

HB2510 – Suggested Revisions

This bill introduces the legal standard of proof of “strict liability” for the noncommercial activities of private Oregonians. Strict liability is the standard where if it happens, one is then liable. In the context of this statute, if an Oregonian fails to comply with the technical definition of safe storage, all that needs to be proved in trial is that they failed to comply with the definition, nothing else. As an example, if grandma neglected to report the loss of her father’s 100 year old rifle following a visit by a family member who failed to respond to calls for a week (72 hr reporting requirement, the technical violation), and it was later used in a hunting accident by someone with no connection to the thief, resulting in an injury or death, grandma is automatically financially responsible for the injury or death—all that matters is the technical violation. She is on the hook for all injuries up to 2, maybe up to 10 years depending interpretation of the bill, no matter the connection to her other than the rifle is involved in the injury in some way and that the originating event was the failure to report the theft or loss within 72 hours.

Presently Oregon law uses the standard of “preponderance of evidence” or more likely than not. A jury would consider a number of factors of proof including the duty of grandma to others to safely store the firearm, the foreseeability that the loss could lead to the injury and who was responsible for the injury (grandma or the criminal user of the rifle, others, or both). In essence, the injured party must prove responsibility and negligence against the accused.

HB2510 without the “strict liability” language is still a significant change to Oregon law since it codifies what constitutes safe storage. As noted above, today a jury would need to determine the duty of the firearm owner to others to safely store a firearm. Conceivably they could conclude there is none. However, this bill clearly states there is, in fact, a duty. So a jury would consider whether there was a safe storage violation, not whether there should be one. Further, since it is statutory violation, if there is no question whether there was a violation, the burden to prove as to who is at fault changes to the firearm owner to prove he was not at fault versus the victim trying to prove the firearm owner at fault. These two consequential changes are very significant and are to the victim’s benefit.

Allowing the “strict liability” standard is a novel and unprecedented change in Oregon law for a legal standard normally reserved for commercial activities of entities involved in ultra-hazardous activities and chemicals (oil companies, airlines, explosives) and extending it to the noncommercial activities of private Oregon citizens. Besides, whether it is fair, it begs one to consider if this precedent occurs, what is next. Could “strict liability” be imposed on other activities because some don’t like the activity? Perhaps the sale or use of alcohol could come up in the next legislative session or ballot measure.

Oregon has law to punish those who act outside of accepted norms or particularly egregious behavior – punitive damages.

HB2510 entrusts determination of what constitutes compliant locks and safes to the Oregon Health Authority. Will locks and safes obtained before this emergency act be grandfathered? Many Oregonians purchased gun safes before 2021 and will be concerned whether their safes will be compliant.

Many Oregonians do not have safes and may, or may not, have locks. Some, particularly in the time of this pandemic, cannot afford locks. Will HB2510 fund locks for those who cannot afford locks?

If this bill is truly intended to reduce injuries and deaths due to improperly stored firearms, the legislation should educate and inform gun owners on the front end (of their responsibilities and obligations of safe storage) under the bill rather than the back end (injuries, deaths, lawsuits, compensation, loss of homes) when it is too late. It mandates a posted sign in gun shops that declares it is the law to safely store firearms but doesn't state what that means. This bill is highly technical (5 pages long and at least 14 technical violations), and likely, most Oregonians will not know of the many potential infractions that could be violated. Most won't understand that locks and safes must be approved by OHA. The bill needs to lay out a plan and requirement (and funding) for education of firearm owners so they understand their responsibilities but also the financial risk of the failure to comply.

This education should also add questions on the **Oregon Firearm Transfer Record (OSP-PPF)** so any new firearm sales/transfer owners will know the law by answering the following questions:

1. I understand I am responsible to safely store this firearm and all firearms in my possession according to ORS----- Yes or No.
2. I have been given a copy of ORS---- as part of this transfer process. Yes or No.
3. I understand safe storage includes securely locking the firearm using OHA approved locks and safes. Yes or No.
4. I understand safe storage of a firearm in Oregon does not mean a locked building or a locked car unless the firearm is also secured within the building or automobile in a compliant safe or secured by a compliant lock. Yes or No.
5. I understand I must report the loss or theft of a firearm within 72 hours of discovery. Yes or no.
6. I understand if I violate the safe storage requirements or fail to report loss or theft, and the firearm is used to cause injuries or death I am automatically financially responsible to the victims (assuming strict liability). Yes or No.
7. I understand that I am also responsible for the use of the firearm if I relinquish control of the firearm to others in certain circumstances. Yes or No.

Other questions may be appropriate but these seem to be the major ones.

This bill is a huge expansion of Oregon tort law. Whether the "strict liability" language remains or not, some added protection for Oregon firearm owners is needed since the financial exposure is considerably raised. This law, especially with the "strict liability" language, may make firearm ownership too expensive or burdensome for lower or middle income Oregonians. The bill should address homeowners/renters/auto liability insurance grey areas and coverage gaps.

When damage occurs triggers coverage under occurrence based homeowners and personal auto policies. The long tail between the date of the safe storage technical violation and when the injury occurs can complicate coverage. A homeowner with insurance at the time of the technical violation may not have insurance at the time of the injury two years later (or up to 10 years later). Or changed insurance companies. Or moved, retired, care home. Unlike commercial businesses, personal homeowners cannot purchase liability coverage tails that extend for years after they sell their home.

The matter of use of an automobile complicates whether the auto or HO's policy, or both, apply.

Some liability policies may have firearm exclusions.

Most liability insurance policies do not cover intentional acts. This normally applies to an insured person (e.g., purposely did not report a theft or loss of firearm) but in some cases could apply to the intentional

act of the criminal thief of the firearm who uses the firearm to injure others. This could also include an insured person and resident of the household where a spouse or other family member violated safe storage that allowed access to a firearm and then committed suicide. The suicide was intentional.

Liability policies typically contain insured person exclusions which do not cover injuries of insured persons (usually residents of the insured premises related by family and adoption). If an insured firearm owner technically violated the statute then any family member insured who was injured from use of the firearm, like children, would not be covered due to the insured personal exclusion. It may be the case a significant portion of potential injuries and deaths arise from resident family members of firearms owners and as a matter of policy language such claims are not covered.

The bottom line is this. This bill should address whether liability insurance coverage should apply to safe storage events. It is a murky area of coverage and fact driven, and, in all fairness, the bill, with or without "strict liability," is a substantial expansion of Oregon law and huge increase in financial exposure to firearm owners and insurers so direction from the legislature would be helpful. Oregonians will need the legislature's help on this.