

# House Bill 2705

Sponsored by Representative RAYFIELD (Presession filed.)

## 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**.

Directs Department of State Police to establish voluntary firearm Do Not Sell List using secure Internet website. Specifies requirements of website and procedures for adding and removing participants from list.

Creates offense of unlawful transfer of a firearm to a Do Not Sell List participant. Punishes by maximum of \$1,000 fine.

Creates crime of making a false statement in connection with the Do Not Sell List. Punishes by maximum of five years' imprisonment, \$125,000 fine, or both.

Creates civil cause of action if person inquires about or considers person's status or previous status on Do Not Sell List when determining eligibility for certain purposes.

Prohibits court from considering participation on list, or request to be added to or removed from list, in any legal proceedings except in specified circumstances.

Provides that it is unlawful employment practice to obtain or use for employment purposes status of employee or applicant as participant or previous participant on Do Not Sell List.

## A BILL FOR AN ACT

Relating to the firearm Do Not Sell List; creating new provisions; and amending ORS 659A.885.

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

### **SECTION 1. As used in sections 1 to 6 of this 2019 Act:**

(1) **"Criminal background check" has the meaning given that term in ORS 166.432.**

(2) **"Do Not Sell List" means a voluntary electronic list maintained by the Department of State Police of persons to whom a transferor may not lawfully transfer a firearm.**

(3) **"Firearm" has the meaning given that term in ORS 166.210.**

(4) **"Participant" means a person whose name is currently on the Do Not Sell List.**

(5) **"Transferor" means a person who intends to deliver a firearm to another person and who is required to perform a criminal background check prior to transfer under state or federal law.**

**SECTION 2. (1) The Department of State Police shall establish a secure Internet website that allows a person who resides in Oregon to voluntarily request to be added to the Do Not Sell List and to request to be removed from the list.**

**(2) The Internet website must:**

**(a) Include a process that accurately verifies the identity of the person requesting to be added to, or requesting to be removed from, the Do Not Sell List;**

**(b) Prevent unauthorized disclosure of information concerning participants;**

**(c) Inform the person of the legal consequences of participation in the Do Not Sell List;**  
**and**

**(d) Include an electronic process to request to be removed from the list.**

**(3)(a) Upon verification of the identity of a person requesting to be added to the Do Not Sell List, the department shall ensure that the participant's name and other necessary information is provided to the National Instant Criminal Background Check System for use**

**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 when a firearm transfer criminal background check is performed.

2 (b) At the time a person requests to be added to the list, the person may also provide  
3 up to five electronic mail addresses to be immediately notified if the person subsequently  
4 requests to be removed from the list.

5 (c) When a transferor requests a criminal background check under ORS 166.412, 166.435  
6 or 166.436 concerning a participant, the department shall inform the transferor of the  
7 participant's status on the Do Not Sell List.

8 (4)(a) At any time after a participant has been added to the Do Not Sell List, the partic-  
9 ipant may contact the department through the Internet website to request to be removed  
10 from the list. Upon receipt of the request, the department shall:

11 (A) Verify the identity of the participant requesting to be removed; and

12 (B) Immediately notify any electronic mail addresses that the participant provided under  
13 subsection (3)(b) of this section.

14 (b) Upon verification of the identity of the participant requesting to be removed from the  
15 list, the department shall:

16 (A) Twenty-one days after the request, remove the person's name and other identifying  
17 information from the Do Not Sell List;

18 (B) Ensure that the person's name and other identifying information is removed from the  
19 National Instant Criminal Background Check System; and

20 (C) Destroy all records associated with the person's participation in and removal from  
21 the list.

22 (5) There is no limit on the number of times a person may request to be added to or re-  
23 moved from the list.

24 (6) The department shall develop and implement a publicity and advertising campaign for  
25 the Do Not Sell List that, at a minimum, includes:

26 (a) Providing information concerning the Do Not Sell List to health care providers,  
27 firearm dealers and the general public.

28 (b) Ensuring that the address of the Internet website for the list is made generally  
29 available to the public.

30 (c) Ensuring that a link to the Internet website for the list is prominently displayed on  
31 the Internet website of the department.

32 (7) The department may enter into an agreement with another state to exchange Do Not  
33 Sell List participant information if the other state has established a substantially similar list.  
34 The agreement must establish a procedure for ensuring the removal of the participant's in-  
35 formation from the other state's list if the person is removed from the Do Not Sell List.

36 (8) Information concerning a person's request to be added to or removed from the Do  
37 Not Sell List is not subject to disclosure under ORS 192.311 to 192.478.

38 (9) Notwithstanding the fact that it is unlawful for a participant to receive a firearm,  
39 receipt or possession by a participant shall not give rise to any civil or criminal penalty.

40 (10) The department shall annually release data consisting of the number of persons who  
41 have requested to be added to the Do Not Sell List, the number of persons who have re-  
42 quested to be removed from the list and the number of persons who are participants on the  
43 list. The data may not contain any identifying information concerning any person.

44 (11) The department shall adopt rules to carry out the provisions of sections 1 to 6 of this  
45 2019 Act.

1       **SECTION 3.** (1) A person commits the offense of unlawful transfer of a firearm to a Do  
 2 Not Sell List participant if the person is a transferor and knowingly transfers a firearm to  
 3 a person whose name is on the Do Not Sell List at the time of the transfer.

4       (2) Unlawful transfer of a firearm to a Do Not Sell List participant is a Class B violation.

5       **SECTION 4.** (1) A person commits the offense of making a false statement in connection  
 6 with the Do Not Sell List if the person knowingly makes a false statement concerning the  
 7 person’s identity when requesting to be added to or removed from the Do Not Sell List.

8       (2) Making a false statement in connection with the Do Not Sell List is a Class C felony.

9       **SECTION 5.** (1) A person may not inquire or consider whether another person is, or has  
 10 ever been, a participant on the Do Not Sell List for the purposes of determining the other  
 11 person’s eligibility for:

12       (a) Admission to an educational institution as defined in ORS 350.272;

13       (b) Buying, renting or leasing real property;

14       (c) Obtaining medical insurance;

15       (d) Obtaining public assistance as defined in ORS 411.010; or

16       (e) Contracts, including but not limited to public contracts as defined in ORS 279A.010.

17       (2) A person aggrieved by a violation of subsection (1) of this section may file a civil  
 18 action in circuit court for actual damages subject to, if applicable, the terms and conditions  
 19 of ORS 30.260 to 30.300.

20       **SECTION 6.** Except when relevant in a proceeding under ORS 659A.885 or section 3, 4, 5  
 21 or 8 of this 2019 Act, a court may not consider in any court proceeding the fact that a person  
 22 has requested to be added to or removed from the Do Not Sell List or the fact that a person  
 23 is a participant on the list.

24       **SECTION 7.** Section 8 of this 2019 Act is added to and made a part of ORS chapter 659A.

25       **SECTION 8.** (1) It is an unlawful employment practice for an employer to obtain or use  
 26 for employment purposes information regarding whether an applicant for employment or an  
 27 employee is or was a participant on the Do Not Sell List, or to refuse to hire, discharge,  
 28 demote, suspend, retaliate or otherwise discriminate against an applicant or an employee  
 29 with regard to promotion, compensation or the terms, conditions or privileges of employment  
 30 based on whether the applicant or employee is or was a participant on the Do Not Sell List.

31       (2) As used in this section, “Do Not Sell List” and “participant” have the meanings given  
 32 those terms in section 1 of this 2019 Act.

33       **SECTION 9.** ORS 659A.885, as amended by section 9, chapter 197, Oregon Laws 2017, and sec-  
 34 tion 13, chapter 691, Oregon Laws 2017, is amended to read:

35       659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
 36 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
 37 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
 38 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
 39 court may order back pay in an action under this subsection only for the two-year period imme-  
 40 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
 41 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
 42 year period immediately preceding the filing of the action. In any action under this subsection, the  
 43 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
 44 cept as provided in subsection (3) of this section:

45       (a) The judge shall determine the facts in an action under this subsection; and

1 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall  
2 review the judgment pursuant to the standard established by ORS 19.415 (3).

3 (2) An action may be brought under subsection (1) of this section alleging a violation of:

4 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,  
5 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
6 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
7 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
8 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
9 659A.318, 659A.320, 659A.355 or 659A.421 **or section 8 of this 2019 Act**; or

10 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

11 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
12 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
13 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
14 659A.290, 659A.318, 659A.355 or 659A.421 **or section 8 of this 2019 Act**:

15 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,  
16 compensatory damages or \$200, whichever is greater, and punitive damages;

17 (b) At the request of any party, the action shall be tried to a jury;

18 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-  
19 ment pursuant to the standard established by ORS 19.415 (1); and

20 (d) Any attorney fee agreement shall be subject to approval by the court.

21 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-  
22 olation of ORS 652.220, the court may award punitive damages if:

23 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted  
24 with malice or acted with willful and wanton misconduct; or

25 (b) An employer was previously adjudicated in a proceeding under this section or under ORS  
26 659A.850 for a violation of ORS 652.220.

27 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the  
28 court may award, in addition to the relief authorized under subsection (1) of this section,  
29 compensatory damages or \$200, whichever is greater.

30 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574  
31 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this  
32 section, compensatory damages or \$250, whichever is greater.

33 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,  
34 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil  
35 penalty in the amount of \$720.

36 (8) Any individual against whom any distinction, discrimination or restriction on account of  
37 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
38 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
39 659A.400, by any employee or person acting on behalf of the place or by any person aiding or  
40 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
41 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
42 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
43 section:

44 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,  
45 compensatory and punitive damages;

1 (b) The operator or manager of the place of public accommodation, the employee or person  
 2 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all  
 3 damages awarded in the action;

4 (c) At the request of any party, the action shall be tried to a jury;

5 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

6 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-  
 7 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable  
 8 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;  
 9 and

10 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the  
 11 judgment pursuant to the standard established by ORS 19.415 (1).

12 (9) When the commissioner or the Attorney General has reasonable cause to believe that a  
 13 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
 14 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied  
 15 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
 16 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
 17 manner as a person or group of persons may file a civil action under this section. In a civil action  
 18 filed under this subsection, the court may assess against the respondent, in addition to the relief  
 19 authorized under subsections (1) and (3) of this section, a civil penalty:

20 (a) In an amount not exceeding \$50,000 for a first violation; and

21 (b) In an amount not exceeding \$100,000 for any subsequent violation.

22 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or  
 23 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing  
 24 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to  
 25 the commissioner if the commissioner prevails in the action. The court may award reasonable at-  
 26 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court  
 27 determines that the commissioner had no objectively reasonable basis for asserting the claim or for  
 28 appealing an adverse decision of the trial court.

29 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145  
 30 or 659A.421 or discrimination under federal housing law:

31 (a) "Aggrieved person" includes a person who believes that the person:

32 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

33 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to  
 34 occur.

35 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of  
 36 right in the action. The Attorney General may intervene in the action if the Attorney General cer-  
 37 tifies that the case is of general public importance. The court may allow an intervenor prevailing  
 38 party costs and reasonable attorney fees at trial and on appeal.

39 **SECTION 9.** ORS 659A.885, as amended by sections 9 and 10, chapter 197, Oregon Laws 2017,  
 40 and section 13, chapter 691, Oregon Laws 2017, is amended to read:

41 659A.885. (1) Any person claiming to be aggrieved by an unlawful practice specified in sub-  
 42 section (2) of this section may file a civil action in circuit court. In any action under this subsection,  
 43 the court may order injunctive relief and any other equitable relief that may be appropriate, in-  
 44 cluding but not limited to reinstatement or the hiring of employees with or without back pay. A  
 45 court may order back pay in an action under this subsection only for the two-year period imme-

1 diately preceding the filing of a complaint under ORS 659A.820 with the Commissioner of the Bureau  
 2 of Labor and Industries, or if a complaint was not filed before the action was commenced, the two-  
 3 year period immediately preceding the filing of the action. In any action under this subsection, the  
 4 court may allow the prevailing party costs and reasonable attorney fees at trial and on appeal. Ex-  
 5 cept as provided in subsection (3) of this section:

6 (a) The judge shall determine the facts in an action under this subsection; and

7 (b) Upon any appeal of a judgment in an action under this subsection, the appellate court shall  
 8 review the judgment pursuant to the standard established by ORS 19.415 (3).

9 (2) An action may be brought under subsection (1) of this section alleging a violation of:

10 (a) ORS 10.090, 10.092, 25.337, 25.424, 171.120, 408.230, 408.237 (2), 475B.281, 476.574, 652.020,  
 11 652.220, 652.355, 653.060, 653.263, 653.265, 653.547, 653.549, 653.601 to 653.661, 659.852, 659A.030,  
 12 659A.040, 659A.043, 659A.046, 659A.063, 659A.069, 659A.082, 659A.088, 659A.103 to 659A.145,  
 13 659A.150 to 659A.186, 659A.194, 659A.199, 659A.203, 659A.218, 659A.228, 659A.230, 659A.233,  
 14 659A.236, 659A.250 to 659A.262, 659A.277, 659A.290, 659A.300, 659A.306, 659A.309, 659A.315,  
 15 659A.318, 659A.320, 659A.355, 659A.357 or 659A.421 **or section 8 of this 2019 Act**; or

16 (b) ORS 653.470, except an action may not be brought for a claim relating to ORS 653.450.

17 (3) In any action under subsection (1) of this section alleging a violation of ORS 25.337, 25.424,  
 18 652.220, 652.355, 653.547, 653.549, 659.852, 659A.030, 659A.040, 659A.043, 659A.046, 659A.069,  
 19 659A.082, 659A.103 to 659A.145, 659A.199, 659A.203, 659A.228, 659A.230, 659A.250 to 659A.262,  
 20 659A.290, 659A.318, 659A.355, 659A.357 or 659A.421 **or section 8 of this 2019 Act**:

21 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,  
 22 compensatory damages or \$200, whichever is greater, and punitive damages;

23 (b) At the request of any party, the action shall be tried to a jury;

24 (c) Upon appeal of any judgment finding a violation, the appellate court shall review the judg-  
 25 ment pursuant to the standard established by ORS 19.415 (1); and

26 (d) Any attorney fee agreement shall be subject to approval by the court.

27 (4) Notwithstanding ORS 31.730, in an action under subsection (1) of this section alleging a vi-  
 28 olation of ORS 652.220, the court may award punitive damages if:

29 (a) It is proved by clear and convincing evidence that an employer has engaged in fraud, acted  
 30 with malice or acted with willful and wanton misconduct; or

31 (b) An employer was previously adjudicated in a proceeding under this section or under ORS  
 32 659A.850 for a violation of ORS 652.220.

33 (5) In any action under subsection (1) of this section alleging a violation of ORS 653.060, the  
 34 court may award, in addition to the relief authorized under subsection (1) of this section,  
 35 compensatory damages or \$200, whichever is greater.

36 (6) In any action under subsection (1) of this section alleging a violation of ORS 171.120, 476.574  
 37 or 659A.218, the court may award, in addition to the relief authorized under subsection (1) of this  
 38 section, compensatory damages or \$250, whichever is greater.

39 (7) In any action under subsection (1) of this section alleging a violation of ORS 10.090 or 10.092,  
 40 the court may award, in addition to the relief authorized under subsection (1) of this section, a civil  
 41 penalty in the amount of \$720.

42 (8) Any individual against whom any distinction, discrimination or restriction on account of  
 43 race, color, religion, sex, sexual orientation, national origin, marital status or age, if the individual  
 44 is 18 years of age or older, has been made by any place of public accommodation, as defined in ORS  
 45 659A.400, by any employee or person acting on behalf of the place or by any person aiding or

1 abetting the place or person in violation of ORS 659A.406 may bring an action against the operator  
 2 or manager of the place, the employee or person acting on behalf of the place or the aider or abettor  
 3 of the place or person. Notwithstanding subsection (1) of this section, in an action under this sub-  
 4 section:

5 (a) The court may award, in addition to the relief authorized under subsection (1) of this section,  
 6 compensatory and punitive damages;

7 (b) The operator or manager of the place of public accommodation, the employee or person  
 8 acting on behalf of the place, and any aider or abettor shall be jointly and severally liable for all  
 9 damages awarded in the action;

10 (c) At the request of any party, the action shall be tried to a jury;

11 (d) The court shall award reasonable attorney fees to a prevailing plaintiff;

12 (e) The court may award reasonable attorney fees and expert witness fees incurred by a de-  
 13 fendant who prevails only if the court determines that the plaintiff had no objectively reasonable  
 14 basis for asserting a claim or no reasonable basis for appealing an adverse decision of a trial court;  
 15 and

16 (f) Upon any appeal of a judgment under this subsection, the appellate court shall review the  
 17 judgment pursuant to the standard established by ORS 19.415 (1).

18 (9) When the commissioner or the Attorney General has reasonable cause to believe that a  
 19 person or group of persons is engaged in a pattern or practice of resistance to the rights protected  
 20 by ORS 659A.145 or 659A.421 or federal housing law, or that a group of persons has been denied  
 21 any of the rights protected by ORS 659A.145 or 659A.421 or federal housing law, the commissioner  
 22 or the Attorney General may file a civil action on behalf of the aggrieved persons in the same  
 23 manner as a person or group of persons may file a civil action under this section. In a civil action  
 24 filed under this subsection, the court may assess against the respondent, in addition to the relief  
 25 authorized under subsections (1) and (3) of this section, a civil penalty:

26 (a) In an amount not exceeding \$50,000 for a first violation; and

27 (b) In an amount not exceeding \$100,000 for any subsequent violation.

28 (10) In any action under subsection (1) of this section alleging a violation of ORS 659A.145 or  
 29 659A.421 or alleging discrimination under federal housing law, when the commissioner is pursuing  
 30 the action on behalf of an aggrieved complainant, the court shall award reasonable attorney fees to  
 31 the commissioner if the commissioner prevails in the action. The court may award reasonable at-  
 32 torney fees and expert witness fees incurred by a defendant that prevails in the action if the court  
 33 determines that the commissioner had no objectively reasonable basis for asserting the claim or for  
 34 appealing an adverse decision of the trial court.

35 (11) In an action under subsection (1) or (9) of this section alleging a violation of ORS 659A.145  
 36 or 659A.421 or discrimination under federal housing law:

37 (a) "Aggrieved person" includes a person who believes that the person:

38 (A) Has been injured by an unlawful practice or discriminatory housing practice; or

39 (B) Will be injured by an unlawful practice or discriminatory housing practice that is about to  
 40 occur.

41 (b) An aggrieved person in regard to issues to be determined in an action may intervene as of  
 42 right in the action. The Attorney General may intervene in the action if the Attorney General cer-  
 43 tifies that the case is of general public importance. The court may allow an intervenor prevailing  
 44 party costs and reasonable attorney fees at trial and on appeal.