

Senate Bill 525

Sponsored by Senator MONNES ANDERSON, Representatives WILLIAMSON, VEGA PEDERSON, LININGER, PILUSO; Senators DEVLIN, STEINER HAYWARD, Representatives HUFFMAN, SMITH WARNER

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**.

Prohibits possession of firearm or ammunition by person who is subject to restraining order issued by court under Family Abuse Prevention Act or who has been convicted of certain misdemeanor crimes involving domestic violence. Punishes unlawful possession of firearm by prohibited person by maximum of one year's imprisonment, \$6,250 fine, or both.

Provides for procedure for relief from prohibition.

A BILL FOR AN ACT

1
2 Relating to possession of firearms by certain persons; creating new provisions; and amending ORS
3 166.250 and 166.274.

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

5 **SECTION 1. Section 2 of this 2015 Act is added to and made a part of ORS 166.250 to**
6 **166.270.**

7 **SECTION 2. (1) It is unlawful for a person to knowingly possess a firearm or ammunition**
8 **if:**

9 (a) **The person is the subject of a restraining order issued by a court pursuant to ORS**
10 **107.700 to 107.735 that was continued after a hearing for which the person had actual notice**
11 **and during the course of which the person had an opportunity to be heard; or**

12 (b) **The person has been convicted of a qualifying misdemeanor crime involving domestic**
13 **violence.**

14 (2) **The prohibition described in subsection (1) of this section does not apply with respect**
15 **to the transportation, shipment, receipt, possession or importation of any firearm or am-**
16 **munition imported for, sold or shipped to or issued for the use of the United States Gov-**
17 **ernment or any federal department or agency, or any state or department, agency or**
18 **political subdivision of a state.**

19 (3) **As used in this section:**

20 (a) **"Convicted" means:**

21 (A) **The person was represented by counsel or knowingly and intelligently waived the**
22 **right to counsel;**

23 (B) **The case was tried to a jury, if the crime was one for which the person was entitled**
24 **to a jury trial, or the person knowingly and intelligently waived the person's right to a jury**
25 **trial; and**

26 (C) **The conviction has not been set aside or expunged, and the person has not been**
27 **pardoned.**

28 (b) **"Deadly weapon" has the meaning given that term in ORS 161.015.**

29 (c) **"Family or household member" has the meaning given that term in ORS 135.230.**

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

2 (e) **“Qualifying misdemeanor crime involving domestic violence” means any of the fol-**
 3 **lowing crimes committed against a family or household member:**

4 (A) **Assault in the fourth degree, as described in ORS 163.160, or attempted assault in the**
 5 **fourth degree.**

6 (B) **Strangulation, as described in ORS 163.187, or attempted strangulation.**

7 (C) **Any other misdemeanor that involves as an element of the crime the use of physical**
 8 **force or a deadly weapon.**

9 **SECTION 2.** ORS 166.250 is amended to read:

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

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

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

16 (c) Possesses a firearm and:

17 (A) Is under 18 years of age;

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

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

23 (C) Has been convicted of a felony;

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

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

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

29 (G) **The possession of the firearm by the person is prohibited under section 2 of this 2015**
 30 **Act.**

31 (2) This section does not prohibit:

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

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

36 (B) Temporarily for hunting, target practice or any other lawful purpose; 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 3.** 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) The possession of the firearm by the person is prohibited under section 2 of this 2015**
39 **Act.**

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; or

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

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

9 (4)(a) Except as provided in paragraphs (b) and (c) of this subsection, a handgun is readily ac-
 10 cessible within the meaning of this section if the handgun is within the passenger compartment of
 11 the vehicle.

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

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

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

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

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

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

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

25 **SECTION 4.** ORS 166.274 is amended to read:

26 166.274. (1) Except as provided in subsection (11) of this section, a person barred from possessing
 27 or purchasing a firearm may file a petition for relief from the bar in accordance with subsection (2)
 28 of this section if:

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

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

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

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

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

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

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

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

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

42 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
 43 the petitioner to be entered into the Department of State Police computerized criminal history files.
 44 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
 45 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall

1 notify the court that granted relief under this section. The court shall review the order granting
2 relief and determine whether to rescind the order. The Department of State Police may charge a
3 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

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

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

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

14 (9) A person filing a petition under this section must pay the filing fee established under ORS
15 21.135.

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

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

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

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

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

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

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

29 **SECTION 5.** ORS 166.274, as amended by section 20, chapter 826, Oregon Laws 2009, section
30 3, chapter 86, Oregon Laws 2010, section 60, chapter 595, Oregon Laws 2011, and section 4, chapter
31 662, Oregon Laws 2011, is amended to read:

32 166.274. (1) Except as provided in subsection (10) of this section, a person barred from possessing
33 a firearm under ORS 166.250 (1)(c)(A), [or] (C) to (E) **or (G)** or 166.270 or barred from purchasing
34 a firearm under ORS 166.470 (1)(a), (b) or (e) to (g) may file a petition for relief from the bar in the
35 circuit court in the petitioner's county of residence.

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

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

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

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

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

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

44 (b) When a petition is granted, the judge shall cause that information and a fingerprint card of
45 the petitioner to be entered into the Department of State Police computerized criminal history files.

1 If, after a petition is granted, the petitioner is arrested and convicted of a crime that would dis-
 2 qualify the petitioner from purchasing or possessing a firearm, the Department of State Police shall
 3 notify the court that granted relief under this section. The court shall review the order granting
 4 relief and determine whether to rescind the order. The Department of State Police may charge a
 5 reasonable fee, under ORS 192.440, for the entry and maintenance of information under this section.

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

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

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

16 (8) A person filing a petition under this section must pay the filing fee established under ORS
 17 21.135.

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

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

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

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

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

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

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

31