party declaration filed with the court under subsection (4)

9 of this section.

10 “(6) A person in possession of a firearm or ammunition in violation of ORS 166.255 (1)(b)

11 or (c) may not be prosecuted under ORS 166.250 if:

12 “(a) The person is in possession of a court order described in subsection (1) of this sec-

13 tion issued within the previous 24 hours;

14 “(b) The firearm is unloaded; and

15 “(c) The person is transporting the firearm or ammunition to a law enforcement agency,

16 gun dealer or third party for transfer in accordance with subsection (2) of this section.

17 “(7) If the person does not file the declaration required under subsection (4) of this sec-

18 tion, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.

19 “SECTION 4. (1)(a) When a respondent becomes subject to an order described in ORS

20 166.255 (1)(a) prohibiting the respondent from possessing firearms or ammunition, the court

21 shall:

22 “(A) Indicate in the order that the respondent is prohibited from possessing firearms and

23 ammunition under ORS 166.250 and 166.255 while the order is in effect.

24 “(B) Ensure that the respondent is subject to an additional order:

25 “(i) Requiring the respondent to transfer all firearms and ammunition in the

26 respondent’s possession in accordance with subsection (2) of this section; and

27 “(ii) Requiring the respondent to file a declaration as described in subsection (4) of this

28 section.

29 “(b) If the respondent becomes subject to the order while the respondent is present in

30 court, the court shall:

31 “(A) Inform the respondent, orally and in writing, that the respondent is prohibited from

32 possessing firearms and ammunition;

33 “(B) Order in writing that the respondent transfer all firearms and ammunition in the

34 respondent’s possession in accordance with subsection (2) of this section; and

35 “(C) Order that the respondent file a declaration as described in subsection (4) of this

36 section.

37 “(2)(a) Within 24 hours of becoming subject to the court order under subsection (1)(a)(B)

38 of this section or receiving the court order under subsection (1)(b)(B) of this section, the

39 respondent shall transfer all firearms and ammunition in the respondent’s possession to a

40 local law enforcement agency, to a gun dealer as defined in ORS 166.412 or to a third party

41 who does not reside with the respondent, and shall obtain a proof of transfer under para-

42 graph (b) of this subsection. A transfer to a third party under this subsection must be in

43 accordance with ORS 166.435, except that the criminal background check exceptions in ORS

44 166.435 (4) do not apply.

45 “(b) A law enforcement agency, gun dealer or third party receiving a firearm or ammu-

1 nition pursuant to this subsection shall issue to the respondent a written proof of transfer.
2 The proof of transfer must include the respondent's name, the date of transfer and the serial
3 number, make and model of each transferred firearm. A proof of transfer issued by a third
4 party must also include the unique approval number from the Department of State Police
5 from the criminal background check conducted under ORS 166.435.

6 “(c) A respondent transferring a firearm or ammunition to a third party under this
7 subsection shall additionally obtain from the third party a declaration under penalty of per-
8 jury confirming receipt of the firearm or ammunition and attesting that:

9 “(A) The third party understands that the respondent is prohibited from possessing
10 firearms and ammunition; and

11 “(B) The third party is subject to criminal penalties if the third party allows the re-
12 spondent access to the firearm or ammunition during the prohibition.

13 “(3)(a) A law enforcement agency may accept a firearm or ammunition transferred under
14 this section.

15 “(b) A gun dealer may purchase or may accept for storage a firearm or ammunition
16 transferred under this section.

17 “(4)(a) Within two judicial days of becoming subject to the court order under subsection
18 (1)(a)(B) of this section or receiving the court order under subsection (1)(b)(B) of this sec-
19 tion, the respondent shall file with the court a declaration under penalty of perjury attesting
20 that:

21 “(A) All firearms and ammunition in the respondent's possession have been transferred
22 under subsection (2) of this section to:

23 “(i) A law enforcement agency;

24 “(ii) A gun dealer; or

25 “(iii) A third party;

26 “(B) The respondent was not in possession of any firearms at the time of the court's
27 order and continues to not possess any firearms; or

28 “(C) The respondent is asserting the respondent's constitutional right against self-
29 incrimination.

30 “(b) The respondent shall file with the declaration a copy of the proof of transfer, if ap-
31 plicable, and a copy of the third party declaration, if applicable.

32 “(5) The respondent shall concurrently file with the district attorney copies of the dec-
33 laration, proof of transfer and third party declaration filed with the court under subsection
34 (4) of this section.

35 “(6) A respondent in possession of a firearm or ammunition in violation of ORS 166.255
36 (1)(a) may not be prosecuted under ORS 166.250 if:

37 “(a) The respondent is in possession of a court order described in subsection (1)(a)(B) or
38 (1)(b)(B) of this section that went into effect or was issued within the previous 24 hours;

39 “(b) The firearm is unloaded; and

40 “(c) The respondent is transporting the firearm or ammunition to a law enforcement
41 agency, gun dealer or third party for transfer in accordance with subsection (2) of this sec-
42 tion.

43 “(7) Upon the expiration or termination of the order described in ORS 166.255 (1)(a), at
44 the request of the respondent:

45 “(a) A law enforcement agency shall return any stored firearms and ammunition to the

1 respondent in accordance with section 5 of this 2019 Act.

2 “(b) A gun dealer shall return any stored firearms and ammunition to the respondent
3 after performing a criminal background check as defined in ORS 166.432 to confirm that the
4 respondent is not prohibited from possessing a firearm or ammunition under state or federal
5 law.

6 “(c) A third party shall return any stored firearms and ammunition to the respondent
7 only after requesting a criminal background check in accordance with ORS 166.435, except
8 that the criminal background check exceptions in ORS 166.435 (4) do not apply.

9 “(8) If the respondent does not file a declaration described in subsection (4) of this sec-
10 tion, the district attorney may commence contempt proceedings under ORS 33.015 to 33.155.

11 “SECTION 5. (1) Upon receiving a request to return a firearm or ammunition relin-
12 quished to a law enforcement agency pursuant to section 4 of this 2019 Act, the law
13 enforcement agency shall:

14 “(a) Notify the Department of Justice of the return request for the purposes of notifying
15 the petitioner of the order; and

16 “(b) Hold the firearm or ammunition for 72 hours after receiving the request.

17 “(2) Prior to returning the firearm or ammunition, the law enforcement agency shall:

18 “(a) Confirm that the person to whom the law enforcement agency will return the
19 firearm or ammunition is the lawful owner of the firearm or ammunition, or a person with
20 a possessory right to the firearm or ammunition; and

21 “(b) Perform a criminal background check as defined in ORS 166.432 to confirm that the
22 person is not prohibited from possessing a firearm or ammunition under state or federal law.

23 “SECTION 6. Sections 2, 3, 4 and 5 of this 2019 Act become operative on January 1, 2020.

24 “SECTION 7. This 2019 Act being necessary for the immediate preservation of the public
25 peace, health and safety, an emergency is declared to exist, and this 2019 Act takes effect
26 on its passage.”.

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