

**PROPOSED AMENDMENTS TO
A-ENGROSSED HOUSE BILL 2797**

1 On page 1 of the printed A-engrossed bill, line 2, after "provisions;" delete
2 the rest of the line and insert "amending ORS 166.250, 166.262, 166.274,
3 166.360, 166.370, 166.425 and 821.240; repealing ORS 166.380; and declaring an
4 emergency."

5 On page 3, line 18, after the first "vehicle" insert ", other than a vehicle
6 described in paragraph (c) of this subsection,".

7 On page 4, delete lines 1 and 2 and insert:

8 **"SECTION 4. A public body as defined in ORS 192.410 may not dis-**
9 **close records or information that identifies a person as a current**
10 **holder of, or applicant for, a concealed handgun license unless:**

11 **"(1) The disclosure is made to another public body and is necessary**
12 **for criminal justice purposes;**

13 **"(2) A court enters an order in a pending civil or criminal case di-**
14 **recting the public body to disclose the records or information; or**

15 **"(3) The holder of, or applicant for, the concealed handgun license**
16 **consents to the disclosure.**

17 **"SECTION 5. ORS 166.274, as amended by section 19, chapter 826, Oregon**
18 **Laws 2009, and section 2, chapter 86, Oregon Laws 2010, is amended to read:**

19 **"166.274. (1) Except as provided in subsection (11) of this section, a**
20 **person barred from possessing or purchasing a firearm may file a petition for**
21 **relief from the bar in accordance with subsection (2) of this section if:**

22 **"(a) The person is barred from possessing a firearm under ORS 166.250**

1 (1)(c)(A) [to] or (C) or 166.270; or

2 “(b) The person is barred from purchasing a firearm under ORS 166.470

3 (1)(a) [to (d) or (g)] or (b).

4 “(2) A petition for relief described in this section must be filed in the
5 circuit court in the petitioner’s county of residence.

6 “(3) A person may apply once per calendar year for relief under the pro-
7 visions of this section.

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

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

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

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

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

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

28 “(6) Notwithstanding the provisions of ORS 9.320, a corporation, the state
29 or any city, county, district or other political subdivision or public corpo-
30 ration in this state, without appearance by attorney, may appear as a party

1 to an action under this section.

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

6 “[(8) *A person barred from possessing or purchasing a firearm because the*
7 *person, while a minor, was found to be within the jurisdiction of the juvenile*
8 *court for committing an act which, if committed by an adult, would have con-*
9 *stituted a felony or a misdemeanor involving violence, is not eligible to petition*
10 *for relief under this section until more than four years have passed since the*
11 *person was discharged from the jurisdiction of the juvenile court.*]

12 “[(9)] (8) Petitions filed under this section shall be heard and disposed of
13 within 15 judicial days of filing or as soon as is practicable thereafter, but
14 not more than 30 days thereafter. The judge shall then make findings and
15 conclusions and issue a judgment based on the findings and conclusions in
16 accordance with the requirements of law.

17 “[(10)] (9) Filing fees shall be as for any civil action filed in the court.

18 “[(11)(a)] (10)(a) Initial appeals of petitions shall be heard de novo.

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

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

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

26 “(a) Has been convicted of a person felony, as that term is defined
27 in the rules of the Oregon Criminal Justice Commission, or the stat-
28 utory counterpart to a person felony in any other jurisdiction, if the
29 offense involved the use of a firearm or a deadly weapon as defined in
30 ORS 161.015;

1 “(b) Has been convicted of an offense listed in ORS 137.700 or the
2 statutory counterpart to an offense listed in ORS 137.700 in any other
3 jurisdiction; or

4 “(c) Is currently serving a felony sentence as defined in ORS 10.030
5 or has served a felony sentence in the three-year period preceding the
6 filing of the petition.

7 “SECTION 6. ORS 166.274, as amended by sections 19 and 20, chapter
8 826, Oregon Laws 2009, and section 3, chapter 86, Oregon Laws 2010, is
9 amended to read:

10 “166.274. (1) Except as provided in subsection (10) of this section, a
11 person barred from possessing a firearm under ORS 166.250 (1)(c)(A) or (C)
12 to (E) or 166.270 or barred from purchasing a firearm under ORS 166.470
13 (1)(a), (b), (e) or (f) [to (g)] may file a petition for relief from the bar in the
14 circuit court in the petitioner’s county of residence.

15 “(2) A person may apply once per calendar year for relief under the pro-
16 visions of this section.

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

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

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

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

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

27 “(b) When a petition is granted, the judge shall cause that information
28 and a fingerprint card of the petitioner to be entered into the Department
29 of State Police computerized criminal history files. If, after a petition is
30 granted, the petitioner is arrested and convicted of a crime that would dis-

1 qualify the petitioner from purchasing or possessing a firearm, the Depart-
2 ment of State Police shall notify the court that granted relief under this
3 section. The court shall review the order granting relief and determine
4 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 infor-
6 mation under this section.

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

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

15 “[~~(7)~~ A person barred from possessing or purchasing a firearm because the
16 person, while a minor, was found to be within the jurisdiction of the juvenile
17 court for committing an act which, if committed by an adult, would have con-
18 stituted a felony or a misdemeanor involving violence, is not eligible to petition
19 for relief under this section until more than four years have passed since the
20 person was discharged from the jurisdiction of the juvenile court.]

21 “[~~(8)~~] (7) Petitions filed under this section shall be heard and disposed of
22 within 15 judicial days of filing or as soon as is practicable thereafter, but
23 not more than 30 days thereafter. The judge shall then make findings and
24 conclusions and issue a judgment based on the findings and conclusions in
25 accordance with the requirements of law.

26 “[~~(9)~~] (8) Filing fees shall be as for any civil action filed in the court.

27 “[~~(10)(a)~~] (9)(a) Initial appeals of petitions shall be heard de novo.

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

30 “(c) If the governmental entity files an appeal under this subsection and

1 does not prevail, it shall be ordered to pay the attorney fees for the pre-
2 vailing party.

3 **"(10) The court may not grant relief under this section to a person**
4 **who:**

5 **"(a) Has been convicted of a person felony, as that term is defined**
6 **in the rules of the Oregon Criminal Justice Commission, or the stat-**
7 **utory counterpart to a person felony in any other jurisdiction, if the**
8 **offense involved the use of a firearm or a deadly weapon as defined in**
9 **ORS 161.015;**

10 **"(b) Has been convicted of an offense listed in ORS 137.700 or the**
11 **statutory counterpart to an offense listed in ORS 137.700 in any other**
12 **jurisdiction; or**

13 **"(c) Is currently serving a felony sentence as defined in ORS 10.030**
14 **or has served a felony sentence in the three-year period preceding the**
15 **filing of the petition.**

16 **"SECTION 7. ORS 166.370 is amended to read:**

17 **"166.370. (1)(a) [Any] A person who intentionally possesses a [*loaded or***
18 ***unloaded*] firearm or any other instrument used as a dangerous weapon,**
19 **while in or on a public building, [*shall upon conviction be guilty of*] commits**
20 **a Class C felony.**

21 **"(b) A person who intentionally possesses a firearm or any other**
22 **instrument used as a dangerous weapon on school grounds commits a**
23 **Class C felony.**

24 **"(2)(a) Except as otherwise provided in paragraph (b) of this subsection,**
25 **a person who intentionally possesses:**

26 **"(A) A firearm in a court facility [*is guilty, upon conviction, of*] commits**
27 **a Class C felony. A person who intentionally possesses a firearm in a court**
28 **facility shall surrender the firearm to a law enforcement officer.**

29 **"(B) A weapon, other than a firearm, in a court facility may be required**
30 **to surrender the weapon to a law enforcement officer or to immediately re-**

1 move it from the court facility. A person who fails to comply with this sub-
2 paragraph *[is guilty, upon conviction, of]* **commits** a Class C felony.

3 “(b) The presiding judge of a judicial district may enter an order permit-
4 ting the possession of specified weapons in a court facility.

5 “(3) Subsection (1) of this section does not apply to:

6 “(a) A sheriff, police officer, other duly appointed peace officers or a
7 corrections officer while acting within the scope of employment.

8 “(b) A person summoned by a peace officer to assist in making an arrest
9 or preserving the peace, while the summoned person is engaged in assisting
10 the officer.

11 “(c) An active or reserve member of the military forces of this state or
12 the United States, when engaged in the performance of duty.

13 “[*(d)* A person who is licensed under ORS 166.291 and 166.292 to carry a
14 concealed handgun.]

15 “[*(e)*] (d) A person who is authorized by the officer or agency that con-
16 trols the public building **or the school grounds** to possess a firearm or
17 dangerous weapon in [*that*] **the public building or on the school grounds**.

18 “[*(f)*] (e) An employee of the United States Department of Agriculture,
19 acting within the scope of employment, who possesses a firearm in the course
20 of the lawful taking of wildlife.

21 “[*(g)*] (f) Possession of a firearm on school [*property*] **grounds** if the
22 firearm[:]

23 “[*(A)*] is possessed by a person who is not otherwise prohibited from
24 possessing the firearm[:] and **the firearm is:**

25 “[*(B)*] (A) [*is*] Unloaded and locked in a motor vehicle; or

26 “(B) **Possessed in a motor vehicle by a person who is licensed under**
27 **ORS 166.291 and 166.292 to carry a concealed handgun.**

28 “(4) Subsection (1)(a) of this section does not apply to a person who
29 is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

30 “[*(4)*] (5)(a) The exceptions listed in subsection (3)(b) to [*(g)*] (f) of this

1 section constitute affirmative defenses to a charge of violating subsection (1)
2 of this section.

3 “(b) The exception described in subsection (4) of this section con-
4 stitutes an affirmative defense to a charge of violating subsection
5 (1)(a) of this section.

6 “[~~(5)(a)~~] (6)(a) [~~Any~~] A person who knowingly, or with reckless disregard
7 for the safety of another, discharges or attempts to discharge a firearm at a
8 place that the person knows is [~~a~~] on school [*shall upon conviction be guilty*
9 of] grounds commits a Class C felony.

10 “(b) Paragraph (a) of this subsection does not apply to the discharge of
11 a firearm:

12 “(A) As part of a program approved by a school in the school by an in-
13 dividual who is participating in the program;

14 “(B) By a law enforcement officer acting in the officer’s official capacity;
15 or

16 “(C) By an employee of the United States Department of Agriculture,
17 acting within the scope of employment, in the course of the lawful taking
18 of wildlife.

19 “[~~(6)~~] (7) Any weapon carried in violation of this section is subject to the
20 forfeiture provisions of ORS 166.279.

21 “[~~(7)~~] (8) Notwithstanding the fact that a person’s conduct in a single
22 criminal episode constitutes a violation of both subsections (1) and [~~(5)~~] (6)
23 of this section, the district attorney may charge the person with only one
24 of the offenses.

25 “[~~(8)~~] (9) As used in this section, ‘dangerous weapon’ means a dangerous
26 weapon as that term is defined in ORS 161.015.

27 “**SECTION 8.** ORS 166.360 is amended to read:

28 “166.360. As used in ORS 166.360 to 166.380, unless the context requires
29 otherwise:

30 “(1) ‘Capitol building’ means the Capitol, the State Office Building, the

1 State Library Building, the Labor and Industries Building, the State Trans-
2 portation Building, the Agriculture Building or the Public Service Building
3 and includes any new buildings which may be constructed on the same
4 grounds as an addition to the group of buildings listed in this subsection.

5 “(2) ‘Court facility’ means a courthouse or that portion of any other
6 building occupied by a circuit court, the Court of Appeals, the Supreme
7 Court or the Oregon Tax Court or occupied by personnel related to the op-
8 erations of those courts, or in which activities related to the operations of
9 those courts take place.

10 “[(3) ‘Loaded firearm’ means:]

11 “[(a) A breech-loading firearm in which there is an unexpended cartridge
12 or shell in or attached to the firearm including but not limited to, in a cham-
13 ber, magazine or clip which is attached to the firearm.]

14 “[(b) A muzzle-loading firearm which is capped or primed and has a pow-
15 der charge and ball, shot or projectile in the barrel or cylinder.]

16 “[(4)] (3) ‘Public building’ means a hospital, a capitol building, [a public
17 or private school, as defined in ORS 339.315, a college or university,] a city
18 hall or the residence of any state official elected by the state at large, and
19 the grounds adjacent to each such building. The term also includes that
20 portion of any other building occupied by an agency of the state or a mu-
21 nicipal corporation, as defined in ORS 297.405, other than a court facility.

22 “(4) ‘School grounds’ means the buildings that compose a commu-
23 nity college, college, university or a school as defined in ORS 339.315,
24 and the grounds adjacent to each such building.

25 “[(5)] (5) ‘Weapon’ means:

26 “(a) A firearm;

27 “(b) Any dirk, dagger, ice pick, slingshot, metal knuckles or any similar
28 instrument or a knife other than an ordinary pocket knife, the use of which
29 could inflict injury upon a person or property;

30 “(c) Mace, tear gas, pepper mace or any similar deleterious agent as de-

1 fined in ORS 163.211;

2 “(d) An electrical stun gun or any similar instrument;

3 “(e) A tear gas weapon as defined in ORS 163.211;

4 “(f) A club, bat, baton, billy club, bludgeon, knobkerrie, nunchaku,
5 nightstick, truncheon or any similar instrument, the use of which could in-
6 flict injury upon a person or property; or

7 “(g) A dangerous or deadly weapon as those terms are defined in ORS
8 161.015.

9 “**SECTION 9.** ORS 166.262 is amended to read:

10 “166.262. A peace officer may not arrest or charge a person for violating
11 ORS 166.250 (1)(a) or (b) or 166.370 (1)(a) if the person has in the person’s
12 immediate possession a valid license to carry a firearm as provided in ORS
13 166.291 and 166.292.

14 “**SECTION 10.** ORS 166.425 is amended to read:

15 “166.425. (1) A person commits the crime of unlawfully purchasing a
16 firearm if the person, knowing that the person is prohibited by state [or
17 *federal*] law from owning or possessing the firearm or having the firearm
18 under the person’s custody or control, purchases or attempts to purchase the
19 firearm.

20 “(2) Unlawfully purchasing a firearm is á Class A misdemeanor.

21 “**SECTION 11.** No later than December 31, 2011, the Department of
22 State Police shall submit a report to the interim committee related to
23 the judiciary that describes the State of Oregon’s compliance with the
24 National Instant Criminal Background Check System Improvement
25 Amendments Act of 2007 (P.L. 110-180). The report must include a de-
26 scription of the rate at which the State of Oregon is providing the
27 United States Attorney General records relevant to a determination
28 of whether a person is disqualified from possessing or receiving a
29 firearm under federal or state law.

30 “**SECTION 12.** Section 11 of this 2011 Act is repealed on January 2,

1 2012.

2 **"SECTION 13. ORS 166.380 is repealed.**

3 **"SECTION 14. The amendments to ORS 166.250, 166.262, 166.370,**
4 **166.425 and 821.240 by sections 1 to 3, 7, 9 and 10 of this 2011 Act apply**
5 **to conduct occurring on or after the effective date of this 2011 Act.**

6 **"SECTION 15. This 2011 Act being necessary for the immediate**
7 **preservation of the public peace, health and safety, an emergency is**
8 **declared to exist, and this 2011 Act takes effect on its passage."**

9
