

Written Testimony – HB 4005
House Judiciary Committee Hearing of 02-07-2020

Dear Committee,
<mailto:hjud.exhibits@oregonlegislature.gov>

I urge you to NOT move forward with this legislation or to vote on this Bill or anything similar to it during this 2020 short session or in the future! This Bill is in clear VIOLATION of the U.S. and Oregon Constitutions and is in clear VIOLATION of existing rulings and standing law made by the United States Supreme Court (Heller vs. District of Columbia 2008).

From OLIS:

SUMMARY House Bill 4005 (2020)

“Requires owner or possessor of firearm to secure firearm with trigger or cable lock, in locked container or in gun room except in specified circumstances. Punishes violation by maximum of \$500 fine. If minor obtains unsecured firearm as result of violation, punishes by maximum of \$2,000 fine. Provides that person who does not secure firearm as required is strictly liable for injury to person or property within two years after violation. Specifies exceptions to liability. Requires owner or possessor of firearm to secure firearm with trigger or cable lock or in locked container when transferring firearm except in specified circumstances. Punishes violation by maximum of \$500 fine. Provides that person who transfers firearm without securing firearm is strictly liable for injury to person or property within two years after violation. Specifies exceptions to liability. Requires person to report loss or theft of firearm within 72 hours of time person knew or reasonably should have known of loss or theft. Punishes violation of requirement by maximum of \$1,000 fine. Requires person transferring firearm to minor to directly supervise minor’s use of firearm unless minor is owner of firearm. Provides that person who does not supervise minor as required is strictly liable for injury to person or property caused by minor’s use of firearm. Directs Oregon Health Authority to specify by rule minimum specifications for trigger and cable locks and locked containers required by Act. Declares emergency, effective on passage.”

I urge you to NOT move forward with this Bill for the following reasons:

1. This Bill is Un-Constitutional and is settled Law by the U.S. Supreme Court Heller Case. 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*.^{[4][5]} 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.** <https://www.thoughtco.com/overview-of-dc-v-heller-case-721336> : SCOTUS ruled that; “the district’s handgun ban **and trigger lock requirement violated the Second Amendment.**”

To proceed with such a Bill will only harm honest Oregon Gun Owners and will tie the State up in expensive tax payer funded litigation for years, which, would obviously and ultimately be found Un-Constitutional and struck down.

2. Violates the U.S. Constitution, Second Amendment; "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.**" Rulings have been handed down that the individual does have a right to own guns for self defense **and** that said guns to be available for self defense **MUST** be accessible. Requiring trigger locks (locking devices) does not make them readily accessible and violates the Second Amendment.

In the twenty-first century, the amendment has been subjected to renewed [academic inquiry](#) and [judicial interest](#).^[18] In *Heller*, the Supreme Court handed down a [landmark decision](#) that held the amendment protects an individual's right to keep a gun for self-defense.^{[19][20]} This was the first time the Court had ruled that the Second Amendment guarantees an individual's right to own a gun.^{[21][22][20]} In *McDonald v. Chicago* (2010), the Court clarified that the Due Process Clause of the Fourteenth Amendment incorporated the Second Amendment against state and local governments.^[23] In *Caetano v. Massachusetts* (2016), the Supreme Court reiterated its earlier rulings that "the Second Amendment extends, prima facie, to all instruments that constitute bearable arms, even those that were not in existence at the time of the founding" and that its protection is not limited to "only those weapons useful in warfare." Wikipedia

3. Violates the Oregon Constitution: Article 1, Section 27 of the Oregon Constitution states: "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[.]" In *State v. Kessler*, the Supreme Court of Oregon held that a state statute, which in the court's words prohibited the "mere possession" of a billy club, among other bladed and blunt weapons, violated an individual's constitutional right to bear arms under article 1, § 27. The court found that article 1, § 27 **applies to an individual's use of arms to protect himself or herself and his or her home** as well as the use of arms by members of the militia. It could be easily argued that requiring that gun's in the home (or elsewhere) to be locked up and secured renders the gun useless to protect one's self or others from harm from a criminal element.

4. Gun safety and storage is a matter of personal responsibility and every person's situation is different. It is unreasonable for the law to impose a one-size-fits-all solution. In short, this measure invades people's homes and forces them to render their firearms useless in self-defense or become criminals. Everyone knows that firearms should be stored safely, but most Americans feel that it is not the government's business to dictate how people store things in their homes. There is no compelling need for such invasions of privacy and may actually violate the U.S. Constitution, Fourth Amendment. Guns are often owned and kept by individuals for personal safety and security. Guns are frequently used for personal defense. When time is critical to protect one's life from criminal assault and/or death; requiring locking mechanisms/boxes/safes for firearms could prevent the gun owner's rights of self-defense. NRAcaz

5. Mandatory storage laws that impose penalties are unnecessary. Oregon already provides penalties for reckless endangerment, under which an individual found negligent in the storage of a firearm could be prosecuted for a felony crime and certainly held civilly liable.

6. No "one size fits all" requirement can possibly meet the needs of all Oregon gun owners, whose circumstances vary greatly. For example, gun owners without children in their homes may have different storage needs than those with children present. Gun owners who live in city dwellings may have different needs than those who live in rural areas on farms or ranches. The

NRA's firearm safety manuals recommend that firearms kept at home be stored inaccessible to unauthorized persons, including children. The NRA believes that it is and should remain the responsibility of the individual firearm owner, not the government, to determine how to ensure that guns are safely stored. The confines of a secured home is not compliance under this Bill. My home specifically designed and built with security features in mind, with no children in the home, would not qualify as a proper and legal safe storage "device" for firearms under this bill. I would still be held liable if a burglar broke into my secure home and stole a firearm. NRAcaz

7. While firearms kept for hunting, target shooting or as collector's items should be stored unloaded, firearms kept for personal protection may be stored loaded and ready for use. Some trigger lock manufacturers recommend that their products not be used on loaded firearms. Trigger locks, boxes, safes do not make firearms foolproof and are not substitutes for safe firearms handling practices, dictated by long standing safety rules. Reliance on devices, rather than safety rules, training and education is not prudent firearms safety. NRAcaz

8. You cannot legislate personal responsibility nor safety. Negligent and careless people will be negligent. There are laws against texting while driving but people still do it. People are injured and killed daily in accidents while texting. We have laws against driving while intoxicated, but, people still do it. The law stops nothing. The law saves no one. People that are safety minded and respect others do not do these things. Gun owners that are safety conscious will voluntarily secure their guns in matters and ways that they so choose. A law mandating locking devices and their use in itself will save no one. The irresponsible individual, law or not, will leave a gun unsecured. Any device used for securing a firearm may be defeated. Any individual desiring to obtain a firearm for criminal use or to harm one's self or others will find the means to defeat such devices. Holding the gun owner responsible for lack of use or the defeat of a device, for criminal theft of firearms is ridiculous. Civil liabilities already exist and means for criminal and civil penalties due to negligence already exist under current Oregon laws.

9. The "strictly liable for injury to person or property within two years" clause; a gun owner may have fully complied with this proposed statute as far as transferring, locking requirements, etc. Through no fault of their own a gun may have been obtained through defeat of a locking device or by criminal act, however, the gun owner could be held liable up to two years later. It would be very difficult for the gun owner, over the passage of time; months, a year or up to two years to prove to the Courts that they did in fact comply with the statute. This section is unfair at best and appears to presume guilt (liability) over a presumption of compliance.

Lastly, Gun owners in Oregon feel as though we are under attack from the Legislature specifically the Democrats. Most Oregon gun owners are good citizens. We work hard, obey the law, we are responsible to ourselves and our neighbors. We will never cause harm to anyone. We are your neighbor, your co-worker, maybe even your friend. We have an interest, a hobby or just believe we should have the right to protect ourselves. That interest, that hobby, that sport, that "right", just happens to involve firearms. We perhaps grew up different than you did. I get that. What I do NOT get is why you are always coming after us? We are NOT the problem when it comes to guns in Oregon. Why are you not going after the criminals and criminal use of guns? Why are you not going after the gangs? Why are you not increasing penalties upon criminals, increasing sentences for crimes used with guns? Why are you not spending the necessary funds for suicide prevention and mental health counseling? I speak as a former Law Enforcement Officer and honest gun owning Oregonian, WE are NOT the problem! Leave our gun ownership rights alone! Leave our ability to protect ourselves and our families alone!

Respectfully,

Craig Ziegenhagel
Oregon Native and Resident, Former Police Officer, Deputy Sheriff, EMT, Business Owner,
Honest Gun Owner
Submitted by email on 1-31-2020