

SB 554B FLOOR DEBATE Q&A

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SAFE STORAGE

The Bill is Unconstitutional/Violates the Heller Supreme Court Case

Short answer:

The bill is clearly not unconstitutional under *DC v Heller*. Because the bill allows gun owners to keep their firearm loaded and at the ready as long as they are in the control of the firearm, it does not violate the Heller test.

Long answer:

D.C. v. Heller involves an attempted District of Columbia law which would have effectively banned handgun possession and required gun owners to store all firearms in the home unloaded and locked with a firearm storage device (or disassembled). The majority opinion, authored by Justice Scalia, explained that the law is unconstitutional because it effectively prohibits residents from using the most popular class of self-defense “arms”, handguns, in home defense. Furthermore, they argue that keeping all firearms in the home unloaded and either disassembled or locked up renders them inoperable in a self-defense situation, for which no exception was given in the law.

However, the D.C. law differs meaningfully from HB 2510 in that it would have required all firearms in the home to be securely stored *and* unloaded *without exception*. HB 2510 does not require any firearm to be unloaded, and does not require all firearms to be securely stored if they are under the control of the owner or an authorized user [sec. 2(3)(a)], or if the owner lives in a home with only other authorized users [sec. 2(3)(b)]. Moreover, HB 2510 provides relief from negligence for firearm injuries occurring as a result of unsecure storage in several situations, including lawful self-defense (see Misconception #6).

The majority opinion in *D.C. v. Heller* also notes on two separate occasions that the right secured by the Second Amendment *is not unlimited*. They explain that the individual right to keep and bear arms is not the right to keep and carry any weapon whatsoever in any manner whatsoever for whatever purpose. Rather, the Justices specifically enumerate prohibitions on firearm ownership “by felons and the mentally ill”, on firearm possession “in sensitive places such as schools and government buildings”, and laws imposing conditions on the sale of firearms as examples of reasonable restrictions on the Second Amendment right.

Moreover, in addition to *Heller*, there were two cases in 2013 where storage requirements were challenged and upheld, namely *Commonwealth v McGowan* in Massachusetts and *Jackson v City of San Francisco*.

Locking Up Guns Compromises Home Defense

Gun owners are able to keep their firearm loaded and at the ready as long as they are in control of it.

If no children or guests are in a home, the bill does not require the firearm to be secured. (The definition of control includes when the owner is in their home with other authorized adults).

If children or guests are in the home, and the gun owner does not want to maintain control of their firearm, they must secure it with keys or combinations not readily available to unauthorized persons.

The bill includes exceptions to liability if an intruder obtains an unsecured firearm from a home. (Exception if firearm was obtained by a person as a result of the person entering or remaining unlawfully in a dwelling, Section 3(B)(4)(b)).

Numerous gun owners testified during the hearing on the safe storage bill that there are many gun safety devices on the market that allow for rapid access when an individual needs a firearm for self-protection.

Given broadly available statistics showing that a firearm is far more likely to be involved in an unintentional shooting or used in an incident involving family members versus a home invasion, this bill strikes the right balance between supporting gun safety and preserving the ability to defend a home.

Minors Will Be Prevented from Using Firearms in Self-Defense

Minors can be authorized by their parent or guardian to use a long gun for hunting, target shooting, and predator control as long as they are only using the firearm for those activities. Current law already prohibits minors from possessing a handgun (ORS 166.250)

If damages occur from the minor's use of a firearm for self-defense there is an exception from liability for the gun owner. However, the bill is clear that if a firearm is accessed by an unauthorized minor due to it being unsecured in the home, and the minor causes harm, the gun owner is liable for damages.

Gun owners should be absolutely sure that the minor is responsible, and in a healthy state of mind before a firearm is transferred to them for self-defense, or hunting or target shooting.

Unfair to Have Liability for Victims of Theft

This bill holds gun owners liable for failing to prevent an unintended user from accessing their firearm and causing harm. Their level of negligence will determine what amount of the damages they are liable for.

Individuals who are unable to purchase a firearm can only gain access by stealing a weapon, and it is the responsibility of law-abiding gun owners to ensure their firearm does not fall into the hands of those who would use it to cause harm. That is why it is critical that firearms be secured, and that law enforcement is made aware quickly of the stolen firearm. Accordingly, this bill is set up not only to require reporting of lost and stolen guns, but to also provide an incentive to do so. It does that in two ways:

- Once a person has reported the stolen gun within the law's requirements – 72 hours after it is stolen, or if there was a delay in discovering the theft, 24 hours after they learned it was stolen – there is no liability to what happens later with the gun.
- The bill specifically exempts individuals from liability for unsafely storing a gun when it is stolen by a home intruder. This creates a strong incentive to report the stolen gun, no matter what.

Easy to Defeat Locking Devices

No safety or security device is foolproof. But they make it significantly harder for someone to gain unintended access, especially a minor.

The intent of this bill is to reduce gun deaths and injury by making it harder to gain unintended access, just as seat belts make it less likely for us to get injured in motor vehicle accidents.

Moreover, the burden of proof in a liability suit is on the individual bringing the suit, and so they would have to prove the device was not locked. The gun owner does not bear the burden of proof to prove the gun was secure.

Storage Devices Are Unaffordable for Low-Income People

There are many affordable ways to comply with the secure storage requirement. Trigger locks can be used to comply with the law, cost less than \$10, and are often provided for free by many nonprofits and law enforcement agencies all over Oregon.

Moreover, federal law requires gun dealers to sell handguns with a locking device. Long guns are not currently required to be sold with a locking device, but many retailers do already sell them with a cable lock.

Additionally, there are affordable safes for handguns. And the bill allows for a gun room or closet to comply, as long as it has no windows and is always securely locked when not in use.

Forces People to Keep Their Home Secure

If a home has an unsecured firearm inside, the home should be secure to prevent someone from easily gaining entry to the home and accessing a weapon that is not safely stored. If a home is not secured, a gun owner must take additional steps to prevent unauthorized access – either by keeping the firearm under their control or using a safe storage device as described in the bill.

Holding One Person Accountable for Actions of Another is Not Good Legal Practice

Firearms are dangerous weapons, and our society holds people and companies responsible for actions or inactions that cause harm. For example, the alcohol vendor can be held liable after an alcohol-related accident, or the social host who can be liable for providing alcohol to intoxicated guests who then cause an accident.

The bill takes the most basic provisions of widely accepted safe storage recommendations, and holds gun owners accountable for failing to be responsible with their firearms.

There is precedent for this, several other states also have liability clauses as part of their firearm storage or child access prevention laws:

- **Connecticut:** *strict liability* if an unauthorized person uses a firearm to cause injury or death
- **Maryland:** damages can be recovered from improper child access of firearms
- **Massachusetts:** child access of firearm evidence of "wanton or reckless conduct" in civil proceedings
- **Nevada:** parent/guardian is liable for any and all damages caused by a child's misconduct with a parent's firearm
- **Oklahoma:** civil damages for any injury or death of a person, or property damage, resulting from a child discharge of a firearm

Can I Leave My Firearm in My Vehicle Under this Law?

Yes, as long as it is secured in a locked container or with a trigger/cable lock, or in an enclosed trunk, glove compartment or console equipped with a tamper resistant lock. Gun safes installed in a vehicle are considered safe storage. Handguns, even with a trigger lock, must be out of view from outside the vehicle, or they are not considered secure.

What is Negligence *Per Se* with a Non-Rebuttable Presumption?

In a negligence case, the courts must determine four things:

1. Did the defendant have a legal duty of care?
2. Did the defendant breach the duty of care? (Did they act reasonably?)
3. Was the plaintiff harmed?
4. Did the defendant's breach of duty cause the harm?

SB 554 establishes *per se* negligence with a non-rebuttable presumption. This standard takes care of the first two factors in determining negligence. *Per se* negligence means that if you break the law, you are presumed negligent. A non-rebuttable presumption means that you cannot show you acted reasonably to comply with the law. For SB 554 – if you did not secure your firearm and an unauthorized user gains access and causes harm, you are negligent.

The next two factors are still to be decided at trial. The courts must decide if the plaintiff was harmed, and whether the breach caused the harm. One factor the courts will consider is whether the plaintiff was someone the statute was designed to protect.

The most common application of negligence *per se* is traffic violations, where the driver is automatically considered negligent for violating the traffic code.

How is Negligence *Per Se* with a Non-Rebuttable Presumption Different than Strict Liability?

The main difference is the negligence standard in SB 554B still requires that the courts decide whether the violation caused the harm. Strict liability would not have left this determination open. Negligence *per se* with a non-rebuttal presumption requires that the injured person be a person that the law intended to protect, and also that it was reasonably foreseeable that the violation would cause the injury.

When would someone be subject to liability under this bill?

The bill uses a “negligence per se” standard, a liability rule that courts often use when someone violates a statutory duty to act a certain way. If a firearm owner or possessor violates the safe-storage requirements of the bill, that person has not complied with the standard of care set forth by law, and cannot argue that their failure to comply with the law was reasonable. When that occurs, a firearm owner or possessor would be potentially liable for civil damages if their violation of the safe-storage requirement was a substantial factor in causing a foreseeable injury to a person or property. That injury must occur within two years of the violation of the safe-storage requirement, and the bill exempts injuries that result from lawful acts of self-defense, defense of another person, or circumstances in which the firearm was obtained by a person who was unlawfully in a dwelling.

[If pressed on whether this is different than strict liability:] The civil liability provision of the bill has teeth because a firearm owner or possessor cannot evade liability by arguing that it was reasonable for them to violate the law’s safe-storage requirements. But the bill does not result in automatic liability. An injured plaintiff would be able recover damages only if violation of the safe-storage requirements *caused* their injury—in other words, only if the owner or possessor’s failure to safely store the firearm was a substantial factor in causing the harm, and only if the plaintiff’s injury was reasonably foreseeable. That’s how negligence per se law works in Oregon, and that’s how Section 3(3) would work here.

Education on Proper Gun Storage is Better

Education is helpful, but it is not sufficient on its own.

The American Academy of Pediatrics has reviewed research on the effectiveness of “Firearm avoidance training,” and has determined that teaching children, “Don’t touch. Get an adult,” is not sufficient to prevent children from accessing unsecured firearms.

Nearly 4.6 million children live in homes with loaded, unlocked firearms in the US. And most children know where their parents keep their guns, even if their parents think otherwise.

We cannot gun-proof children, so we need to child-proof guns.

Not every gun owner is going to take the initiative to learn about gun safety, just as many did not take the initiative to wear their seat belt until it was required by law.

Requirements for safe storage are a critical mechanism to change behavior and ensure that all gun owners take the responsible step of locking up a gun when it is not under their control.

Fails to Prevent Firearm Deaths

In Oregon, an average of 28 children and teens die by guns every year, and 69% of these deaths are by suicide. If gun owners follow the law, minors would only have supervised access to firearms, and those deaths would be avoided.

78% of school shooters under the age of 18 obtained their guns from the home of family or friends. If these minors did not have access to firearms, those shootings would be prevented.

States with Child Access Prevention laws see an average of 8% reduction in overall suicide rates, and an 11% reduction among teens. In Massachusetts, where they have a comprehensive safe storage law, the youth suicide rate is 35% below national average.

No other state does this/This is unprecedented/Where else is this done?

28 states have some form of child access prevention law, which hold gun owners criminally liable if minors gain access to unsecured firearms.

Massachusetts is the only state in the country to require that all firearms be safely stored when not in use. Guns are used in only 9% of youth suicides in MA vs. 39% nationally. Overall, the MA youth suicide rate is 35% below national average.

There are also several cities who have safe storage requirements, including Seattle and Edmunds in Washington, and San Francisco in California.

Several other states also have liability clauses as part of their firearm storage or child access prevention laws:

- **Connecticut:** *strict liability* if an unauthorized person uses a firearm to cause injury or death
- **Maryland:** damages can be recovered from improper child access of firearms
- **Massachusetts:** child access of firearm evidence of "wanton or reckless conduct" in civil proceedings
- **Nevada:** parent/guardian is liable for any and all damages caused by a child's misconduct with a parent's firearm
- **Oklahoma:** civil damages for any injury or death of a person, or property damage, resulting from a child discharge of a firearm

This Bill Doesn't Have Adequate Support

This bill is supported by the following organizations:

State of Safety Action
Everytown for Gun Safety
MOMS Demand Action
Giffords Law Center
Oregon Pediatric Society
Oregon Education Association
Students Demand Action
Doernbecher Children's Hospital
Ceasefire Oregon Board of Directors
Oregon Nurses Association
Ecumenical Ministries of Oregon
Democratic Party of Lane County
Boys and Girls Aid
American College of Physicians – Oregon Chapter
Oregon Medical Association
Oregon Public Health Association
National Association of Pediatric Nurse Practitioners – Oregon
Native American Youth and Family Center
Oregon Women's Right Coalition
Oregon Coalition of Christian Voices
American Association of University Women – Oregon
League of Women Voters
Consolidated Oregon Indivisible Network
American College of Emergency Physicians – Oregon Chapter
Oregon PTA
YWCA of Greater Portland
Jewish Federation of Greater Portland
Crisis Management Institute
Oregon Physicians for Social Responsibility

Law Enforcement Would Inspect Homes

Nothing in this bill would change the ability of a homeowner to deny the request of a law enforcement officer to enter a private home absent a warrant.

Under this law, people who fail to lock up their weapon are subject to a violation – a penalty comparable to a speeding ticket. Law enforcement would still require a search warrant to enter a house, and the violations established in this law are not grounds for obtaining a warrant. Even if someone calls to report that your firearms are unsecured, law enforcement is not able to search your home, as the offense is not criminal.

Can't Defend Against Wildlife or Livestock Predation

The proposed legislation makes a specific exception to safe storage when a person has a weapon under their control. This allows people to keep weapons on their person and gain immediate access if they believe dangerous wildlife is in the vicinity. Numerous gun owners testified during the hearing for this bill that there are a number of safe storage devices on the market that allow one to rapidly gain access to a firearm in the event of a wildlife attack.

Prevents Minors from Learning How to Use Guns

The bill allows for minors to use a firearm when they are under supervision. That is the proper way for a young person to learn about guns until they learn about gun safety. The bill also allows for unsupervised access if minors are hunting or at a shooting range or other area designated for target or sport shooting.

Additionally, there are no immediate penalties in this law for failure to supervise a minor that has been given access to a firearm. The bill only creates liability for the gun owner if they allow a minor to use a firearm that results in injury to a person or property.

Negligence Was Really Included to Deter Gun Ownership

Negligence was included as an alternative to criminal penalties to take a public health approach to establishing a safe behavior.

Rather than establishing a misdemeanor or felony for allowing an unauthorized person to gain access to a firearm, the focus of this bill is on the damages caused.

Moreover, negligence enables victims of potential firearm injuries or damage to directly seek compensation for their suffering, rather than being punitive to the gun owner without relief for the victim. Neither rationale was designed to deter gun ownership, but rather to promote safe storage, supervision of minors, and reporting of gun loss or theft.

This Bill Has Unintended Consequences for Retailers

The only impact of this bill on Gun Dealers is Section 7, which requires them to be part of educating consumers by posting a notice that gun owners have an obligation to store firearms in a safe manner.

SB 554B allows for a gun room to store firearms, which allows retailers to comply with ATF requirements.

Gun dealers would not be subject to the transfer requirements of Section 4, as they are not subject to the background check requirements in ORS 166.435, so will continue to be regulated by current state and federal law.

Federal law already requires that handguns be sold with a secure gun storage or safety device (18 USC 922(z)).

Long guns are not required to be sold with a safe storage device, but many are currently sold with a cable lock.

PUBLIC BUILDINGS

Will the Class A Misdemeanor Deny a CHL Permit?

Yes, a person is prohibited from obtaining or renewing a CHL if they have been convicted of a Class A misdemeanor within the last 4 years. Once the 4 years is up (and barring any other additional information), one should be able to obtain or renew a CHL.

Oregon law prohibits the issuance of a concealed handgun license to anyone who:

- Has been convicted of a felony
- Has been convicted of a misdemeanor within the last 4 years, or
- Is the respondent of a current restraining order or stalking order

Federal law prohibits anyone who has ever been convicted of a domestic violence related crime, whether a misdemeanor or felony, from possessing a firearm.

A Class A misdemeanor – maximum 365 days in jails and a \$1625 fine. This is the maximum that you could be charged if it is proven by the preponderance of the evidence that one had a CHL at the time they were in the Capitol.

Penalty for Class A Misdemeanor

The penalty for a Class A misdemeanor is a maximum 365 days in jails and a \$1625 fine. This is the maximum a CHL holder could be charged if it is proven by the preponderance of the evidence that the CHL holder had a CHL at the time they possessed a firearm in the Capitol, in the passenger terminal at the Portland Airport, or at a school that has passed a policy limiting possession of firearms.

Class A Misdemeanor and Gun Ownership

A misdemeanor conviction in general does not tend to affect a person's ability to legally acquire firearms. However, certain misdemeanors, such as domestic violence convictions or violent misdemeanor convictions do.

CHL Fees – How much and how are they used?

The fee for an initial CHL is currently \$50 plus a \$15 background check fee – the 24th lowest registration fee in the country. In comparison, 17 states (including California) charge \$100 or more for an initial CHL registration. Five states (Oklahoma, Connecticut, Arkansas, Kansas and Illinois) charge more than double Oregon's initial fee. Even the southern states of Mississippi (\$112) and Louisiana (\$125) are charging nearly double Oregon's rate.

Oregon's current CHL renewal fee is \$50 for four years (equating to about \$13 annually). It is the 30th lowest renewal fee in the country. In comparison, Multnomah County charges a pet license registration fee of \$62 for a neutered dog for three years or \$20.6 annually. Seven other states' (including California) renewal rates are around \$75.

Oregon's CHL fee has not been changed since the early 1990s. County Sheriff's Offices use CHL fees to cover the cost of processing and issuing CHL licenses.

Multnomah County asked for the CHL fee increase. As stated in Sheriff Reese's testimony on February 22nd, this money will go back to the County/Sheriff offices to help the CHL program be more efficient and self-sustaining.

How Does SB 554B Apply? What is permissive and what is automatic?

Currently, Oregon law prohibits guns in public buildings but provides an affirmative defense for CHL holders. SB 554B would allow only a partial defense for CHL holders in certain buildings.

In SB 554-B Engrossed, the Capitol building itself and the passenger terminal of a commercial service airport with over 1 million passenger boardings per year **automatically** get rid of the affirmative defense and make it a partial defense (making it a Class A misdemeanor).

The governing board of a public university listed in ORS 352.002, the Oregon Health and Science University Board of Directors, the governing board of a community college or a district school board as defined in ORS 352.002 **may adopt** a policy that gets rid of the affirmative defense and makes it a partial defense on the grounds of the school controlled by the board.

As of February 2nd, 2021, Oregon has issued more than 310,410 concealed handgun licenses. That is an 11.5% increase since 2020.

What is a clearly visible sign?

The definition of a clearly visible sign is up to interpretation. According to Legislative Counsel, upon a search through Oregon statute, there is nowhere that defines what a clearly visible sign should mean and what it should look like.

However, both federal buildings and courthouses do not allow firearms into their buildings. Other states also have signage that explain where guns are prohibited.