

**Confusion from the testimony today:**

- 1.) Several people testified that they would like to be able to perform background checks when they sell their firearms. Current law ALREADY allows that exact scenario, with a transfer through an FFL. It is unfortunate that they didn't read the bill like Senator Prozanski recommended, because then they would have realized that is not something that SB 941 is doing.
- 2.) Senator Gelser seemed to be confused about what SB 941 does when she questioned a citizen who declared they would not obey an unjust law. If she had read the bill like Senator Prozanski had recommended, she would have understood that it is not making it illegal for felons to buy firearms, as that is ALREADY illegal, but that it is adding burdens to non-prohibited people.

**Who is effected and how?**

There are a total of four permutations of who sellers and buyers are, that conclude in three unique use cases for outcomes. In the graphical representation below, buyers are the columns, sellers are the rows.

	<i>Criminal-Buyer</i>	<i>Peaceful Citizen-Buyer</i>
<i>Criminal-Seller</i>	Criminals don't care; Blackmarket	Usually approved but...
<i>Peaceful Citizen-Seller</i>	Criminal doesn't care; Strawpurchaser	Subjected to undue burdens: fines & fees travel, time delayed approval falsely denied approval

Color Code is for a Perfect world
Always denied
Always approved

As shown, in a perfect world the criminals are always denied and the peaceful citizen are always approved, but we don't live in a perfect world, far from it as a matter of fact. Instead, the text refers to what happens in the real world in which we actually live. Perhaps this explains the primary difference between those who support and those who oppose SB 941.

Unfortunately this also highlights that SB 941 cannot and does not address the criminal element.

**How to make SB 941 less bad:**

S. 374/i594 transfer does not mean sale:

With the current language taken from S.374/i594, SB 941 primarily consists of using color of law to harass peaceful citizens, and that runs afoul of any level of scrutiny, as that is absolutely not a compelling government interest.

So the first order of business would be to strip the offending language from the definition of transfer, and narrowing the definition to only sales. It could be as simple of a change as making Section 2.(1)(a) read as

"“Transfer” means the delivery of a firearm from a transferor to a transferee, including, but not limited to, the sale or gift of the firearm. “Transfer” does not include the temporary provision of a firearm to a transferee if the transferor has no reason to believe the transferee is prohibited from possessing a firearm or intends to use the firearm in the commission of a crime."

and then deleting (A) through (F) from Section 2.(1)(a).

CHL Exemption:

CHL holders have already passed an extensive background check, and so it is only natural that they be exempted from further background checks, and the burden that brings. Additionally, such an exception would help alleviate some of the demand on the already overwhelmed background check system.

This would go into Section 2.(4), I would place it as (b) and the language would be similar to that in ORS 166.173, ORS 166.370, and ORS 166.260

"(b) The transfer of a firearm to a person licensed to carry a concealed handgun under ORS 166.291 (issuance of concealed handgun license) and 166.292 (Procedure for issuing) to carry a concealed handgun."

There are also 14th amendment, equal protection clause concerns with this bill. A CHL exception helps address many of the real world problems shown in the earlier peaceful citizen use cases. Unfortunately, it does not completely address the issue, as acquiring the CHL in the first place also represents an undue burden which unfairly limits access, and reduces the exercise of the right.

Equivalent to Poll Tax:

Also along the equal protection lines, we have that it is in no way appropriate to force someone to pay the government to exercise their rights. So in that regard the \$10 fine paid to OSP for a background check needs to be done away with. This fine would be utterly unacceptable for any other right, and should not be accepted in this case either.

This would only require the deletion of subsection (4) under the amended Section 8.

Unfortunately, just like the CHL exemption, this does not completely alleviate the concern of an undue burden, as the law requires the use of a third party who charges fees for their service, and fixing that requires larger changes (more on that in a bit).

"Proportioned to the offense":

With regard to this supposed crime being a class A misdemeanor or even a class B felony, I refer to Article 1 Section 16 of the Oregon constitution which contains the following,

*"all penalties shall be proportioned to the offense"*

In the case of a non-prohibited person selling to a non-prohibited person without first getting the permission of big brother, there is no real offense, so even a class C misdemeanor is not proportional to the offense.

Instead a class A misdemeanor puts it in the same league as actual violent crimes like strangulation and menacing, and the class B felony puts this offense on the same level as some classifications of assault and manslaughter, and makes it worse than assaulting a public safety officer!! As well as a long list of many other real crimes.

The punishment in this measure is so extreme it even exceeds that of felons in actual possession of firearms, which is only a class C felony!

Changing Section 2)(5) to reflect the punishment only applying if the transferee is a prohibited person fixes the vast majority of cases where no offense has in fact taken place. From that rebased starting point, a more nuanced discussion on the level of the offense can be had. Though that is a discussion I won't get into at this point. Additionally, this change would bring SB 941 into line with what seems to be a common misunderstanding of the bill, as shared by Senator Gelsler and others in today's hearing.

**How to make something that's kind of good:**

Today Senator Prozanski offered the challenge to offer an alternative to fix the problem. The first part of the response to that is to address that just like voter id is chasing a non-existent problem, so is 'universal' background checks. Instead the problem is that 56% of the population wrongly feels that gun violence is at an all time high, when it is actually at historical lows. (<http://www.pewsocialtrends.org/2013/05/07/gun-homicide-rate-down-49-since-1993-peak-public-unaware/>) So this misplaced demand to "do something" is downright horrifying, and our representatives feeding into it is inappropriate.

Now, if we must truly feed into this misplaced desire to feel like something is being done, there are alternatives to heavy handed bills like SB 941. While there are many variations on how such alternatives can be implemented they all feature greatly reduced burden to users, they offer greater privacy and protection from registration, all while offering the same efficacy of the heavier handed approaches.

Instead of rehashing what is being described else-where I will merely point in the direction of the discussion on these do it yourself alternatives...

<http://www.pagunblog.com/2014/12/10/alternative-background-check-systems/>

It is these sort of do it yourself alternatives that truly address all the 2nd and 14th amendment issues with background checks.

Thank you for this opportunity to provide written testimony.

Sincerely,  
Chris Janik