

Senate Bill 928

Sponsored by COMMITTEE ON JUDICIARY

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**.

Modifies various provisions dealing with weapons.

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A BILL FOR AN ACT

Relating to weapons; creating new provisions; and amending ORS 166.170, 166.370, 166.412 and 339.315.

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

SECTION 1. ORS 166.370 is amended to read:

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

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

(A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A person who intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement officer.

(B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon to a law enforcement officer or to immediately remove it from the court facility. A person who fails to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

(b) The presiding judge of a judicial district may enter an order permitting the possession of specified weapons in a court facility.

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

(a) A sheriff, police officer, other duly appointed peace officers or a corrections officer [*while acting within the scope of employment*].

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

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

(d) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

(e) A person who is authorized by the officer or agency that controls the public building to possess a firearm or [*dangerous*] **deadly** weapon in that public building.

(f) Possession of a firearm on school property if the firearm:

(A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

(B) Is unloaded and locked in a motor vehicle.

(4) The exceptions listed in subsection (3)(b) to (f) of this section constitute affirmative defenses

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 to a charge of violating subsection (1) of this section.

2 (5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges
3 or attempts to discharge a firearm [*at*] **in a place, or in the direction of a place**, that the person
4 knows is a school shall upon conviction be guilty of a Class C felony.

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

6 (A) As part of a program approved by a school in the school by an individual who is partic-
7 ipating in the program; or

8 (B) By a law enforcement officer acting in the officer's official capacity.

9 (6) Notwithstanding the fact that a person's conduct in a single criminal episode constitutes a
10 violation of both subsections (1) and (5) of this section, the district attorney may charge the person
11 with only one of the offenses.

12 (7) As used in this section, [*“dangerous weapon” means a dangerous weapon as that term is de-*
13 *finied*] **“deadly weapon” has the meaning given that term** in ORS 161.015.

14 **SECTION 2.** ORS 166.370, as amended by section 36, chapter 666, Oregon Laws 2001, and sec-
15 tion 6, chapter 614, Oregon Laws 2003, is amended to read:

16 166.370. (1) Any person who intentionally possesses a loaded or unloaded firearm or [*any other*
17 *instrument used as a dangerous*] **a deadly** weapon, while in or on a public building, shall upon con-
18 viction be guilty of a Class C felony.

19 (2)(a) Except as otherwise provided in paragraph (b) of this subsection, a person who inten-
20 tionally possesses:

21 (A) A firearm in a court facility is guilty, upon conviction, of a Class C felony. A person who
22 intentionally possesses a firearm in a court facility shall surrender the firearm to a law enforcement
23 officer.

24 (B) A weapon, other than a firearm, in a court facility may be required to surrender the weapon
25 to a law enforcement officer or to immediately remove it from the court facility. A person who fails
26 to comply with this subparagraph is guilty, upon conviction, of a Class C felony.

27 (b) The presiding judge of a judicial district may enter an order permitting the possession of
28 specified weapons in a court facility.

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

30 (a) A sheriff, police officer, other duly appointed peace officers or a corrections officer [*while*
31 *acting within the scope of employment*].

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

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

36 (d) A person who is licensed under ORS 166.291 and 166.292 to carry a concealed handgun.

37 (e) A person who is authorized by the officer or agency that controls the public building to
38 possess a firearm or [*dangerous*] **deadly** weapon in that public building.

39 (f) Possession of a firearm on school property if the firearm:

40 (A) Is possessed by a person who is not otherwise prohibited from possessing the firearm; and

41 (B) Is unloaded and locked in a motor vehicle.

42 (4) The exceptions listed in subsection (3)(b) to (f) of this section constitute affirmative defenses
43 to a charge of violating subsection (1) of this section.

44 (5)(a) Any person who knowingly, or with reckless disregard for the safety of another, discharges
45 or attempts to discharge a firearm [*at*] **in a place, or in the direction of a place**, that the person

1 knows is a school shall upon conviction be guilty of a Class C felony.

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

3 (A) As part of a program approved by a school in the school by an individual who is partic-
4 ipating in the program; or

5 (B) By a law enforcement officer acting in the officer’s official capacity.

6 (6) Any weapon carried in violation of this section is subject to the forfeiture provisions of ORS
7 166.279.

8 (7) Notwithstanding the fact that a person’s conduct in a single criminal episode constitutes a
9 violation of both subsections (1) and (5) of this section, the district attorney may charge the person
10 with only one of the offenses.

11 (8) As used in this section, [*“dangerous weapon” means a dangerous weapon as that term is de-*
12 *finied*] **“deadly weapon” has the meaning given that term** in ORS 161.015.

13 **SECTION 3.** ORS 166.170 is amended to read:

14 166.170. (1) Except as expressly authorized by state statute, the authority to regulate in any
15 [*matter*] **manner** whatsoever the sale, acquisition, transfer, ownership, possession, storage, trans-
16 portation or use of firearms or any element relating to firearms and components thereof, including
17 ammunition, is vested solely in the Legislative Assembly.

18 (2) Except as expressly authorized by state statute, no county, city or other municipal corpo-
19 ration or district may enact civil or criminal ordinances, including but not limited to zoning ordi-
20 nances, to regulate, restrict or prohibit the sale, acquisition, transfer, ownership, possession,
21 storage, transportation or use of firearms or any element relating to firearms and components
22 thereof, including ammunition. Ordinances that are contrary to this subsection are void.

23 **SECTION 4.** ORS 166.412 is amended to read:

24 166.412. (1) As used in this section:

25 [(a) *“Antique firearm” has the meaning given that term in 18 U.S.C. 921;*]

26 [(b) *“Department” means the Department of State Police;*]

27 [(c) *“Firearm” has the meaning given that term in ORS 166.210, except that it does not include an*
28 *antique firearm;*]

29 [(d)] (a) **“Firearms transaction record”** means the firearms transaction record required by 18
30 U.S.C. 921 to 929;

31 [(e)] (b) **“Firearms transaction thumbprint form”** means a form provided by the Department of
32 **State Police** under subsection (12) of this section;

33 [(f)] (c) **“Gun dealer”** means a person engaged in the business, as defined in 18 U.S.C. 921, of
34 selling, leasing or otherwise transferring a firearm, whether the person is a retail dealer,
35 pawnbroker or otherwise; **and**

36 [(g) *“Handgun” has the meaning given that term in ORS 166.210; and*]

37 [(h)] (d) **“Purchaser”** means a person who buys, leases or otherwise receives a firearm from a
38 gun dealer.

39 (2) Except as provided in subsections (3)(c) and (13) of this section, a gun dealer shall comply
40 with the following before a handgun is delivered to a purchaser:

41 (a) The purchaser shall present to the dealer current identification meeting the requirements
42 of subsection (4) of this section.

43 (b) The gun dealer shall complete the firearms transaction record and obtain the signature of
44 the purchaser on the record.

45 (c) The gun dealer shall obtain the thumbprints of the purchaser on the firearms transaction

1 thumbprint form and attach the form to the gun dealer's copy of the firearms transaction record to
2 be filed with that copy.

3 (d) The gun dealer shall request by telephone that the department conduct a criminal history
4 record check on the purchaser and shall provide the following information to the department:

5 (A) The federal firearms license number of the gun dealer;

6 (B) The business name of the gun dealer;

7 (C) The place of transfer;

8 (D) The name of the person making the transfer;

9 (E) The make, model, caliber and manufacturer's number of the handgun being transferred;

10 (F) The name and date of birth of the purchaser;

11 (G) The Social Security number of the purchaser if the purchaser voluntarily provides this
12 number to the gun dealer; and

13 (H) The type, issuer and identification number of the identification presented by the purchaser.

14 (e) The gun dealer shall receive a unique approval number for the transfer from the department
15 and record the approval number on the firearms transaction record and on the firearms transaction
16 thumbprint form.

17 (f) The gun dealer may destroy the firearms transaction thumbprint form five years after the
18 completion of the firearms transaction thumbprint form.

19 (3)(a) Upon receipt of a request of the gun dealer for a criminal history record check, the de-
20 partment shall immediately, during the gun dealer's telephone call or by return call:

21 (A) Determine, from criminal records and other information available to it, whether the pur-
22 chaser is disqualified under ORS 166.470 from completing the purchase; and

23 (B) Notify the dealer when a purchaser is disqualified from completing the transfer or provide
24 the dealer with a unique approval number indicating that the purchaser is qualified to complete the
25 transfer.

26 (b) If the department is unable to determine if the purchaser is qualified or disqualified from
27 completing the transfer within 30 minutes, the department shall notify the dealer and provide the
28 dealer with an estimate of the time when the department will provide the requested information.

29 (c) If the department fails to provide a unique approval number to a gun dealer or to notify the
30 gun dealer that the purchaser is disqualified under paragraph (a) of this subsection before the close
31 of the gun dealer's next business day following the request by the dealer for a criminal history re-
32 cord check, the dealer may deliver the handgun to the purchaser.

33 (4)(a) Identification required of the purchaser under subsection (2) of this section shall include
34 one piece of current identification bearing a photograph and the date of birth of the purchaser that:

35 (A) Is issued under the authority of the United States Government, a state, a political subdivi-
36 sion of a state, a foreign government, a political subdivision of a foreign government, an interna-
37 tional governmental organization or an international quasi-governmental organization; and

38 (B) Is intended to be used for identification of an individual or is commonly accepted for the
39 purpose of identification of an individual.

40 (b) If the identification presented by the purchaser under paragraph (a) of this subsection does
41 not include the current address of the purchaser, the purchaser shall present a second piece of
42 current identification that contains the current address of the purchaser. The Superintendent of
43 State Police may specify by rule the type of identification that may be presented under this para-
44 graph.

45 (c) The department may require that the dealer verify the identification of the purchaser if that

1 identity is in question by sending the thumbprints of the purchaser to the department.

2 (5) The department shall establish a telephone number that shall be operational seven days a
3 week between the hours of 8 a.m. and 10 p.m. for the purpose of responding to inquiries from
4 dealers for a criminal history record check under this section.

5 (6) No public employee, official or agency shall be held criminally or civilly liable for performing
6 the investigations required by this section provided the employee, official or agency acts in good
7 faith and without malice.

8 (7)(a) The department may retain a record of the information obtained during a request for a
9 criminal records check for no more than five years.

10 (b) The record of the information obtained during a request for a criminal records check by a
11 gun dealer is exempt from disclosure under public records law.

12 (8) The Department of Human Services shall provide the Department of State Police with direct
13 electronic access to information from the Department of Human Services' database of information
14 identifying persons meeting the criteria in ORS 166.470 (1)(e) and (f) who were committed or subject
15 to an order under ORS 426.130. The Department of State Police and the Department of Human
16 Services shall enter into an agreement describing the access to information under this subsection.

17 (9) A law enforcement agency may inspect the records of a gun dealer relating to transfers of
18 handguns with the consent of a gun dealer in the course of a reasonable inquiry during a criminal
19 investigation or under the authority of a properly authorized subpoena or search warrant.

20 (10) When a handgun is delivered, it shall be unloaded.

21 (11) In accordance with applicable provisions of ORS chapter 183, the Superintendent of State
22 Police may adopt rules necessary for:

23 (a) The design of the firearms transaction thumbprint form;

24 (b) The maintenance of a procedure to correct errors in the criminal records of the department;

25 (c) The provision of a security system to identify dealers who request a criminal history record
26 check under subsection (2) of this section; and

27 (d) The creation and maintenance of a database of the business hours of gun dealers.

28 (12) The department shall publish the firearms transaction thumbprint form and shall furnish the
29 form to gun dealers on application at cost.

30 (13) This section does not apply to transactions between persons licensed as dealers under 18
31 U.S.C. 923.

32 **SECTION 5. ORS 166.412, 166.414, 166.416, 166.418 and 166.421 are added to and made a**
33 **part of ORS 166.410 to 166.470.**

34 **SECTION 6.** ORS 339.315 is amended to read:

35 339.315. (1)(a) Any employee of a public school district, an education service district or a private
36 school who has reasonable cause to believe that a person, while in a school, is or within the previ-
37 ous 120 days has been in possession of a firearm or destructive device in violation of ORS 166.250,
38 166.370 or 166.382 shall report the person's conduct immediately to a school administrator, school
39 director, the administrator's or director's designee or law enforcement agency within the county. A
40 school administrator, school director or the administrator's or director's designee, who has reason-
41 able cause to believe that the person, while in a school, is or within the previous 120 days has been
42 in possession of a firearm or destructive device in violation of ORS 166.250, 166.370 or 166.382, shall
43 promptly report the person's conduct to a law enforcement agency within the county. If the school
44 administrator, school director or employee has reasonable cause to believe that a person has been
45 in possession of a firearm or destructive device as described in this paragraph more than 120 days

1 previously, the school administrator, school director or employee may report the person’s conduct
 2 to a law enforcement agency within the county.

3 (b) Anyone participating in the making of a report under paragraph (a) of this subsection who
 4 has reasonable grounds for making the report is immune from any liability, civil or criminal, that
 5 might otherwise be incurred or imposed with respect to the making or content of the report. Any
 6 participant has the same immunity with respect to participating in any judicial proceeding resulting
 7 from the report.

8 (c) Except as required by ORS 135.805 to 135.873 and 419C.270 (5) or (6), the identity of a person
 9 participating in good faith in the making of a report under paragraph (a) of this subsection who has
 10 reasonable grounds for making the report is confidential and may not be disclosed by law enforce-
 11 ment agencies, the district attorney or any public or private school administrator, school director
 12 or employee.

13 (2) When a law enforcement agency receives a report under subsection (1) of this section, the
 14 law enforcement agency shall promptly conduct an investigation to determine whether there is
 15 probable cause to believe that the person, while in a school, did possess a firearm or destructive
 16 device in violation of ORS 166.250, 166.370 or 166.382.

17 (3) As used in this section, “school” means:

18 (a) A public or private institution of learning providing instruction at levels kindergarten
 19 through grade 12, or their equivalents, or any part thereof;

20 (b) The grounds adjacent to the institution; and

21 (c) Any site or premises that at the time is being used exclusively for a student program or
 22 activity that is sponsored or sanctioned by the institution, a public school district, an education
 23 service district or a voluntary organization approved by the State Board of Education under ORS
 24 339.430 and that is posted as such.

25 (4) For purposes of subsection (3)(c) of this section, a site or premises is posted as such when
 26 the sponsoring or sanctioning entity has posted a notice identifying the sponsoring or sanctioning
 27 entity and stating, in substance, that the program or activity is a school function and that the pos-
 28 session of firearms or [*dangerous*] **deadly** weapons in or on the site or premises is prohibited under
 29 ORS 166.370.

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