

Senate Bill 945

Sponsored by Senator STEINER HAYWARD, Representative SMITH WARNER; Senator BURDICK, Representatives EVANS, FREDERICK, GREENLICK, HELM, KENY-GUYER

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 **as introduced**.

Creates crime of endangering a minor by allowing access to a firearm. Punishes by maximum of one year's imprisonment, \$6,250 fine, or both.

Prohibits possession of firearm by person convicted of endangering a minor by allowing access to a firearm for five-year period after conviction. Creates process for obtaining relief from prohibition. Provides that minor may lawfully possess firearm only with parent or guardian's permission.

Prohibits transfer of firearm to person convicted of endangering a minor by allowing access to a firearm for five-year period after conviction. Requires permission of minor's parent or guardian for temporary transfer of firearm to minor.

Requires gun dealer to post notice concerning obligation to prevent minors from accessing firearm without consent of firearm owner or minor's parent or guardian.

Declares emergency, effective on passage.

A BILL FOR AN ACT

1
2 Relating to preventing minors from accessing firearms; creating new provisions; amending ORS
3 166.250, 166.274 and 166.470; and declaring an emergency.

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

5 **SECTION 1. (1) A person commits the crime of endangering a minor by allowing access**
6 **to a firearm if:**

7 (a) **The person possesses an operable firearm within premises under the person's control;**

8 (b) **The firearm is in a location where the person knows or reasonably should know that**
9 **a minor could gain access to the firearm; and**

10 (c) **A minor obtains the firearm without the consent of the person or the minor's parent**
11 **or legal guardian.**

12 (2) **Subsection (1) of this section does not apply if:**

13 (a) **The minor obtains the firearm as the result of an unlawful entry into the premises**
14 **by any person;**

15 (b) **The firearm is located in a locked container;**

16 (c) **The firearm is locked with a device that:**

17 (A) **Is designed to prevent unauthorized users of the firearm from firing the firearm; and**

18 (B) **Has rendered the firearm temporarily inoperable; or**

19 (d) **The person is a peace officer or a servicemember as defined in ORS 135.881 and the**
20 **minor obtains the firearm during or incidental to the performance of the person's duties as**
21 **a peace officer or servicemember.**

22 (3) **Endangering a minor by allowing access to a firearm is a Class A misdemeanor.**

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

24 (a) **"Firearm" has the meaning given that term in ORS 166.210.**

25 (b) **"Minor" has the meaning given that term in ORS 166.210.**

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 (c) “Possess” has the meaning given that term in ORS 161.015.

2 **SECTION 2.** A gun dealer, as defined in ORS 166.412, shall post in a prominent location
 3 in the gun dealer’s place of business a notice in block letters not less than one inch in height
 4 that states: “The owner of a firearm has an obligation to prevent minors from accessing
 5 firearms without the consent of the owner or the minor’s parent or legal guardian. If a mi-
 6 nor obtains access to a firearm without the consent of the owner or the minor’s parent or
 7 legal guardian, the owner may be guilty of a crime.”

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

9 166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,
 10 166.291, 166.292 or 166.410 to 166.470 or section 5, chapter 826, Oregon Laws 2009, a person commits
 11 the crime of unlawful possession of a firearm if the person knowingly:

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

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

15 (c) Possesses a firearm and:

16 (A) Is under 18 years of age;

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

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

22 (C) Has been convicted of a felony;

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

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

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

28 **(G) Has been convicted of endangering a minor by allowing access to a firearm under**
 29 **section 1 of this 2015 Act within five years prior to being charged under this section.**

30 (2) This section does not prohibit:

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

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

35 (B) Temporarily for hunting, target practice or any other lawful purpose, **with the permission**
 36 **of the minor’s parent or guardian;** or

37 (b) Any citizen of the United States over the age of 18 years who resides in or is temporarily
 38 sojourning within this state, and who is not within the excepted classes prescribed by ORS 166.270
 39 and subsection (1) of this section, from owning, possessing or keeping within the person’s place of
 40 residence or place of business any handgun, and no permit or license to purchase, own, possess or
 41 keep any such firearm at the person’s place of residence or place of business is required of any such
 42 citizen. As used in this subsection, “residence” includes a recreational vessel or recreational vehicle
 43 while used, for whatever period of time, as residential quarters.

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

45 (4)(a) Except as provided in paragraphs (b) and (c) of this subsection, a handgun is readily ac-

1 cessible within the meaning of this section if the handgun is within the passenger compartment of
2 the vehicle.

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

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

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

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

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

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

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

16 **SECTION 4.** ORS 166.250, as amended by section 11a, chapter 826, Oregon Laws 2009, section
17 2, chapter 662, Oregon Laws 2011, and section 7, chapter 360, Oregon Laws 2013, is amended to
18 read:

19 166.250. (1) Except as otherwise provided in this section or ORS 166.260, 166.270, 166.274,
20 166.291, 166.292 or 166.410 to 166.470, a person commits the crime of unlawful possession of a firearm
21 if the person knowingly:

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

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

25 (c) Possesses a firearm and:

26 (A) Is under 18 years of age;

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

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

32 (C) Has been convicted of a felony;

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

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

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

38 **(G) Has been convicted of endangering a minor by allowing access to a firearm under**
39 **section 1 of this 2015 Act within five years prior to being charged under this section.**

40 (2) This section does not prohibit:

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

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

45 (B) Temporarily for hunting, target practice or any other lawful purpose, **with the permission**

1 **of the minor’s parent or guardian; 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 the vehicle is a motorcycle, an all-terrain vehicle or a snowmobile, a handgun is not
 21 readily 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 5.** ORS 166.470 is amended to read:

27 166.470. (1) Unless relief has been granted under ORS 166.274 or section 5, chapter 826, Oregon
 28 Laws 2009, or 18 U.S.C. 925(c) or the expunction laws of this state or an equivalent law of another
 29 jurisdiction, a person may not intentionally sell, deliver or otherwise transfer any firearm when the
 30 transferor knows or reasonably should know that the recipient:

31 (a) Is under 18 years of age;

32 (b) Has been convicted of a felony;

33 (c) Has any outstanding felony warrants for arrest;

34 (d) Is free on any form of pretrial release for a felony;

35 (e) Was committed to the Oregon Health Authority under ORS 426.130;

36 (f) After January 1, 1990, was found to be a person with mental illness and subject to an order
 37 under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result
 38 of that mental illness;

39 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity
 40 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in
 41 this paragraph, “misdemeanor involving violence” means a misdemeanor described in ORS 163.160,
 42 163.187, 163.190, 163.195 or 166.155 (1)(b); [or]

43 (h) Has been found guilty except for insanity under ORS 161.295 of a felony; **or**

44 **(i) Has been convicted of endangering a minor by allowing access to a firearm under**
 45 **section 1 of this 2015 Act within the five years immediately preceding the date of the at-**

1 **tempted sale, delivery or transfer.**

2 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or
3 reasonably should know is stolen.

4 (3) Subsection (1)(a) of this section does not prohibit:

5 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a
6 minor from transferring to the minor a firearm, other than a handgun; or

7 (b) The temporary transfer of any firearm to a minor, **with the permission of the minor's**
8 **parent or guardian**, for hunting, target practice or any other lawful purpose.

9 (4) Violation of this section is a Class A misdemeanor.

10 **SECTION 6.** ORS 166.470, as amended by section 11, chapter 826, Oregon Laws 2009, and sec-
11 tion 11, chapter 360, Oregon Laws 2013, is amended to read:

12 166.470. (1) Unless relief has been granted under ORS 166.274 or 18 U.S.C. 925(c) or the
13 expunction laws of this state or an equivalent law of another jurisdiction, a person may not inten-
14 tionally sell, deliver or otherwise transfer any firearm when the transferor knows or reasonably
15 should know that the recipient:

16 (a) Is under 18 years of age;

17 (b) Has been convicted of a felony;

18 (c) Has any outstanding felony warrants for arrest;

19 (d) Is free on any form of pretrial release for a felony;

20 (e) Was committed to the Oregon Health Authority under ORS 426.130;

21 (f) After January 1, 1990, was found to be a person with mental illness and subject to an order
22 under ORS 426.130 that the person be prohibited from purchasing or possessing a firearm as a result
23 of that mental illness;

24 (g) Has been convicted of a misdemeanor involving violence or found guilty except for insanity
25 under ORS 161.295 of a misdemeanor involving violence within the previous four years. As used in
26 this paragraph, "misdemeanor involving violence" means a misdemeanor described in ORS 163.160,
27 163.187, 163.190, 163.195 or 166.155 (1)(b); [or]

28 (h) Has been found guilty except for insanity under ORS 161.295 of a felony; **or**

29 **(i) Has been convicted of endangering a minor by allowing access to a firearm under**
30 **section 1 of this 2015 Act within the five years immediately preceding the date of the at-**
31 **tempted sale, delivery or transfer.**

32 (2) A person may not sell, deliver or otherwise transfer any firearm that the person knows or
33 reasonably should know is stolen.

34 (3) Subsection (1)(a) of this section does not prohibit:

35 (a) The parent or guardian, or another person with the consent of the parent or guardian, of a
36 minor from transferring to the minor a firearm, other than a handgun; or

37 (b) The temporary transfer of any firearm to a minor, **with the permission of the minor's**
38 **parent or guardian**, for hunting, target practice or any other lawful purpose.

39 (4) Violation of this section is a Class A misdemeanor.

40 **SECTION 7.** ORS 166.274 is amended to read:

41 166.274. (1) Except as provided in subsection (11) of this section, a person barred from possessing
42 or purchasing a firearm may file a petition for relief from the bar in accordance with subsection (2)
43 of this section if:

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (9) A person filing a petition under this section must pay the filing fee established under ORS
30 21.135.

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

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

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

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

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

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

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

44 **SECTION 8.** ORS 166.274, as amended by section 20, chapter 826, Oregon Laws 2009, section
45 3, chapter 86, Oregon Laws 2010, section 60, chapter 595, Oregon Laws 2011, and section 4, chapter

1 662, Oregon Laws 2011, is amended to read:

2 166.274. (1) Except as provided in subsection (10) of this section, a person barred from possessing
3 a firearm under ORS 166.250 (1)(c)(A), [or] (C) to (E) **or (G)** or 166.270 or barred from purchasing
4 a firearm under ORS 166.470 (1)(a), (b) or (e) to (g) may file a petition for relief from the bar in the
5 circuit court in the petitioner's county of residence.

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

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

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

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

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

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

14 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
15 the petitioner to be entered into the Department of State Police computerized criminal history files.
16 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
17 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
18 notify the court that granted relief under this section. The court shall review the order granting
19 relief and determine whether to rescind the order. The Department of State Police may charge a
20 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

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

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

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

31 (8) A person filing a petition under this section must pay the filing fee established under ORS
32 21.135.

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

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

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

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

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

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

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

1 **SECTION 9.** Section 1 of this 2015 Act and the amendments to ORS 166.250, 166.274 and
2 **166.470** by sections 3 to 8 of this 2015 Act apply to conduct occurring on or after the effective
3 **date of this 2015 Act.**

4 **SECTION 10.** This 2015 Act being necessary for the immediate preservation of the public
5 **peace, health and safety, an emergency is declared to exist, and this 2015 Act takes effect**
6 **on its passage.**

7
